5-7-91
Vol. 56 No. 88

federal register

Tuesday
May 7, 1991

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

0

5-7-91
Vol. 56 No. 88
Pages 21063-21254

Federal Register

Tuesday
May 7, 1991

Briefings on How To Use the Federal Register
For information on briefings in Washington, DC, and New York City see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 56 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–783–3238
Magnetic tapes	275–0186
Problems with public subscriptions	275–3054

Single copies/back copies:

Paper or fiche	783–3238
Magnetic tapes	275–0186
Problems with public single copies	275–3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5240
Magnetic tapes	275–0186
Problems with Federal agency subscriptions	523–5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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

NEW YORK, NY

WHEN: May 21, at 9:00 am
WHERE: 26 Federal Plaza
Room 305 B and C
New York, NY
RESERVATIONS: Federal Information Center
1–800–347–1997

WASHINGTON, DC

WHEN: May 23, at 9:00 am
WHERE: Office of the Federal Register
First Floor Conference Room
1100 L Street, NW, Washington, DC
RESERVATIONS: 202–523–5240 (voice); 202–523–5229 (TDD)

NOTE: There will be a sign language interpreter for hearing impaired persons at the May 23, Washington, DC briefing.

Contents

Federal Register
Vol. 56, No. 88
Tuesday, May 7, 1991

Separate Parts In This Issue

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

CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
Vol. 56, No. 88
Tuesday, May 7, 1991

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 354

[Docket No. 91-024]

Commuted Traveltime Periods

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning overtime services provided by employees of Plant Protection and Quarantine (PPQ) by removing and adding commuted traveltime allowances for travel between various locations in Delaware and Missouri. Commuted traveltime allowances are the periods of time required for PPQ employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty. The Government charges a fee for certain overtime services provided by PPQ employees and, under certain circumstances, the fee may include the cost of commuted traveltime. This action is necessary to inform the public of the commuted traveltime for these locations.

EFFECTIVE DATE: May 7, 1991.

FOR FURTHER INFORMATION CONTACT: Paul R. Eggert, Director, Resource Management Support, PPQ, APHIS, USDA, Room 458, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7764.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR, chapter III, and 9 CFR, chapter I, subchapter D, require inspection, laboratory testing, certification, or quarantine of certain plants, plant products, animals and animal byproducts, or other commodities intended for importation into, or exportation from, the United States. When these services must be provided by an employee of PPQ on a Sunday or holiday, or at any other time outside the PPQ employee's regular duty hours, the Government charges a fee for the services in accordance with 7 CFR part 354. Under circumstances described in § 354.1(a)(2), this fee may include the cost of commuted traveltime. Section 354.2 contains administrative instructions prescribing commuted traveltime allowances, which reflect, as nearly as practicable, the periods of time required for PPQ employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty.

We are amending § 354.2 of the regulations by removing and adding commuted traveltime allowances for locations in Delaware and Missouri. The amendments are set forth in the rule portion of this document. This action is necessary to inform the public of the commuted traveltime between the dispatch and service locations.

Executive Order 12291 and Regulatory Flexibility Act

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

The number of requests for overtime services of a PPQ employee at the locations affected by our rule represents an insignificant portion of the total number of requests for these services in the United States.

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

Effective Date

The commuted traveltime allowances appropriate for employees performing services at ports of entry, and the features of the reimbursement plan for recovering the cost of furnishing port of entry services, depend upon facts within the knowledge of the Department of Agriculture. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary; we also find good cause for making this rule effective less than 30 days after publication of this document in the Federal Register.

Executive Order 12372

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

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 354

Agricultural commodities, Exports, Government employees, Imports, Plants (Agriculture), Quarantine, Transportation.

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

Accordingly, 7 CFR part 354 is amended as follows:

1. The authority citation for part 354 continues to read as follows:

Authority: 7 U.S.C. 2260, 49 U.S.C. 1741; 7 CFR 2.17, 2.51 and 371.2(c).

2. Section 354.2 is amended by removing or adding in the table, in

alphabetical order, the information as shown below:

§ 354.2 Administrative instructions prescribing commuted traveltime.

* * * * *

COMMUTED TRAVELTIME ALLOWANCES

[In hours]

Location covered	Served from	Metropolitan area	
		Within	Outside
Remove:			
* * * * *			
Delaware:			
* * * * *			
Claymont	Dover		3
Claymont	Wilmington		1
* * * * *			
Dover		1	
Greater Wilmington Airport.	Dover		3
Wilmington (including marine terminal and airport).		1	
* * * * *			
Wilmington	Dover		3
Missouri:			
* * * * *			
Kansas City International Airport.		2	
* * * * *			
Add:			
* * * * *			
Delaware:			
* * * * *			
Claymont	Dover		4
Claymont	Wilmington		2
* * * * *			
Dover		2	
Slaughter Beach.	Dover		2
Wilmington (including marine terminal and airport).		2	
* * * * *			
Wilmington (including marine terminal and airport).	Dover		4
Missouri:			
* * * * *			
Kansas City International Airport.		1	
* * * * *			

Done in Washington, DC, this 1st day of May 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91–10807 Filed 5–6–91; 8:45 am]

BILLING CODE 3410–10–M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AA96

Assessments

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Board of Directors ("Board") of the Federal Deposit Insurance Corporation ("FDIC") is amending part 327 of its regulations, 12 CFR part 327, ("Assessments") to increase the assessment to be paid by Bank Insurance Fund ("BIF") members during the second half of calendar year 1991 and thereafter.

EFFECTIVE DATE: The Final Rule is effective June 6, 1991.

FOR FURTHER INFORMATION CONTACT: Alvin E. Kitchen, Associate Director, Division of Accounting and Corporate Services, Federal Deposit Insurance Corporation, 550 Seventeenth St., NW., Washington, DC, 20429, (202) 625–8344.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in the final rule. Consequently, no information has been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply to the publication of "a rule of particular applicability relating to rates." *Id.* 601(2). Accordingly, the Act's requirements relating to an initial and final regulatory flexibility analysis (*id.* 603 & 604) are not applicable.

In any case, the primary purpose of the Regulatory Flexibility Act is fulfilled as a matter of course. The Act's purpose is to make sure that agencies' rules do not impose disproportionate burdens on small businesses. The Act is "designed to encourage agencies to tailor their rules to the size and nature of those to be regulated whenever this is consistent with the underlying statute authorizing the rule." See 126 Cong. Rec. 21453 (1980) ("Description of Major Issues and Section-by-Section Analysis of Substitute for S. 299"). The Federal Deposit Insurance Act ("FDI Act") specifies how assessments are computed, and gears each institution's assessment to the institution's size (as measured by domestic deposits). See 12 U.S.C. 1813 & 1817. The FDIC has no authority to "tailor [assessments] to the size and nature of [banks]" in any manner other than that set forth in the Act.[1]

The Final Rule

I. Increase in the BIF assessment rate

A. The substance of the rule

The FDIC must assess all insured depository institutions. *Id.* 1817. The FDIC's assessment rules are set forth in part 327 of title 12 of the Code of Federal Regulations ("Assessments").

The minimum assessment rate for BIF members is 0.15 percent per annum (subject to a minimum annual assessment of $1,000). The Board of Directors may set a higher rate if the Board determines that the higher rate is "appropriate * * * to increase the reserve ratio to the designated reserve ratio within a reasonable period of time." *Id.* 1817(b)(1)(C). When determining an appropriate rate, the Board must consider the BIF's financial condition—its expected operating expenses, case resolution expenditures, and income—and the effect of the assessment rate on the earnings and capital of BIF members. The Board may consider other appropriate factors as well.

The Board of Directors has already raised the annual assessment rate for BIF members from .15 percent to .195 percent. The higher rate has been in effect for the first semiannual period of 1991. See 55 FR 40817 (1990).

Now the Board is increasing the rate to .23 percent per annum. The new rate applies to assessments that become due in the second semiannual period of 1991 and thereafter.[2]

B. The need for the assessment increase

The BIF's designated reserve ratio is currently set by statute at 1.25%. *Id.* 1817(b)(1)(B). The BIF's actual reserve ratio is below that level. It has fallen from 1.10 percent at year-end 1987

[1] The Board believes that the adverse effects of the higher assessment rate do not fall disproportionately on smaller banks. See footnote 16.

[2] The Board published its proposal to raise the BIF assessment rate on March 6, 1991, in the form of a proposed regulation. 56 FR 9308 (1991).

(when the BIF's balance stood at $18.3 billion) to .80 percent at year-end 1988 (BIF balance $14.1 billion), and then to .70 percent at year-end 1989 (BIF balance $13.2 billion). Preliminary figures indicate that the ratio was .42 percent at the end of 1990 (BIF balance $8.4 billion).[3]

Current data suggest that the BIF reserve ratio will continue to decline through the end of 1992 if the assessment rate remains at .195 percent. Under the FDIC's baseline assumptions,[4] the ratio is expected to decline to .19 percent (BIF balance: $3.8 billion) by the end of 1991 and to .11 percent at the end of 1992 (BIF balance: $2.3 billion).[5] Under pessimistic assumptions,[6] the BIF ratio is expected to be zero at the end of 1991 and to be negative (−.28 percent; BIF balance −$5.9 billion) at the end of 1992:[7]

TABLE 1.—BANK INSURANCE FUND TRENDS AND PROJECTIONS, 1984–1992

[Dollars in Billions]

Year	No. failed banks	Failed banks assets	Failed banks assets (adj.) [1]	Baseline Estimate				Pessimistic Estimate			
				Total income [2]	Total expense	Fund balance	BIF reserve ratio (percent)	Total income [2]	Total expense	Fund balance	BIF reserve ratio (percent)
1984	80	$38.9	$36.9	$3.1	$2.0	$16.5	1.19	$3.1	$2.0	$16.5	1.19
1985	120	8.8	8.8	3.4	2.0	18.0	1.19	3.4	2.0	18.0	1.19
1986	145	7.7	8.9	3.3	3.0	18.3	1.12	3.3	3.0	18.3	1.12
1987	203	9.5	20.8	3.3	3.3	18.3	1.10	3.3	3.3	18.3	1.10
1988	221	53.9	61.6	3.4	7.6	14.1	0.80	3.4	7.6	14.1	0.80
1989	207	29.2	15.5	3.5	4.3	13.2	0.70	3.5	4.3	13.2	0.70
1990 [3]	169	16.3	39.8	3.9	8.7	8.4	0.42	3.9	8.7	8.4	0.42
Estimates for 1991 and 1992 [4]											
1991	180–230	$65–90B		$5.4	$10.00	$3.8	0.19	$5.04	$13.8	$−0.1	0.00
1992	160–210	30–70B		5.0	6.5	2.3	0.11	5.0	10.8	−5.9	−0.28

Notes to Table 1:

[1] Reserves are established for open banks when their failure appears likely. The adjusted figures on failed bank assets reflect either the year reserves were established or the year the bank was actually closed, whichever was earlier.

[2] Assumes that the assessment rate remains at .195 percent per annum through year-end 1992.

[3] 1990 BIF revenue and expense figures are preliminary.

[4] The most recent projections dated April 10, 1991, using the .23 percent rate included in the final rule shows the BIF balance in 1991 and 1992 to be $4.1 billion and $3.6 billion, respectively, for the baseline estimates and $.2 billion and $−4.6 billion, respectively, for the pessimistic estimate.

In view of this trend, the Board has determined that the annual BIF assessment rate must be increased to .23 percent for the second semiannual period of 1991 and thereafter. The increase is needed as part of the FDIC's overall program to restore the BIF's reserve ratio to 1.25 percent within a reasonable time. The FDIC presently anticipates that it will borrow working capital [8] of approximately $10 billion. The higher assessment rate is expected to generate additional annual revenues of approximately $870 million, and will provide the funds needed to pay the interest and amortization on that level of borrowing.

The FDIC's anticipated borrowing, and the assessment increase needed to fund it, are only interim measures. They are necessary under the current framework of insurance and supervision for depository institutions. But they must also be seen in the context of longer-term BIF recapitalization efforts currently under development. In any event, it will be appropriate for the FDIC to reconsider its assumptions and projections, and to reevaluate the need for setting the assessment rate at the level here prescribed.

C. Impact on Bank Capital

1. The industry as a whole. Increasing the assessment rate from .195 percent to .23 percent will have a minimal impact on industry capital levels in the short term. The FDIC recognizes, however that banks' assessment costs have been rising sharply in recent years. Assessments will have risen nearly 92 percent between year-end 1990 and mid-year 1991, and will have nearly tripled from the level that prevailed prior to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law 101–73, 103 Stat. 183 ("FIRREA"). To the extent that banks are unable to share these costs with customers, or that banks are unable to find ways to reduce other costs, bank earnings and profitability will be diminished.

As of December 31, 1990, the tangible equity capitalization [9] of BIF members [10] was approximately $222.9 billion. The assessment rate increase will raise 1991 industry assessments by an estimated $435 million, or less than .2 percent of fourth-quarter 1990 industry capital. On an annual basis, the higher rate will generate additional assessments of $870 million, or about .39 percent of fourth-quarter 1990 industry capital.[11]

The FDIC staff estimates that year-end 1992 tangible equity capital for BIF

[3] During the past 4 years, 800 banks with about $140 billion in total assets have been closed or reserved for, costing the BIF $23 billion. The BIF's administrative and operating expenses over that period have exceeded $850 million. As a result, although the BIF has generated about $14 billion in revenue during this time, the BIF has declined from $18.3 billion at year-end 1986 to $8.4 billion as of year-end 1990. About $6.8 billion is comprised of cash or other liquid assets.

[4] The "baseline" forecast assumes a moderate recession ending by mid-year 1991. It does not represent a best-case scenario.

[5] Under currently expected conditions, FDIC staff projects that 180 banks will be closed in 1991, with another 160 failures in 1992. FDIC staff estimates that reserves of $10 billion will be set aside to cover total expenses and losses on $65 billion in failed-bank assets in 1991. Another $6.5 billion in reserves will be needed in 1992 to cover expenses and losses on $30 billion in failed-bank assets. If the assessment rate were to remain at .195 percent, the BIF's income would be approximately $5.4 billion in 1991 and $5.0 billion in 1992.

[6] The assumptions are "pessimistic" in that they assume the recession lasts for more than a year. They do not represent a worst-case scenario.

[7] Under these assumptions, FDIC staff projects that 230 banks would fail in 1991 and 210 banks would fail in 1992. Reserves of $13.9 billion would be needed to cover expenses and losses on $90 billion in failed-bank assets in 1991. Reserves of $10.8 billion would be needed to cover expenses and losses on $70 billion in failed-bank assets in 1992.

[8] See discussion of the term "working capital" in connection with the comments of the Independent Bankers' Association of America, at paragraph II(B).

[9] Tangible capital is narrowly defined as bank equity minus all intangible assets.

[10] This analysis excludes 18 federal savings banks with tangible capital of $0.934 billion or .4% of industry tangible capital. The federal savings banks were excluded because of significant differences between the financial reports filed by federal savings banks and the other BIF-insured banks.

members would have been just under $240.6 billion if the .195 percent rate had remained in place. With the assessment rate set at .23 percent, FDIC staff estimates that BIF members' year-end 1992 tangible equity capital will be just over $240.1 billion (roughly $.5 billion lower).

The after-tax cost of the assessment increase is projected to be $574 million per year.[12] If banks maintain dividend levels despite the increase in operating costs, growth in their book capital will be reduced by the full amount of the after-tax cost of the assessment increase (assuming no new capital issues). That is to say, if dividends are not reduced, then the increased operating costs will be reflected in lower retained earnings.[13]

For the projections presented here, the FDIC staff has assumed that banks' dividend rates remained the same as those reported in 1990, and that the only source of new book capital is additions to retained earnings. Under those assumptions, the total $861 million in increased after-tax assessment costs projected over the next one-and-a-half years result in a $474 million total decline in capital and a $387 million total reduction in dividends. This represents a reduction in average annual dividends for the industry of approximately $258 million or 1.8 percent of total 1990 industry dividends of $14.2 billion.

2. Individual banks. Forty-three BIF-insured banks (assets: $22.6 billion) reported negative equity capital at the end of 1990. If the assessment rate had been .195 percent in 1990, three more banks (assets: $0.174 billion) would have reported negative equity capital that year. For another 21 banks (assets: $4.2 billion), the extra cost of the higher insurance premiums would have represented more than 10 percent of their equity capital.

If the 1990 assessment rate had been .23 percent, one additional bank (assets: $2.1 billion) would have seen its equity capital eclipsed by the higher insurance fee. Fourteen more banks (assets: $1.9 billion) would have had increased premiums equal to more than 10 percent of their equity capital.[14]

During 1992, the assessment increase is projected to raise the number of poorly capitalized banks—those with less than 3 percent tangible capital—by only 3 banks (average assets: $35 million). The number of banks with between 3 and 6 percent tangible capital is projected to increase by 11 (average assets: just over $122 million). In sum, while the assessment increase lowers the book capital of most banks, the overall impact on book capital is expected to be small in the short run.

D. Earnings

1. Impact on the industry. The additional assessment premiums, when measured over a full year, would boost BIF members' noninterest overhead expenses by approximately .71 percent. The additional expense of the 3.5 basis point assessment rate increase, measured on an annual basis, amounts to 4.1 percent of 1990 pre-tax net operating income and 6.2 percent of net income after taxes and nonrecurring extraordinary gains. The after-tax impact will be reduced to 3.9 percent of 1990 net income, however, when 1990 state and federal income tax provisions—which amounted to $8.0 billion—are considered.

2. Individual banks.[15] The assessment rate stood at .12 percent during 1990. That year 1,758 BIF members (assets: $730 billion) reported full-year earnings losses totalling $10.7 billion.

If the 1990 rate had been the rate effective for the first semiannual period of 1991 (.195 percent), these banks would have lost an additional $398 million. Another 166 banks (assets: $197 billion) would have lost $57 million. In addition, 2,483 banks (assets: $617 billion) would have had their earnings reduced by more than 10 percent.

If the 1990 assessment rate had been 0.23 percent, 63 more banks (assets: $21.5 billion) would have seen their net income reduced below zero by the additional insurance assessment: [16]

TABLE 2.—BIF MEMBERS WITH EARNINGS LOSSES UNDER DIFFERENT ASSESSMENT SCENARIOS

[Based on 1990 earnings; amounts in $ millions]

	Actual 1990 rate (0.12%)	First-half 1991 rate (0.195%)	Second-half 1991 rate (0.23%)
Number of banks with negative net income	1,758	1,924	1,987
Combined losses	$10,672	$11,108	$11,296
Total assets	$730,741	$928,118	$949,656

An additional 2,767 banks (assets: $485 billion) would have incurred earnings reductions exceeding 10 percent. The average full-year reduction in earnings for these banks attributable to the increase from .195 percent to .23 percent in the assessment rate would have been approximately 15 percent.

The 1,758 banks reporting net losses in 1990 included 193 banks (assets: $100 billion) that had equity capital of less than 3 percent of assets at year-end 1990. If the 1990 assessment rate had been .195 percent, two additional thinly-capitalized banks would have reported a net loss for the year, and 9 others would have had more than 10 percent of their net income absorbed by the additional assessment payments. Lifting the assessment rate to .23 percent would not have resulted in any additional under-capitalized unprofitable banks, nor would it have caused any additional banks to have earnings reduced by more than 10 percent.

II. Comments

The FDIC published the proposed assessment increase for comment on March 6, 1991. 56 FR 9308 (1991). The FDIC received 185 comments on the proposal. Bankers supplied 182 comments; trade groups provided the other 3 comments.

[11] The FDIC staff has projected the BIF assessment base to increase at an annual rate of 4.5 percent during 1991.

[12] FDIC staff has assumed an average tax rate of 34 percent. FDIC staff has also assumed that banks will bear the full after-tax cost of the assessments themselves, and will not pass any portion of the cost along to bank customers in the form of higher borrowing rates, increased service fees, and lower deposit rates.

[13] A change in the value of a bank's book capital is not the same as a change in the bank's overall market value. Some observers have suggested that, if banks cut dividends in order to maintain internal capital generation rates, the market value of common stock will be reduced, and that banks raising capital through new stock issues will see a reduction in the proceeds from new capital issues. This argument runs counter to standard financial theory. While the market value of bank equity undoubtedly rises and falls with profits, it should be independent of dividend policy. Accordingly, the bank's ability to attract new capital should not be materially affected by assumptions about dividend policy.

[14] It is assumed that all increased deposit insurance costs are taken directly out of retained earnings, and are not offset by tax reductions, cost pass-throughs, or lower dividends.

[15] This analysis of the impact of higher assessment rates on bank earnings makes several simplifying assumptions, which have the effect of overstating the likely consequences of a rate increase. Estimated assessment payments are based on end-of-year total domestic deposits, which enlarges the assessment base; in practice, actual assessments would be somewhat lower than the amounts used here. In addition, the effect of higher insurance premiums represents a "worst-case" scenario, in which no tax effect or cost pass-through is assumed, where all higher payments are carried directly through to lower net income.

[16] The affected banks are not disproportionately small ones. Fifty-four have assets under $100 million (86%); four have assets from $100 million to $1 billion (6.4%); three have assets between $1 billion and $5 billion (4.8%); and two have assets exceeding $5 billion (3.2%). By comparison, banks with assets under $100 million comprise 73.3% of all BIF members; $100 million-to-$1 billion banks comprise 23.3%; $1-to-$5 billion comprise 2.5%; and banks with assets over $5 billion comprise the remaining 1%.

A. Bankers' Comments

Just over two-thirds of the bankers (119) opposed the increase; just under one-third of them (63 bankers) did not oppose it or favored it in some degree.

Ninety-eight bankers said that the assessment increase weighs more heavily on small banks than on large ones. These bankers generally noted that large banks often hold foreign deposits, which are not subject to assessment, whereas small banks usually hold domestic deposits only. Accordingly, said these bankers, smaller banks are assessed on a larger proportion of their liabilities.

In the same vein, 95 bankers objected that the FDIC protects all the liabilities of bigger banks under the so-called "Too Big To Fail" doctrine. These bankers made two points: on one hand, the doctrine places them at a disadvantage in competing for deposits; and on the other, smaller banks are in effect paying the cost of the extra protection afforded to the bigger banks.

Bankers suggested three main alternatives to the uniform rate increase. Forty-three bankers called for risk-based assessments; 69 bankers specifically recommended assessing foreign deposits; and 52 bankers proposed changing and/or broadening the assessment base in other ways (*e.g.*, by assessing assets less capital).

None of these options are available under current law, however. The FDI Act prescribes a single rate for all BIF members. 12 U.S.C. 1817(b)(1)(C). The FDI Act also defines the assessment base in terms of "deposits," *id.* 1817(c)(4),[17] and specifically excludes foreign deposits from that term, *id.* 1813(1)(5)(2)(A).

Sixty-one bankers said the increase would have an adverse impact on their own banks. Many bankers described the magnitude of the impact in terms of dollars, but only a few described (or provided sufficient information to compute) the effect of the increase in terms of their banks' earnings or capital. In general, the information provided in the comments was in line with the FDIC's projections. A somewhat smaller number of bankers (13) asserted that the increase would hurt banks generally.

Thirty-two bankers indicated that banks would have to raise interest rates paid by borrowers and/or cut rates paid to depositors. Half as many (16 bankers) said they would not be able to pass costs on to customers.

B. Trade groups' comments

One comment was filed jointly by four trade groups. The other two comments were filed by individual groups. None of the comments directly opposed the assessment increase. All, however, suggested changes in the current statutory assessment plan.

The joint comment was filed by the American Bankers Association, the Association of Bank Holding Companies, the Association of Reserve City Bankers, and the Consumers Banking Association. These four groups noted that industry representatives had developed a recapitalization program, and had presented it to the FDIC in a letter dated February 12, 1991 ("February 12 proposal"). This program called for the FDIC to issue bonds to be purchased by banks. The FDIC would impose a special assessment on the banking industry to cover the interest and principal on the bonds. The assessment would be levied on a different assessment base: Namely, assets minus capital.

The four trade groups contend that the February 12 proposal is a better plan than the FDIC's proposal to raise the assessment rate. They acknowledge, however, that changes in federal law would be needed before the February 12 proposal could be implemented. Accordingly, none of the four groups disputes the need for an increase in BIF resources. But the groups also believe that the increase should be adopted only as an interim measure, pending final Congressional action on various legislative proposals.

The four trade groups make the point that the assessment increase will reduce bank earnings and capital, and will accordingly have an adverse effect on bank lending. The trade groups suggest that the assessment increases from .12 percent per annum (which was the rate in effect at year-end 1990) to .23 percent (which will apply to assessments collected in July 1991, and thereafter) result in a net withdrawal of approximately $3 billion per year from banks' earnings and capital. Based on this computation, the trade groups assert that bank lending would be reduced by almost $25 billion per year. They observe that the assessment increase of .035 percent could take as much as ten years to amortize $10 billion in borrowings. They conclude that, over this interval, raising the rate from .12 percent to .23 percent could reduce bank lending by $250 billion.

There can be no doubt that the increase in bank assessments has been steep ever since the passage of the FIRREA. But at the same time, it is not clear that the impact of the present assessment increase will be as severe as the four trade groups suggest. For one thing, the increase at issue here is a bit less than one-third of the overall increase discussed by the trade groups (.035 percent as compared with .11 percent). For another, the trade groups evidently do not allow for any tax deduction for these operating expenses, nor contemplate the possibility that bank dividends may be reduced: Rather, the trade groups assume that the entire amount of the charge will be reflected in reduced bank capital and retained earnings. For a third, it is not at all clear that a change in banks' retained earnings automatically causes a proportionate change in their lending activity. Banks' lending practices are sensitive to a variety of influences. External conditions can make banks reluctant to lend even when they have unused lending capacity. Conversely, when little excess lending capacity exists, external conditions may nevertheless be more conductive to increased lending activity. The lending environment can change over comparatively short intervals; accordingly, ten-year projections of lending activity are necessarily speculative.

Nevertheless, the four trade groups' central point is well taken. The FDIC agrees that the present assessment schedule should be considered in the context of the larger problems of industry structure and of the deposit-insurance program. If these issues are addressed comprehensively, it may well become appropriate to re-evaluate assessment levels.

The Independent Bankers Association of America ("IBAA") filed one of the individual comments. The IBAA indicated its support for the February 12 proposal. In addition, the IBAA specifically called for the inclusion of foreign deposits in the assessment base, or in the alternative for the assessment base to be changed to assets less capital. The IBAA acknowledged, as did the four trade groups signing the joint statement, that changes of this kind would require new legislation.

With respect to the assessment increase, however, the IBAA called upon the FDIC to clarify the use to which the FDIC will put the assessment proceeds. As provided above, the FDIC expects to borrow $10 billion, and to use the proceeds for the purpose of resolving failed and failing institutions. The FDIC

[17] The FDIC does have limited power under current law to vary the limits of the category "deposit." *Id.* 1813(1)(5). But the FDIC may only include liabilities that are "deposit liabilities by usage." In addition, the FDIC must consult with the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Office of Thrift Supervision before changing the scope of the term "deposit." The comments did not call for minor changes of this kind, however.

describes the funds so borrowed and used as "working capital." The IBAA properly observes that, in this connection, "working capital" generally refers to temporary borrowings used to finance the acquisition of assets from failed banks, and that the proceeds from the sale of the assets are expected to be the primary source of repayment for the borrowings. The IBAA indicates concern that the assessment increase will be used to amortize the principal amount so borrowed. Conversely, the IBAA calls for "working capital borrowings" to be "fully collateralized."

The FDI Act does not afford a basis for distinguishing the funds received pursuant to the incremental .035 percent increase from other assessment receipts. The basic purpose for instituting the assessment rate increase is to help restore the BIF's reserve ratio to the designated ratio. See 12 U.S.C. 1817(b)(1)(C). All amounts assessed on BIF members are to be deposited in the BIF without differentiation, and are to be available for the BIF's general uses and purposes. *Id.* 1821(a)(5) (C) & (D). Accordingly, while the FDIC characterizes the funds to be borrowed as "working capital," and speaks of devoting the proceeds from the incremental 0.035 percent increase to the amortization of the principal and interest of those funds, the FDIC's remarks are in the nature of a description of the practical uses to which the funds will be put, and of the reason for setting the amount of the assessment increase at .035 percent. The fact of the matter is that the full resources of the BIF—not just the incremental assessment, and not just any particular collateral—are available for the repayment of any borrowings by the FDIC.

The IBAA calls upon the FDIC to estimate the amount of losses the FDIC expects to sustain over the next five years. As the IBAA itself recognizes, however, such estimates can vary greatly depending on the assumptions used and the economic conditions expected. The FDIC considers that the shorter-term projections set forth above, taken together with the current status of the BIF reserve ratio, are sufficient to demonstrate the need for the assessment increase at issue here.

Finally, the IBAA makes the point, as so many bankers have done, that the assessable deposits of small banks represent a much larger proportion of total liabilities (and in particular, of total deposits) than is the case for larger banks (particularly those that hold foreign deposits). Accordingly, says the IBAA, the assessment increase weighs more heavily on small banks than on larger ones.

The IBAA's observation has to do, at bottom, with the question whether small banks are paying their fair share of the insurance costs. The IBAA implicitly assumes that they are doing so and more. Whatever the validity of this assumption,[18] the FDI Act does not currently provide a mechanism for granting special relief to banks based on size alone. A program of risk-based assessments might address this issue indirectly, however, insofar as the composition of small banks' assets and liabilities might lower their risk profiles.

The New Jersey Council of Savings Institutions filed the other individual comment. The Council recommended that the assessment base be expanded to include foreign deposits. The Council also called for the aggressive pursuit of a system of risk-based insurance premiums. As noted above, these changes would require modifications to federal law.

III. Effective date

The final rule is made effective June 6, 1991.

List of Subjects in 12 CFR Part 327

Assessments, Bank deposit insurance, Financing Corporation, Savings associations.

For the reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation is amending part 327 of title 12 of the Code of Federal Regulations as follows:

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

Authority: 12 USC 1441, 1441b, 1817–19.

2. Section 327.13(c) is revised to read as follows:

§ 327.13 Payment of assessment.

* * * * *

(c) *Assessment rate.* The annual assessment rate for each BIF member shall be:

(1) For the first semiannual period of calendar year 1991, 0.195 percent; and

(2) For the second semiannual period of calendar year 1991, and for subsequent semiannual periods, 0.23 percent.

By order of the Board of Directors.

Dated at Washington, DC, this 30th day of April, 1991.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 91–10705 Filed 5–6–91; 8:45 am]

BILLING CODE 6714–01–M

[18] The Treasury Study indicates that, from 1985 through 1989, banks with assets exceeding $1 billion paid 70.7% of all assessments yet imposed only 51.5% of all resolution costs. Dept. of the Treasury, Modernizing the Financial System: Recommendations for Safer, More Competitive Banks 30–31 (1991). But the average size of failed banks is increasing: The pattern reported in the Treasury Study may not hold true in future years.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90–CE–46–AD; Amdt. 39–6987]

Airworthiness Directives; British Aerospace Beagle B121 Pup Series 1, 2, and 3 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to British Aerospace Beagle B121 Pup series 1, 2, and 3 airplanes. This action requires initial replacement of the flight control column handgrips on the affected airplanes and replacement thereafter at five-year intervals. Several cases of fractures to the flight control column handgrips have been reported on relatively low-time airplanes, and a life limit of five years has been established. The actions of this AD are intended to prevent the possibility of flight control column handgrip failure that could result in loss of control of the airplane.

DATES: Effective May 22, 1991. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 22, 1991. Comments for inclusion in the Rules Docket must be received on or before July 1, 1991.

ADDRESSES: British Aerospace Mandatory Pup Service Bulletin B121/95, Revision 2, dated January 28, 1991, that is discussed in this AD may be obtained from British Aerospace Limited, Manager Product Support, Commercial Aircraft Airlines Division, Prestwick Airport, Ayrshire, KA9 2RW Scotland; Telephone (44–292) 79888; Facsimile (44–292) 79703; or British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, DC 20041; Telephone (703) 435–9100; Facsimile (703) 435–2628. This information may also be examined at the Rules Docket at the address below. Send comments on this AD in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 90–CE–46–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond A. Stoer, Program Officer, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; Telephone (322) 513.38.30 ext. 2710; Facsimile (322) 230.68.99; or Mr. John P. Dow, Sr., Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 601 E. 12th Street, Kansas City, Missouri 64106; Telephone (816) 426–6932; Facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA of an unsafe condition that may exist on British Aerospace (BAe) Beagle B121 Pup series 1, 2, and 3 airplanes. The CAA reports that several of the affected airplanes have developed fractures on the flight control column handgrips. These fractures, if not detected and corrected, could result in flight control column handgrip failure and possible loss of control of the airplane. The CAA and the manufacturer (BAe) have determined that a five-year service life should be established for the flight control column handgrips on the affected airplanes.

BAe has issued Mandatory Pup Service Bulletin (SB) B121/95, Revision No. 2, dated January 28, 1991, which specifies inspection and replacement procedures for the flight control column handgrips (part number (P/N) BE–45–10283) on the affected airplanes. The CAA classified the actions specified in this service bulletin as mandatory and issued CAA AD 10–05–90 to assure the continued airworthiness of these airplanes. These airplanes are manufactured in the United Kingdom and are type certificated in the United States. Pursuant to a bilateral airworthiness agreement, the CAA has kept the FAA fully informed of the conditions described above.

The FAA has examined the findings of the CAA, reviewed all other available information, and determined that AD action is necessary for BAe Beagle B121 Pup series 1, 2, and 3 airplanes that are certificated for operation in the United States. The FAA determined that rather than rely on repetitive inspections to reveal damaged flight control column handgrips, the flight control column handgrips should be replaced initially instead of after damage is found. Therefore, the proposed AD would require initial and five-year interval replacements of the flight control column handgrips on the affected airplanes. Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedure, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered and this rule may be amended in light of the comments received. Comments that provide a factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effectiveness of the AD and determining whether additional rulemaking is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket at the address given above. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

The FAA has determined that calendar time is the most desirable method of compliance for this AD because the flight control column handgrips are made of plastic. Over time, water and heat adversely affect plastic, causing cracks and distortions on the flight control column handgrips. The analysis that was performed to establish the five-year service life of the flight control column handgrips took into account factors such as water and heat.

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

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

British Aerospace (BAe): Amendment 39–6987; Docket No. 90–CE–46–AD.

Applicability: Beagle B121 Pup series 1, 2, and 3 (all serial numbers) airplanes, certificated in any category.

Compliance: Required within the next 30 calendar days after the effective date of this AD, unless already accomplished, and thereafter at intervals not to exceed 60 calendar months.

To avoid loss of control of the airplane, accomplish the following:

(a) Replace the flight control column handgrips, part number BE–45–10283, in accordance with the instructions in BAe Mandatory Pup Service Bulletin (SB) B121/95, Revision 2, dated January 28, 1991.

(b) Special permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000

Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Office.

(d) The replacements required by this AD shall be done in accordance with British Aerospace Mandatory Pup SB B121/95, Revision 2, dated January 28, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace PLC, Manager Product Support, Commercial Aircraft Airlines Division, Prestwick Airport, Ayrshire, KA9 2RW Scotland; or British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, DC, 20041. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC.

This amendment becomes effective on May 22, 1991.

Issued in Kansas City, Missouri on April 19, 1991.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-10708 Filed 5-6-91; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 89-ANE-21; Amdt. 39-6915]

Airworthiness Directives; Textron Lycoming Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to all Textron Lycoming four cylinder piston engines equipped with a rear-mounted propeller governor and external oil line. The existing AD requires a one-time inspection, and replacement if necessary, of the propeller governor oil line installation. This amendment is prompted by the determination that additional oil line configurations exist and the need to allow an optional use of flexible hose in place of a steel oil line. This amendment is needed to prevent oil line fracture and loss of engine oil which could lead to engine failure.

EFFECTIVE DATE: May 28, 1991.

ADDRESSES: The applicable service information may be obtained from Textron Lycoming/Subsidiary of Textron Inc., 652 Oliver Street, Williamsburg, Pennsylvania 17701. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, room 311, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Mr. Pat Perrotta or Mr. Nick Minniti, Propulsion Branch, ANE-174, New York Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581, telephone (516) 791-7421.

SUPPLEMENTARY INFORMATION: On January 2, 1990, the FAA issued AD 90-04-06, Amendment 39-6427 (55 FR 3577, February 2, 1990), to require a one-time inspection on all Textron Lycoming four cylinder engines equipped with a rear-mounted governor and external oil line. That AD was prompted by several incidents and accidents resulting from propeller oil line failures. The FAA determined that engines with oil lines having aluminum B-nuts were operating with missing support clamps or clips and with interference conditions.

Since the issuance of that AD, the FAA has determined that other propeller governor oil line configurations exist, which are not addressed in the existing AD.

Textron Lycoming has revised Service Instruction (SI) No. 1435 to include an optional flexible line as an acceptable replacement for the propeller governor steel oil line. The FAA is adding this option as an alternate means of compliance. Also paragraphs (a)(1), (a)(2), and b and Notes (1), (2) and (3) were revised for clarification.

The FAA has reviewed and approved Textron Lycoming Service Bulletin (SB) No. 488, Revision A, dated April 2, 1990, and Textron Lycoming SI No. 1435, including Supplement No. 1, dated April 24, 1990, which contain related information on correct oil line installation.

Since this condition is likely to exist or develop on other engines of this same type design, this AD revises AD 90-04-06 to correct Figure 1 to Appendix 1 of that AD to show other existing oil line configurations and add an optional flexible line installation as an optional method of compliance (Appendix 2).

Since this AD provides for an optional method of compliance and provides a clarification only, and imposes no additional burden on any person, notice and public procedure hereon are unnecessary, and the AD may be made effective in less than 30 days.

There are approximately 10,000 engines of the affected design in the U.S. registry and it will cost approximately $152 per engine for the inspection and replacement of parts. Based on the cost per engine, it is estimated that the total cost impact will be approximately $1,520,000.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by revising Amendment 39-6427, AD 90-04-06, (55 FR 3577, February 2, 1990), as follows:

Textron Lycoming: Applies to all Textron Lycoming four cylinder piston engines equipped with a rear mounted propeller governor and external oil line, manufactured prior to January 1, 1990.

Compliance is required as indicated, unless already accomplished.

To prevent oil line fracture and loss of engine oil, accomplish the following:

(a) Within the next 25 time hours in service or whenever the propeller governor oil line is removed, whichever occurs first, accomplish the following:

(1) Inspect the propeller governor external oil line for abrasions, cracks, and oil leaks along the length of the line and at the end attachment fittings. Inspect to determine that the two cushion type support clamps or clips are properly installed as shown in figure 1 of appendix 1 to this AD, and assure that sufficient clearances exist between the oil line and adjacent components.

(2) If any leaks, chafing, or interference condition exists or if the two support clamps or clips are not properly installed, replace the governor oil line and its attachment end fittings with new parts even though the parts show no visible damage. Refer to figure 1 in appendix 1 to this AD, for parts identification, line routing, and location of support clamps or clips. The fittings in the engine case and governor must be replaced if they are damaged or are made of aluminum.

(b) At the next engine overhaul or anytime the governor oil line is removed for any reason, whichever occurs first, but no later than May 1, 1992, remove any governor oil line assembly having integral aluminum connecting nuts and reinstall an oil line assembly with corresponding steel connecting nuts. Replace any engine case/governor aluminum fittings with corresponding steel fittings as shown in figure 1 of appendix 1 to this AD.

Note: The attachment nuts are components of the governor oil line tube assembly and have been changed by Textron Lycoming from aluminum to steel without changing the oil line part number. Aluminum nuts may be identified by their blue colored anodized surface. The attachment nuts as well as the elbow/nipple end fittings may also be identified by using a magnet to differentiate aluminum from steel.

(c) An optional method of compliance with paragraph (a)(2) and (b) is the installation of steel fittings and a fire resistant flexible hose assembly which meets the standards in FAA Technical Standard Order TSO–C53a Type D, and is installed in accordance with appendix 2 of this AD.

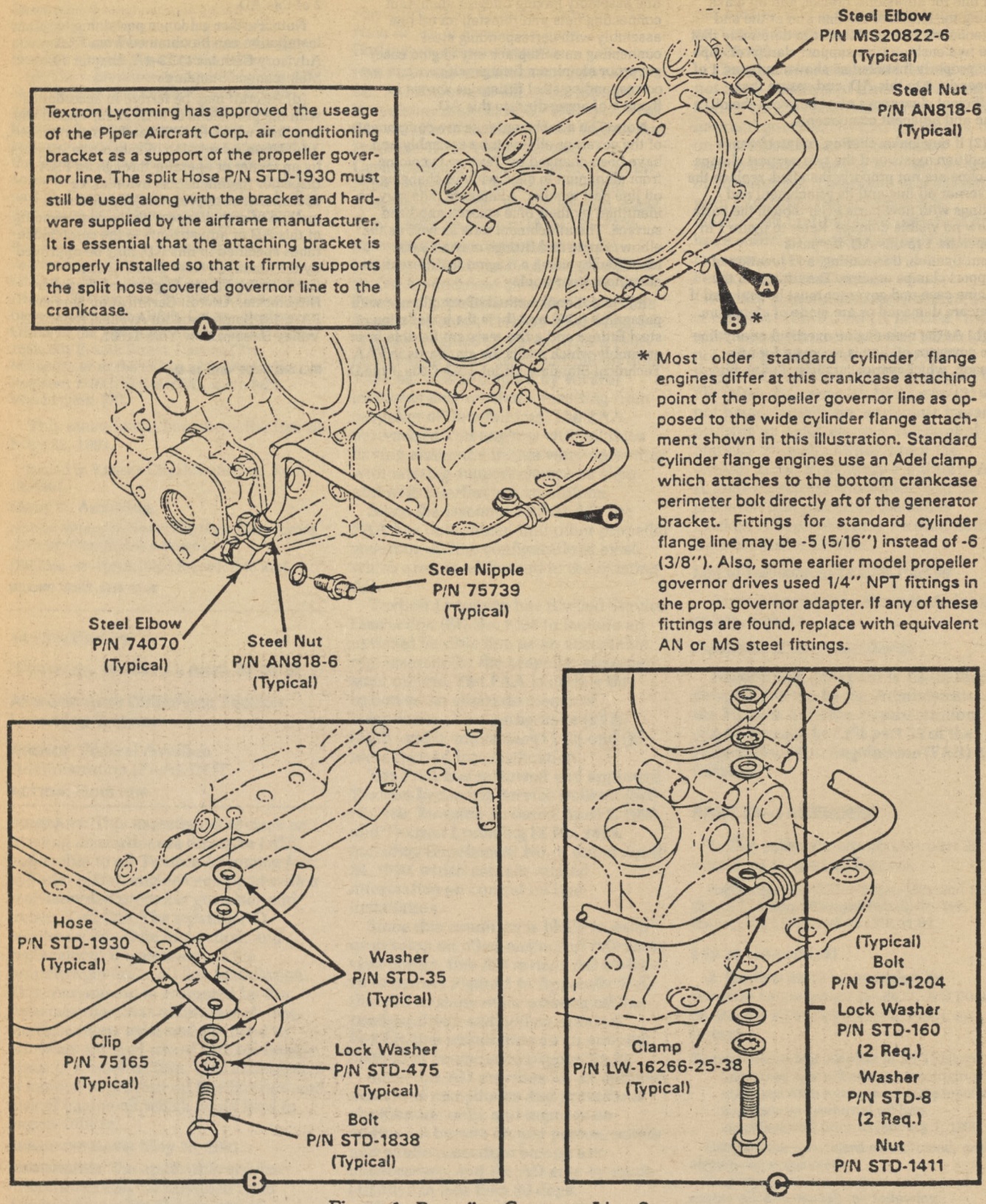
Note: Further guidance pertaining to installation can be obtained from FAA Advisory Circular 43.13–1A, chapter 10, Maintenance Standards.

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

(e) Upon submission of substantiating data by an owner or operator through an FAA Inspector (maintenance, avionics, or operations, as appropriate), an alternate method of compliance with the requirements of this AD or adjustments to the compliance times specified in this AD, may be approved by the Manager, New York Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581.

BILLING CODE 4910–13–M

Appendix 1



Textron Lycoming has approved the useage of the Piper Aircraft Corp. air conditioning bracket as a support of the propeller governor line. The split Hose P/N STD-1930 must still be used along with the bracket and hardware supplied by the airframe manufacturer. It is essential that the attaching bracket is properly installed so that it firmly supports the split hose covered governor line to the crankcase.

A

* Most older standard cylinder flange engines differ at this crankcase attaching point of the propeller governor line as opposed to the wide cylinder flange attachment shown in this illustration. Standard cylinder flange engines use an Adel clamp which attaches to the bottom crankcase perimeter bolt directly aft of the generator bracket. Fittings for standard cylinder flange line may be -5 (5/16") instead of -6 (3/8"). Also, some earlier model propeller governor drives used 1/4" NPT fittings in the prop. governor adapter. If any of these fittings are found, replace with equivalent AN or MS steel fittings.

Figure 1. Propeller Governor Line Support

Appendix 2

If -5 (5/16") fittings have been installed on some standard cylinder flange crankcase model engines, the propeller governor drive fitting and front crankcase fitting must be changed to the appropriate steel fitting to accommodate the new -6 (3/8") line. When re-installing new stainless steel tube assembly, appropriate -5 steel fittings must be re-installed.

CAUTION

IT IS MANDATORY THAT THIS FLEXIBLE HOSE BE REPLACED AT EACH OVERHAUL.

When this engine modification is accomplished, Textron Lycoming recommends that a copy of the approved FAA Form 337 — plus the proper logbook entry become a permanent part of the aircraft records.

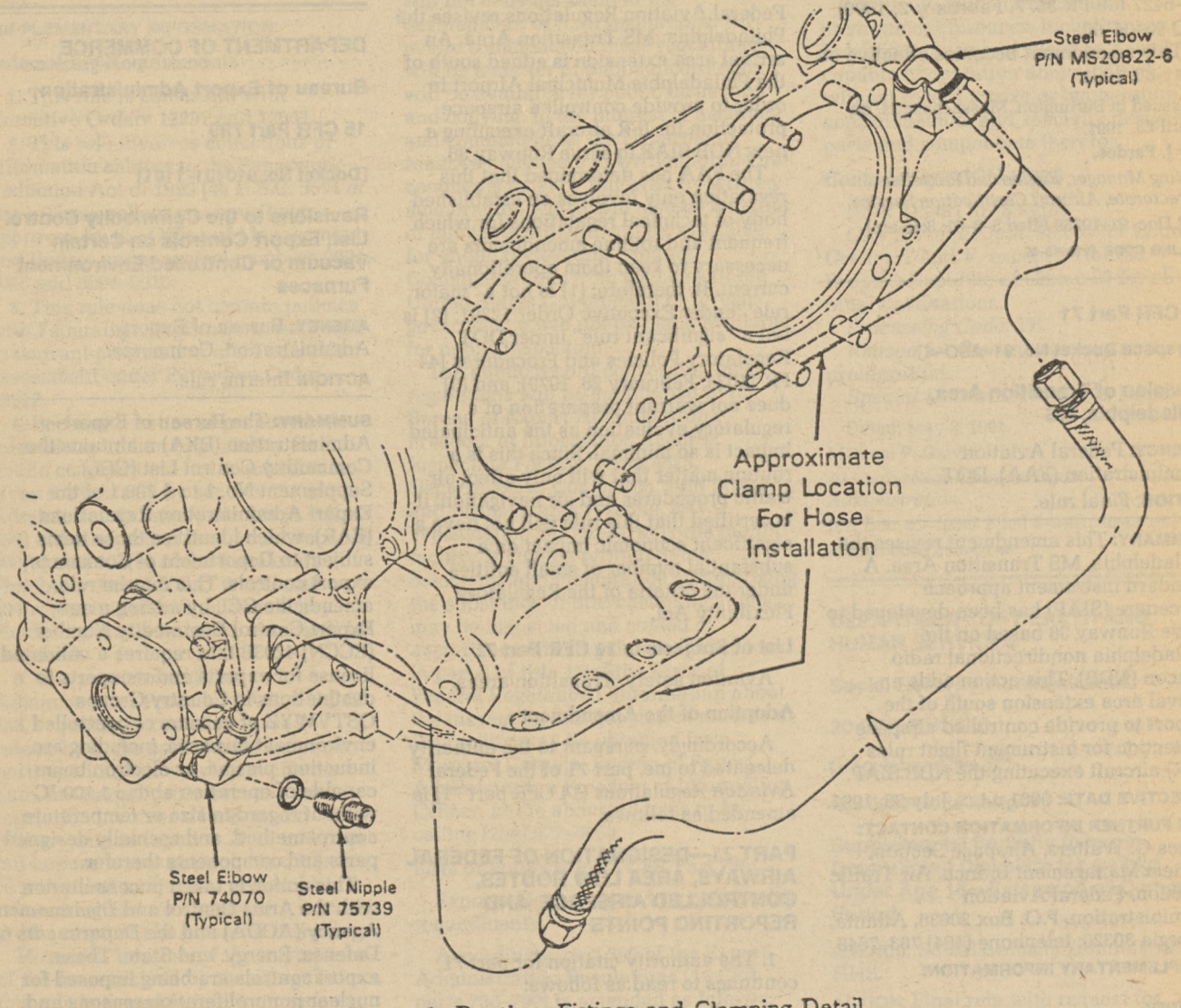


Figure 1. Routing, Fittings and Clamping Detail

ILLING CODE 4910-13-C

Installation is as follows:

a. Determine proper hose length as required for your particular installation.

b. No sharp bends are permissible. Ascertain that no "kinks" exist while routing and clamping hose.

c. Hose must not be routed near a heat source, such as any portion of the exhaust system.

d. Hose is to be clamp supported to the engine (not to an airframe component) at a minimum of two locations.

e. No clamping to cylinder head drain back tubes is allowed.

f. After installation is complete, ensure that hose is not pinched. Make certain that engine motion during startup and shutdown does not pull or pinch the hose.

This amendment revises Amendment 39–6427 (55 FR 3577, February 2, 1990) AD 90–04–06.

This amendment becomes effective on May 28, 1991.

Issued in Burlington, Massachusetts, on April 23, 1991.

Jay J. Pardee,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 91–10759 Filed 5–6–91; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 71

[Airspace Docket No. 91–ASO–4]

Revision of Transition Area, Philadelphia, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises the Philadelphia, MS Transition Area. A standard instrument approach procedure (SIAP) has been developed to serve Runway 36 based on the Philadelphia nondirectional radio beacon (NDB). This action adds an arrival area extension south of the airport to provide controlled airspace protection for instrument flight rules (IFR) aircraft executing the NDB SIAP.

EFFECTIVE DATE: 0901 u.t.c., July 25, 1991.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763–7646.

SUPPLEMENTARY INFORMATION:

History

On March 7, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Philadelphia, MS Transition Area (56 FR 9660). A standard instrument approach procedure has been developed to serve Runway 36 at the Philadelphia Municipal Airport. This action adds an arrival area extension south of the airport to provide the necessary controlled airspace for protection of IFR aircraft executing the instrument approach procedure. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6G dated September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revises the Philadelphia, MS Transition Area. An arrival area extension is added south of the Philadelphia Municipal Airport in order to provide controlled airspace protection for IFR aircraft executing a new NDB SIAP to serve Runway 36.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

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

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

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

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Philadelphia, MS [Amended]

By deleting the remainder of the present description beginning with the phrase, "within 3.5 miles each side of the 001° bearing* * *" and inserting the following, "within 3.5 miles each side of the 001° and 196° bearings from the Philadelphia NDB (lat. 32°47′54″N, long. 89°07′28″W.), extending from the 6.5-mile radius area to 11.5 miles north and south of the NDB."

Issued in East Point, Georgia, on April 25, 1991.

Don Cass,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 91–10760 Filed 5–6–91; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 799

[Docket No. 910401–1101]

Revisions to the Commodity Control List; Export Controls on Certain Vacuum or Controlled Environment Furnaces

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim rule.

SUMMARY: The Bureau of Export Administration (BXA) maintains the Commodity Control List (CCL), Supplement No. 1 to § 799.1 of the Export Administration Regulations (EAR), which identifies those items subject to Department of Commerce export controls. This interim rule amends the CCL by adding a new Export Control Commodity Number (ECCN) 4203B that requires a validated license for exports and reexports to destinations in Country Groups QSTVWYZ of vacuum or controlled environment furnaces, including arc, induction, plasma, or electron beam capable of operation above 1,100 °C without regard to size or temperature control method, and specially designed parts and components therefor.

This action is taken in consultation with the Arms Control and Disarmament Agency (ACDA) and the Departments of Defense, Energy, and State. These export controls are being imposed for nuclear nonproliferation reasons and are the result of a comprehensive review of the Nuclear Referral List. Other changes in the Nuclear Referral List will follow as the review continues.

The net effect of this rule will be to increase the number of individual validated license applications that will

have to be submitted for these types of furnaces.

DATES: This rule is effective May 2, 1991. Comments must be received by June 6, 1991.

ADDRESSES: Written comments (six copies) should be sent to Willard Fisher, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Surendra Dhir, Office of Technology and Policy Analysis, Bureau of Export Administration, telephone (202) 377–5695.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694–0005 and 0694–0010.

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

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a foreign and military affairs function. This rule does not impose a new control. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

However, because of the importance of the issues raised by these regulations, this rule is issued in interim form and comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close June 6, 1991. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, room 4525, Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 377–5653.

Lists of Subjects in 15 CFR Part 799

Exports, Reporting and recordkeeping requirements.

Accordingly, part 799 of the Export Administration Regulations (15 CFR parts 730–799) is amended as follows:

1. The authority citation for 15 CFR part 799 is revised to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended; E.O. 12532 of September 8, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986); Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242 of March 10, 1978, 92 Stat. 141 (42 U.S.C. 2139a); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990).

PART 799—[AMENDED]

2. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 2 (Electrical and Power-Generating Equipment), a new ECCN 4203B is added immediately preceding ECCN 1205A, as follows:

§ 700.1 Supplement No. 1 [Amended]

4203B Vacuum or controlled environment furnaces, including arc, induction, plasma, or electron beam capable of operation above 1,100 °C without regard to size or temperature control method, and specially designed parts and components therefor.

Controls for ECCN 4203B

Unit: Report in "$ value".

GLV $ Value Limit: $5,000 for Country Groups T and V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: TE.

Reason for Control: Nuclear non-proliferation.

Special Licenses Available: None.

Dated: May 2, 1991.

Michael P. Galvin,

Assistant Secretary for Export Administration.

[FR Doc. 91–10867 Filed 5–3–91; 10:43 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulations No. 16]

RIN 0960-None Assigned

Supplemental Security Income; Determining Disability for a Child Under Age 18—Extension of Comment Period

AGENCY: Social Security Administration, HHS.

ACTION: Final rule with request for comments—extension of comment period.

SUMMARY: This document announces an extension of the comment period to July 8, 1991, on the final rule "Supplemental Security Income; Determining Disability

for a Child Under Age 18," which was published in the Federal Register on February 11, 1991 (56 FR 5534). Corrections to the final rule were published in the Federal Register on April 1, 1991, at 56 FR 13266 and 13365.

DATES: Your comments on the final rule published on February 11, 1991, as corrected, will be considered if we receive them no later than July 8, 1991.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21235, or delivered to the Office of Regulations, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8 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: Martin Sussman, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 965–1758.

SUPPLEMENTARY INFORMATION: On February 11, 1991 (56 FR 5534), we published "Supplemental Security Income; Determining Disability for a Child Under Age 18" as a final rule with request for comments. This final rule is designed to comply with the February 20, 1990, U.S. Supreme Court ruling in the case of *Sullivan* v. *Zebley*, ___ U.S. ___, 110 S.CCt. 885 (1990). We provided a comment period ending April 12, 1991. We have received a number of requests to extend the comment period. This factor, and the unusual significance of the final rule, make it appropriate to extend the comment period an additional 60 days to July 8, 1991.

Dated: April 19, 1991.

Gwendolyn S. King

Commissioner of Social Security.

Approved: May 1, 1991.

Louis W. Sullivan

Secretary of Health and Human Services

[FR Doc. 91–10738 Filed 5–6–91; 8:45 am]

BILLING CODE 4190–29–M

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Bacitracin Methylene Disalicylate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by A. L. Laboratories, Inc. The supplement provides for the use of bacitracin Type A medicated articles to manufacture Type C medicated swine feeds containing 250 grams of bacitracin per ton for the control of clostridial enteritis in suckling piglets by feeding the medicated feed to sows before and after farrowing on premises with a history of clostridial scours.

EFFECTIVE DATE: May 7, 1991.

FOR FURTHER INFORMATION CONTACT: Larry D. Rollins, Center for Veterinary Medicine (HFV–133), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3410.

SUPPLEMENTARY INFORMATION: A. L. Laboratories, Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, filed a supplement to NADA 46–592 providing for the use of Type A medicated articles containing 25, 30, 40, 50, 60, or 75 grams of bacitracin (as bacitracin methylene disalicylate) per pound to manufacture Type C medicated swine feeds containing 250 grams of bacitracin per ton. The Type C feed is used for the control of clostridial enteritis caused by *C. perfringens* in suckling piglets by feeding the medicated feed to sows before and after farrowing. The NADA is approved as of April 29, 1991 and 21 CFR 558.76(d)(1)(xi) is amended to reflect the approval of the new use. The basis of approval is discussed in the freedom of information summary. Section 558.76(d)(1)(xi) is also amended to change the designation of the production class from "swine" to "growing/finishing swine."

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this supplemental approval qualifies for 3 years of marketing exclusivity beginning April 29, 1991 because new clinical or field investigations conducted or sponsored by A. L. Laboratories, Inc., were essential to the approval.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, room 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

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.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

2. Section 558.76 is amended in the table in paragraph (d)(1) at entry (xi), under the heading "Indications for use" by removing "Swine:" and inserting in its place "1. Growing/Finishing Swine:" and by adding a new item "2." and a new item under the "Limitations" column to read as follows:

§ 558.76 Bacitracin methylene disalicylate.

* * * * *

(d) * * *

(1) * * *

Bacitracin methylene disalicylate in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
•	•	•	•	•	•	•
(xi) 250		1. Growing/Finishing Swine: * * *	* * *	* * *

Bacitracin methylene disalicylate in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
		2. Pregnant sows: For control of clostridial enteritis caused by *C. perfringens* in suckling piglets..	As the sole ration. Feed to sows from 14 days before through 21 days after farrowing on premises with a history of clostridial scours. Diagnosis should be confirmed by a veterinarian when results are not satisfactory.	

* * * * *

Dated: April 29, 1991.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 91-10754 Filed 5-6-91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR part 58a

RIN 0790-AC49

[DoD Directive 6485.AA]

Human Immunodeficiency Virus (HIV-1)

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: The Department of Defense published a proposed rule on December 5, 1989 (54 FR 50243) concerning Human Immunodeficiency Virus (HIV-1). This document is published to remove 32 CFR part 58a. On April 16, 1991 (56 FR 15281), the Department of Defense published a final rule, same subject as part 58a, which replaced part 58a, therefore, part 58a is no longer required.

EFFECTIVE DATE: March 19, 1991.

FOR FURTHER INFORMATION CONTACT: L.M. Bynum, Directives Division, Washington Headquarters Services, Pentagon, Washington, DC 20301, telephone (703) 697-4111.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 58a

Armed Forces reserves, DoD civilian employees, Government employees, Human Immunodeficiency Virus (HIV-1), Military personnel.

PART 58a—[REMOVED]

Accordingly, proposed rule 32 CFR part 58a is removed:

Authority: 10 U.S.C. 131.

Dated: May 1, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaision Officer, Department of Defense.

[FR Doc. 91-10679 Filed 5-6-91; 8:45 am]

BILLING CODE 3810-01-M

32 CFR Part 367

[DoD Directive 5136.1]

Assistant Secretary of Defense (Health Affairs)

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This part is revised to comply with statutory changes required by title 10, United States Code and section 8091 of Public law 101-511. This revision also reflects a change in the Assistant Secretary of Defense (Health Affairs) and the Uniformed Services University of the Health Sciences (USUHS).

EFFECTIVE DATE: April 15, 1991.

ADDRESSES: Office of the Organizational and Management Planning Directorate, The Pentagon, Washington, DC 20301.

FOR FURTHER INFORMATION CONTACT: Mr. R. Kennedy, telephone 707-697-1142.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 367

Organization and functions (Government agencies). Accordingly, 32 CFR part 367 is revised to read as follows:

PART 367—ASSISTANT SECRETARY OF DEFENSE (HEALTH AFFAIRS)

Sec.

Authority: 10 U.S.C. 136.

§ 367.1 Purpose.

Pursuant to the authority vested in the Secretary of Defense under 10 U.S.C. 136, this part:

(a) Designates one of the positions of Assistant Secretary of Defense as the ASD(HA).

(b) Assigns responsibilities, functions, relationships, and authorities, as prescribed herein, to the ASD(HA).

§ 367.2 Definition.

DoD Components. The Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Unified and Specified Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities.

§ 367.3 Responsibilities.

The Assistant Secretary of Defense (Health Affairs) is the principal staff assistant and advisor to the Secretary of Defense for all DoD health policies, programs, and activities. Subject to the direction of the Secretary of Defense, the ASD(HA) is responsible for overall supervision of the health affairs of the Department of Defense and exercises oversight of all DoD health resources. The ASD(HA) shall:

(a) Develop policies, conduct analyses, issue guidance on DoD plans and programs, and advise the Secretary of Defense, as appropriate.

(b) Develop systems, standards, and procedures for the administration and management of approved DoD plans and programs.

(c) Develop plans, programs, actions, and taskings to ensure adherence to DoD health policies and national security objectives and to ensure that programs and systems are designed to accommodate operational requirements.

(d) Establish requirements and standards for medical facility and material acquisition programs.

(e) Establish requirements for DoD research and development programs in medical fields. Keep abreast of technical developments to provide for their orderly transition to operational status. Make recommendations on funding levels for DoD research and development programs in medical fields and the Human Immunodeficiency Virus (HIV) Program.

(f) Serve as program manager for all DoD health and medical resources. I coordination with the Comptroller of the Department of Defense (C, DoD) and the

Assistant Secretary of Defense (Program Analysis and Evaluation) (ASD(PA&E)), review all Program Objective Memoranda and budget submissions, and make determinations regarding priorities and resources for health and medical programs. Provide input to Program Decision Memoranda and Program Budget Decisions to the C, DoD, and the ASD(PA&E) for incorporation into the Planning, Programming, and Budgeting System (PPBS) process. Monitor the execution of approved health and medical programs by the DoD Components and, subject to the direction of the Secretary of Defense, make such determinations regarding priorities and resources as may be required to achieve DoD-wide program objectives.

(g) Review, evaluate, and make recommendations to the Secretary of Defense on health requirements and priorities.

(h) Review and evaluate plans and programs to ensure adherence to approved policies, standards, and resource guidance and decisions.

(i) Promote coordination, cooperation, and mutual understanding within the Department of Defense and between the Department of Defense and other Federal Agencies and the civilian community.

((j) Serve on boards, committees, and other groups pertaining to ASD(HA) functional areas.

(k) Exercise direction, authority, and control over:

(1) The Office of Civilian Health and Medical Program of the Uniformed Services.

(2) The Defense Medical Support Activity, which includes the Defense Medical Systems Support Center and the Defense Medical Facilities Office.

(l) Exercise the direction, authority, and control over the Uniformed Services University of the Health Sciences (USUHS) vested in the Secretary of Defense by chapter 104 of 10 U.S.C. and the Department of Defense Appropriations Act, 1991, except that the authority to appoint the President of the USUHS is reserved to the Secretary of Defense.

§ 367.4 Functions.

The ASD(HA) shall:

(a) Carry out the responsibilities described in § 367.3 for the following functional areas:

(1) Medical readiness.

(2) Disease prevention.

(3) Health promotion.

(4) Health benefits programs.

(5) Alcohol and drug abuse treatment.

(6) Cost containment.

(7) Quality assurance.

(8) Medical information systems.

(9) DoD HIV Program and research on acquired immunodeficiency syndrome.

(10) Procurement, professional development, and retention of medical and dental personnel, and related healthcare specialists and technicians.

(11) Military medical construction.

(b) Perform such other functions as may be assigned.

§ 367.5 Relationships.

(a) In the performance of assigned duties, the ASD(HA) shall:

(1) Coordinate and exchange information with other OSD officials and heads of DoD Components having collateral or related functions.

(2) Consult, as appropriate, with the C, DoD, and the ASD(PA&E) to ensure that medical planning, programming, and budget activities are integrated with the DoD PPBS.

(3) Use existing facilities and services of the Department of Defense or other Federal Agencies, whenever practicable, to achieve maximum efficiency and economy.

(b) Other OSD officials and heads of DoD Components shall coordinate with the ASD(HA) on all matters concerning the functions in § 367.4.

§ 367.6 Authorities.

The ASD(HA) is hereby delegated authority to:

(a) Carry out the responsibilities and functions described in § 367.3 and § 367.4.

(b) Issue orders, DoD Instructions, publications, and one-time directive-type memoranda, consistent with DoD 5025.1-M [1], regarding the accomplishment of functions and responsibilities delegated by the Secretary of Defense in this part. Instructions to the Military Departments shall be issued through the Secretaries of those Departments. Instructions to Unified or Specified Commands shall be issued through the Chairman of the Joint Chiefs of Staff.

(c) Obtain reports, information, advice, and assistance, consistent with DoD Directive 7750.5 [2], as necessary.

(d) Communicate directly with the heads of the DoD Components. Communications to the Commanders of the Unified and Specified Commands shall be coordinated through the Chairman of the Joint Chiefs of Staff.

(e) Make determinations on the uniform implementation of laws relating to separation from the Military Departments due to physical disability as prescribed in DoD Directive 1332.18 [3].

(f) Develop, issue, and maintain regulations, with the coordination of the Military Departments, as necessary and appropriate to fulfill the Secretary of Defense's responsibility to administer chapter 55 of 10 U.S.C.

(g) Establish arrangements for DoD participation in nondefense governmental programs for which the ASD(HA) has been assigned primary cognizance.

(h) Communicate with other Government Agencies, representatives of the legislative branch, and members of the public, as appropriate, in carrying out assigned functions.

(i) Execute the authorities required to administer and operate the USUHS as specified in enclosure 1 of DoD Directive 5105.45 [4].

Dated: May 1, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-10682 Filed 5-6-91; 8:45 am]

BILLING CODE 3810-01-M

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to § 367.6(b).

[3] See footnote 1 to § 367.6(b).

[4] See footnote 1 to § 367.6(b).

---

32 CFR Part 367a

[DoD Directive 5105.45]

Uniformed Services University of the Health Sciences (USUHS)

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This part reflects the provisions of title 10, United States Code and section 8091 of Public Law 101-511. It also reflects the change that provides the USUHS Board of Regents as an advisory board to the Secretary of Defense.

EFFECTIVE DATE: April 19, 1991.

ADDRESSES: Office of the Organizational and Management Planning Directorate, The Pentagon, Washington, DC 20301.

FOR FURTHER INFORMATION CONTACT: Mr. R. Kennedy, telephone 707-697-1142.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 367a

Organization and functions (Government agencies).

Accordingly, title 32, subchapter R is amended to add part 367a to read as follows:

PART 367a—UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES (USUHS)

Sec.

Authority: 10 U.S.C. 136.

§ 367a.1 Purpose.

This part updates the mission, responsibilities, functions, and authorities of the USUHS and provides for its governance pursuant to chapter 104, section 2112, et seq. of title 10, United States Code and section 8091 of Public Law 101–511, "Department of Defense Appropriations Act, 1991," November 5, 1990.

§ 367a.2 Definitions.

(a) *Academic Affairs.* Faculty appointments, promotions and organization, awarding of degrees, curriculum design and implementation, academic requirements for admission and graduation, and related matters vital to the academic well-being of the USUHS.

(b) *DoD Components.* The Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Unified and Specified Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities.

(c) *Uniformed Services.* The Army, Navy, Air Force, Marine Corps, Coast Guard, Commissioned Corps of the U.S. Public Health Service, and the Commissioned Corps of the National Oceanic and Atmospheric Administration.

§ 367a.3 Mission and scope.

The mission of the USUHS is to educate and train competent medical personnel qualified to serve the needs of the Uniformed Services of the United States through providing the highest quality education programs in the health sciences. Within that mission, the University shall place high priority on educating and training personnel to meet the combat and peacetime medical needs of the armed forces. The University is authorized to grant appropriate advanced academic degrees; establish postdoctoral and postgraduate programs, and technological institutes; conduct medical readiness training and continuing education for uniformed members of the health professions; and prepare individuals for careers in the health professions in the Uniformed Services.

§ 367a.4 Policy.

Consistent with the performance of the Department's mission and with established practices covering academic independence and integrity in the fields of medical and health sciences education, the Department of Defense recognizes the University's Board of Regents' unique role in advising the Secretary of Defense. In particular, consistent with applicable law and accomplishment of the Department's mission, the Assistant Secretary of Defense (Health Affairs) (ASD(HA)) will be guided by the advice of the USUHS Board of Regents on academic affairs.

§ 367a.5 Organization.

The USUHS shall consist of:

(a) A Board of Regents, which shall be established and operated in accordance with the Federal Advisory Committee Act and shall consist of members appointed as provided by section 2113(a) of chapter 104, section 2112, et seq. of title 10, United States Code.

(b) A President of the USUHS, who shall be the chief executive officer of the University, and who also is the Dean of the University described in section 2113(a) of chapter 104, section 2112, et seq. of title 10, United States Code, and who shall report to the ASD(HA).

(c) A Dean of the F. Edward Hebert School of Medicine, who shall function as the chief academic officer of the F. Edward Hebert School of Medicine and report to the President of the USUHS.

(d) Other deans, academic officers, faculty members and administrative officials, staffs, and other subordinate organizations as may be required for the accomplishment of the University's mission.

(e) Students selected under procedures prescribed in accordance with section 2113(a) of chapter 104, section 2112, et seq. of title 10, United States Code and graduate students.

§ 367a.6 Responsibilities and functions.

(a) The Assistant Secretary of Defense (Health Affairs) shall exercise the authorities over the USUHS vested in the Secretary of Defense by chapter 104, section 2112, et seq. of 10 U.S.C. and section 8091 of Public Law 101–511, except that the authority to appoint the President of the USUHS is reserved to the Secretary of Defense. In this capacity, the ASD(HA) shall:

(1) Ensure effective operation of the University.

(2) In matters of academic affairs, ensure that the advice of the Board of Regents is given due regard in accordance with the policy set forth in § 367a.4.

(3) Make arrangements with the Secretaries of the Military Departments and the heads of other DoD Components to provide for support of the USUHS as may be necessary to implement this part.

(b) The *Board of Regents* shall participate in the governance of the USUHS by advising the Secretary of Defense, through the ASD(HA), on academic affairs and administration and management of the USUHS.

(c) *The President of the Uniformed Services University of the Health Sciences* shall:

(1) Ensure that educational programs leading to a Doctor of Medicine or other advanced degrees in the health professions meet the standards of appropriate and recognized, accrediting, licensing, and certifying agencies.

(2) Carry out those responsibilities and functions about the supervision and management of University programs, activities, personnel, and resources as the ASD(HA) prescribes.

(d) The *Dean of the F. Edward Hebert School of Medicine* shall develop and administer policies and procedures on the academic affairs of the F. Edward Hebert School of Medicine.

§ 367a.7 Relationships.

(a) In carrying out the responsibilities and functions of chief executive officer of the USUHS, the President of the USUHS shall:

(1) Obtain advice from the Board of Regents as necessary to assist the President in performing the President's duties.

(2) Coordinate and exchange information and advice with elements of the OSD and other DoD Components having collateral or related responsibilities.

(3) Make use of established facilities and services in the Department of Defense and other Government Agencies, whenever practical, to avoid duplication and achieve maximum efficiency and economy.

(4) Consult and coordinate with other governmental and nongovernmental agencies on matters related to the mission and programs of the USUHS.

(b) The Heads of the DoD Components shall coordinate with the ASD(HA) on all matters relating to the mission and programs of the USUHS.

§ 367a.8 Authorities.

The ASD(HA) shall exercise the delegations of administrative authority contained in appendix A to this part.

Appendix A to part 367a—Delegations of Authority

Pursuant to the authority vested in the Secretary of Defense, and subject to the direction, authority, and control of the Secretary of Defense and in accordance with DoD policies, Directives, and Instructions, the ASD(HA), or in the absence of the ASD(HA), the person acting for the ASD(HA), is hereby delegated authority as required in the administration and operation of the USUHS to:

1. Obtain such information, consistent with the policies and criteria of DoD Directive 7750.5,[1] advice, and assistance from the DoD Components, as necessary, to carry out assigned responsibilities and functions.

2. Communicate directly with appropriate DoD Component personnel on matters related to the mission and programs of the USUHS.

3. Appoint civilian members of the faculty and staff under salary schedules and grant retirement and other related benefits prescribed by the Secretary of Defense so as to place the employees of the USUHS on a comparable basis with the employees of fully accredited schools of the health professions within the vicinity of the District of Columbia as provided by law.

4. Exercise the powers vested in the Secretary of Defense by 5 U.S.C. 301, 302(b), and 3101 regarding the employment, direction, and general administration of USUHS civilian personnel.

5. Fix rates of pay for wage-rate employees exempted from the Classification Act of 1949 by 5 U.S.C. 5102 on the basis of rates established under the Coordinated Federal Wage System. In fixing such rates, the ASD(HA) shall follow the wage schedule established by the DoD Wage Fixing Authority.

6. Establish advisory committees and employ part-time advisors, as approved by the Secretary of Defense, for the performance of USUHS functions consistent with the 10 U.S.C. 173; 5 U.S.C. 3109(b); DoD Directive 5105.4,[2] "DoD Federal Advisory Committee Management Program," September 5, 1989; and the agreement between the Department of Defense and the Office of Personnel Management (OPM) regarding employment of experts and consultants, June 21, 1977.

7. Administer oaths of office to those entering the Executive branch of the Federal Government or any other oath required by law in connection with employment therein, in accordance with 5 U.S.C. 2903, and designate in writing, as may be necessary, officers and employees of the USUHS to perform this function.

8. Establish a USUHS Incentive Awards Board and pay cash awards to, and incur necessary expenses for the honorary recognition of, civilian employees of the Government whose suggestions, inventions, superior accomplishments, or other personal efforts, including special acts or services, benefit or affect the USUHS or its subordinate activities, in accordance with 5 U.S.C. 4503 and applicable OPM regulations.

9. In accordance with 5 U.S.C. 7532; Executive Orders 10450, 12333, and 12356; and DoD Directive 5200.2,[3] "DoD Personnel Security Program," December 20, 1979; as appropriate:

(a) Designate any position in the USUHS as a "sensitive" position.

(b) Authorize, in case of an emergency, the appointment of a person to a sensitive position in the USUHS for a limited period of time for whom a full field investigation or other appropriate investigation, including the National Agency Check, has not been completed.

(c) Authorize the suspension, but not terminate the services, of an employee in the interest of national security in positions within the USUHS.

(d) Initiate investigations, issue personnel security clearances and, if necessary, in the interest of national security, suspend, revoke, or deny a security clearance for personnel assigned or detailed to, or employed by, the USUHS.

Any action to deny or revoke a security clearance shall be taken in accordance with procedures prescribed in DoD 5200.2–R,[4] "DoD Personnel Security Program," January 1987.

10. Act as agent for the collection and payment of employment taxes imposed by chapter 21 of the Internal Revenue Code of 1954, as amended; and, as such agent, make all determinations and certifications required or provided for under section 3122 of the Internal Revenue Code of 1954, as amended, and section 205(p) (1) and (2) of the Social Security Act, as amended (42 U.S.C. 405(p) (1) and (2)) about USUHS employees.

11. Authorize and approve overtime work for USUHS civilian officers and employees in accordance with 5 U.S.C. chapter 55, subchapter V, and applicable OPM regulations.

12. Authorize and approve:

(a) Temporary duty travel for military personnel assigned or detailed to the USUHS in accordance with Joint Travel Regulations, Volume 1, "Uniformed Service Members."

(b) Travel for USUHS civilian officers and employees in accordance with Joint Travel Regulations, Volume 2, "DoD Civilian Personnel."

(c) Invitational travel to non-DoD employees whose consultative, advisory, or other highly specialized technical services are required in a capacity that is directly related to, or in connection with, USUHS activities, in accordance with Volume 2, Joint Travel Regulations.

13. Approve the expenditure of funds available for travel by military personnel assigned or detailed to the USUHS for expenses about attendance at meetings of technical, scientific, professional, or other similar organizations in such instances where the approval of the Secretary of Defense, or designee, is required by law (37 U.S.C. 412 and 5 U.S.C. 4110 and 4111).

14. Develop, establish, and maintain an active and continuing Records Management Program pursuant to section 506(b) of the Federal Records Act of 1950 (44 U.S.C. 3102).

15. Establish and use imprest funds for making small purchases of material and services, other than personal services, for the USUHS, when it is determined more advantageous and consistent with the best interests of the Government, in accordance with DoD Directive 7360.10,[5] "Disbursing Policies," January 17, 1989.

16. Authorize the publication of advertisements, notices, or proposals in newspapers, magazines, or other public periodicals as required for the effective administration and operation of the USUHS consistent with 44 U.S.C. 3702.

17. Establish and maintain appropriate property accounts for the USUHS, and appoint Boards of Survey, approve reports of survey, relieve personal liability, and drop accountability for USUHS property contained in the authorized property accounts that has been lost, damaged, stolen, destroyed, or otherwise rendered unserviceable, in accordance with applicable laws and regulations.

18. Promulgate the necessary security regulations for the protection of property and places under the jurisdiction of the President of USUHS, pursuant to DoD Directive 5200.8,[6] "Security of Military Installations and Resources," July 29, 1980.

19. Establish and maintain, for the functions assigned, an appropriate publications system for the promulgation of common supply and service regulations, instructions, and reference documents, and changes thereto, pursuant to the policies and procedures prescribed in DoD 5025.1–M,[7] "DoD Directives System Procedures," December 1990.

20. Enter into support and service agreements with the Military Departments, other DoD Components, or other Government Agencies, as required for the effective performance of USUHS functions and responsibilities.

21. Exercise the authority delegated to the Secretary of Defense by the Administrator of the General Services Administration for the disposal of surplus personal property.

22. Enter into and administer contracts, directly or through a Military Department, a DoD contract administration services component, or other Government Department or Agency, as appropriate, for supplies, equipment, and services required to accomplish the mission of the USUHS. To the extent that any law or Executive order specifically limits the exercise of such authority to persons at the Secretarial level, such authority shall be exercised by the appropriate Under Secretary or Assistant Secretary of Defense.

The ASD(HA) may redelegate these authorities, as appropriate, and in writing, except as otherwise specifically indicated

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to section 1 of this appendix.

[3] See footnote 1 to section 1 of this appendix.

[4] See footnote 1 to section 1 of this appendix.

[5] See footnote 1 to section 1 of this appendix.

[6] See footnote 1 to section 1 of this appendix.

[7] See footnote 1 to section 1 of this appendix.

above or as otherwise provided by law or regulation.

Dated: May 1, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-10683 Filed 5-6-91; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 149

[CGD-90-016]

RIN 2115-AD53

Deepwater Port Radar Beacons

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is modifying the radar beacon regulations for deepwater ports to require transmission in both the X-band and S-Band, eliminate the sweep requirements, and have a programmed off time for frequency agile radar beacons. This change is needed to improve the effectiveness of radar beacons as a navigational aid.

EFFECTIVE DATE: July 8, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Gary W. Chappell, Office of Marine Safety, Security and Environmental Protection (G-MPS-3) at (202) 267-0491, between 7 a.m. and 3:30 p.m, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Mr. Gary W. Chappell, Project Manager, and Christena G. Green, Project Counsel, Office of Chief Counsel.

Regulatory History

On September 19, 1990, the Coast Guard published a notice of proposed rulemaking entitled Deepwater Port Radar Beacons in the **Federal Register** (55 FR 38562). The Coast Guard received two letters commenting on the proposal. A public hearing was not requested and one was not held.

Background and Purpose

The Coast Guard is making changes to the regulations for radar beacons on deepwater ports to improve their effectiveness as a navigational aid and eliminate requirements that could be interpreted as prohibiting the use of frequency agile radar beacons. The current regulations only require transmission capability in the 9320-9500 MHz frequency range but the use of S-Band radars operating in the 2900-3100 MHz frequency range is increasing. To allow S-Band radars to more easily identify the deepwater port, the Coast Guard is changing the regulations to require transmission capability in both the S-Band and X-Band frequency ranges for all radar beacons installed after the effective date of this rule.

A change is also being made that will permit the use of frequency agile radar beacons on deepwater ports and limit their response rate to between 40% and 90% of the time. The response rate is limited to prevent the radar beacon from creating clutter on the vessel's radar screen without reducing the ability of vessels to identify the beacon. Wording referring to sweep type and sweep rate has been eliminated. This change will allow flexibility in the selection of an effective radar beacon.

Discussion of Comments and Changes

1. Two letters containing several comments were received in response to the notice of proposed rulemaking and several minor wording changes were made, however, the basic requirements remain the same.

2. One comment recommended that paragraph (c) be revised to begin "Transmits a morse code character beginning with a dash, the length of which, * * * " This wording would eliminate the limitations on the size of the morse code character and add a requirement that the morse code symbol begin with a dash.

The Coast Guard believes that single element morse code symbols should not be used because they are harder to distinguish from radar contacts. Morse code symbols with more than 3 elements are easily identified but would have to be displayed as smaller characters in order to meet the size limitation of 25% of the expected vessel radar range. Limiting morse code symbols to those beginning with a dash aids identification since a dot can easily be lost in the radar return from the deepwater port structure. This factor is already taken into account when ID codes are assigned by the Coast Guard and need not be included in this rule. When the morse code symbol to be used is selected during the deepwater port permit approval process, preference will be given to 2 or 3 element symbols beginning with a dash. The wording in the final rule has been changed to allow selection of morse code symbols with more than 3 elements.

3. Three comments recommended changing the wording of paragraph (d). One comment suggested that paragraph (d) read: "Will respond to radar interrogations on X (3 cm) and S (10 cm) bands with response times at least 15 seconds in length." Another comment suggested that paragraph (d) read: "The racon must be programmed so that there is a regular off time on each band during which the racon does not respond to interrogations." The third comment recommended that the racon transmission be limited to between 30% and 40% of the time.

While the first two suggested changes have merit, neither provides the necessary limitations on the programming of off times for frequency agile radar beacons. The intent of this pargagraph is to require off times to prevent the morse code character transmission from obscuring radar contacts, while retaining the visibility of the morse code character. The first suggestion addresses the length of response time but does not require off times. The second suggestion requires off times but does not specify a duration to ensure that the amount of off time will provide an adequate break and that the on time will provide the necessary morse code character visibility. The visibility concern must be considered since efforts to save energy and reduce wear on the radar beacon could produce an insufficient on time.

The third comment requests a shorter on time for the racon due to problems being experienced at the existing deepwater port. The racon transmission is being received by the deepwater port's radar, creating excessive clutter. The technology exists to eliminate this problem by careful location of the racon in relation to the radar and use of absorbent material to isolate the racon. Alternatively, a hard wire connection between the radar and the racon would be used to eliminate the problem. Coast Guard policy recommends a 75% rate for structures, right in the middle of the originally proposed limits. Further research indicates that racons in other countries are sometimes set with response rates as low as 40% with no adverse effects. The existing deepwater port has been operating the racon at a 40% response rate for some time and no complaints have been received indicating that the low response rate has adversely affected navigation in the area. Although a response rate closer to 75% is preferred, paragraph (d) has been changed to allow a response rate as low as 40%. A narrower range of acceptable response rates may be set during the deepwater port permitting process for future deepwater ports.

With response rates as low as 40%, a concern arises as to the duration of the

racon on time. If the on time is not at least 15 seconds in duration, some radars may not recognize the racon. To avoid this problem, paragraph (d) has been further modified to require an on time of at least 15 seconds in duration.

The Coast Guard agrees that the word "respond" is more accurate than the word "transmit" as used in paragraph (d) and has changed the final rule text accordingly.

Regulatory Evaluation

This rule is not major under Executive Order 12291 and not significant under the Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). A Regulatory Evaluation is available in the docket.

The cost resulting from this rule will be low. The deepwater port radar beacon currently in use need not be replaced until the end of its useful life, in approximately 10 years. Purchasing a dual band radar beacon costs approximately $1,800.00 more than buying a comparable single band beacon. Radar beacons cost $20,000 to $35,000 each. The $1,800.00 increase in cost required by this proposal is a relatively small cost differential. Over time the cost differential between single and dual band radar beacons is expected to become an even smaller percentage of the total unit price. Single band radar beacons may even become unavailable as dual band radar beacons become standard for most applications. No comments were received on the regulatory evaluation.

Small Entities

Only one deepwater port currently exists and neither the owners or operators qualify as small entities. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

The Coast Guard has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this rule and concluded that under section 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion determination is available in the docket.

List of Subjects in 33 CFR Part 149

Fire prevention, Harbors, Marine safety, Navigation (water), Occupational safety and health, Oil pollution.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 149 as follows:

PART 149—[AMENDED]

1. The authority citation for part 149 is revised to read as follows:

Authority: 33 U.S.C. 1504; 49 CFR 1.46.

2. Section 149.795 is revised to read as follows:

§ 149.795 Radar beacon.

The tallest platform must have an FCC type accepted radar beacon (RACON) that:

(a) Transmits in—

(1) Both the 2900–3100 MHz and 9300–9500 MHz frequency bands, or

(2) The 9320–9500 MHz frequency band if installed prior to July 8, 1991.

(b) Transmits a signal of a least 250 milliwatts radiated power that is omnidirectional and polarized in the horizontal plane;

(c) Transmits a 2 or more element Morse code character, the length of which does not exceed 25% of the radar range expected to be used by vessels operating in the area;

(d) If of the frequency agile type, is programmed so that it will respond at least 40% of the time but not more than 90% of the time, with a response time duration of at least 15 seconds; and

(e) Is installed at a minimum height of 15 feet above the highest deck of the platform and where the structure of the platform, or equipment mounted thereon, does not obstruct the signal propagation in any direction.

Dated: April 15, 1991.

J. D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 91–10751 Filed 5–6–91; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–3954–5]

Nebraska Schedule of Compliance for Modification of Waste Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Nebraska Compliance Schedule to adopt program modifications.

SUMMARY: On September 22, 1986, EPA promulgated amendments to the deadline for State hazardous waste program modifications and published requirements for States to be placed on compliance schedules to adopt the necessary program modifications. EPA is today publishing a compliance schedule for Nebraska to modify its program in accordance with 40 CFR 271.21(g) to adopt the Federal program modifications.

FOR FURTHER INFORMATION CONTACT: Daniel J. Wheeler, RCRA Branch, U.S. EPA, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101; 913–551–7055.

SUPPLEMENTARY INFORMATION: State authorization to implement the Federal hazardous waste management program within a state is available under section 3006(b) of the Resource Conservation and Recovery Act (RCRA). Final authorization is granted by EPA upon findings that the State program (1) is equivalent to the Federal program, (2) is consistent with the Federal and other state programs, and (3) provides for adequate enforcement. EPA regulations for final authorization appear at 40 CFR 271.1 through 271.24. In order to retain authorization, a state must revise its program to adopt new Federal requirements by the "cluster" deadlines specified on 40 CFR 271.21. See 51 FR 33712, September 22, 1986, for a complete discussion of the regulatory clusters and associated deadlines.

Nebraska received final authorization of its hazardous waste management program on February 7, 1985 (50 FR 3345, January 24, 1985) and was authorized for two "clusters" of program revisions on December 3, 1988 (53 FR 38950, October 4, 1988). The State has also submitted an authorization request for the first cluster of Hazardous and Solid Waste Amendments of 1984 (HSWA) authorities and two more clusters of non-HSWA authorities. This request is currently under review by EPA.

Today EPA is publishing a compliance schedule for Nebraska to obtain

program modifications for the following Federal program requirements, all of which are in the fifth non-HSWA cluster.

- Treatability Studies Sample Exemption, 53 FR 27290;
- Standards for Hazardous Waste Storage and Treatment Tank Systems, 53 FR 34079;
- Identification and Listing of Hazardous Waste, 53 FR 35412;
- Permit Modifications for Hazardous Waste Management Facilities (optional), 53 FR 37912 and 53 FR 41649;
- Statistical Methods for Evaluating Ground-Water Monitoring Data from Hazardous Waste Facilities, 53 FR 39720;
- Removal of Iron Dextran from the List of Hazardous Wastes (optional), 53 FR 43878;
- Removal of Strontium Sulfide from the List of Hazardous Wastes (optional), 53 FR 43881;
- Manifest Renewal (optional), 53 FR 45089;
- Hazardous Waste Miscellaneous Units, 54 FR 615;
- Amendment to Requirements for Hazardous Waste Incinerator Permits, 54 FR 4286; and
- Changes to Interim Status Facilities for Hazardous Waste Management Permits (optional), 54 FR 9596.

The State has agreed to seek the needed program modifications according to the following schedule:

(1) Public notice of proposed rulemaking, May 1, 1991 (approximately);

(2) Public hearing and adoption by Environmental Control Council, June 7, 1991; and

(3) New rules become effective, August 7, 1991;

Nebraska expects to submit a final application to EPA for authorization of the above mentioned program revisions by March 1, 1992. This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the RCRA of 1976, as amended, 42, U.S.C. 6912(a), 6926 and 6974(b).

Dated: April 17, 1991.

Morris Kay,

Regional Administrator.

[FR Doc. 91-10788 Filed 5-6-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 87

[GEN Docket No. 89-295; FCC 91-102, RM-6620, RM-6649]

Aviation Services; Use of Frequencies in the 136-137 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Memorandum Opinion and Order amends and clarifies the rules governing the use of the Aviation Services frequencies in the 136-137 MHz band. This was in response to a Petition for Partial Reconsideration filed by Aeronautical Radio, Inc. This will clarify the rules and enhance their usefulness to the public.

EFFECTIVE DATE: June 17, 1991.

FOR FURTHER INFORMATION CONTACT: William P. Berges, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554, (202) 632-7175.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, PR Docket No. 89-295, adopted April 1, 1991, and released May 2, 1991. The full text of this Commission decision including the adopted rule changes are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The full text of this decision including the adopted rule changes may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1114 21st Street NW., Washington, DC 20036.

Summary of Memorandum Opinion and Order

In response to two petitions for rulemaking, one filed by Aeronautical Radio, Inc. (ARINC), RM-6620, and the other by the American Petroleum Institute (API), RM-6649, on June 28, 1989, the Commission released a Notice of Proposed Rule Making (Notice), GEN. Docket No. 89-295, FCC 89-207 54 FR 28823, July 10, 1989, which proposed to amend the rules to authorize the aviation services to use the frequencies in the 136-137 MHz band. Authorization to use these frequencies will help to alleviate the frequency congestion currently being experienced in the aviation services. On July 5, 1990, the Commission released a Report and Order (R&O), GEN. Docket No. 89-295, FCC 90-236 55 FR 28627, July 12, 1990, which amended the rules and distributed the frequencies in the 136-137 MHz to the aeronautical enroute services, general aviation services and special purpose services. On August 13, 1990, ARINC filed a Petition for Partial Reconsideration (Petition) requesting that the number of special purpose frequencies be reduced and to rearrange the frequency allocation plan adopted in the (R&O). This Memorandum Opinion & Order discusses the comments filed regarding the issues in the Petition and adopts certain changes and clarifies the rules adopted in the R&O.

Ordering Clauses

Accordingly, *it is ordered* That pursuant to the authority contained in sections 4(i) and 303(r), of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), and § 1.429(i) of the Commission's Rules, 47 CFR 1.429(i), the Petition for Partial Reconsideration filed by ARINC is Granted to the extent indicated herein and in all other respects denied.

It is further ordered That part 87 of the Commission's Rules is amended as shown below effective June 17, 1991.

It is further ordered That this proceeding is terminated.

List of Subjects in 47 CFR Part 87

Aviation services, Aeronautical stations, Communications equipment.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Rule Changes

Parts 87 of chapter I title 47 of the Code of Federal Regulations is amended as follows:

PART 87—AVIATION SERVICES

1. The authority citation for part 87 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-156, 301-609.

2. In § 87.173, the frequency table in paragraph (b) is amended by revising the entries for 136.900 MHz, 136.925 MHz, 136.950 MHz and 136.975 MHz to read as follows:

§ 87.173 Frequencies

* * * * *

(b) * * *

Frequency or frequency band	Subpart	Class of station	Remarks
* * * * * * *			
136.900 MHz	I	MA, FAE	International and domestic VHF.
136.925 MHz	I	MA, FAE	International and domestic VHF.
136.950 MHz	I	MA, FAE	International and domestic VHF.
136.975 MHz	I	MA, FAE	International and domestic VHF.
* * * * * * *			

3. In § 87.263, paragraphs (a) (1) and (5) are revised to read as follows:

§ 87.263 Frequencies.

(a) * * *

(1) The frequencies in the 128.825–132.000 MHz band and the frequencies 136.500 MHz, 136.525 MHz, 136.550 MHz, 136.575 MHz, 136.600 MHz, 136.625 MHz, 136.650 MHz, 136.675 MHz, 136.700 MHz and 136.725 MHz are available to serve domestic routes. The frequencies 136.900 MHz, 136.925 MHz, 136.950 MHz and 136.975 MHz are available to serve domestic and international routes. The frequencies 136.750 MHz, 136.775 MHz, 136.800 MHz, 136.825 MHz, 136.850 MHz and 136.875 MHz are also available to enroute stations located at least 288 kilometers (180 miles) from the Gulf of Mexico shoreline (outside the Gulf of Mexico Region). Frequency assignments are based on 25 kHz spacing. Use of these frequencies must be compatible with existing operations and must be in accordance with pertinent international treaties and agreements.

* * * * *

(5) The frequencies 136.750 MHz, 136.775 MHz, 136.800 MHz, 136.825 MHz, 136.850 MHz and 136.875 MHz are available in the Gulf of Mexico Region to serve domestic routes over the Gulf of Mexico and adjacent coastal areas. Assignment of these six frequencies is reserved until January 1, 1994, for helicopter flight following systems. Applicants must provide a showing of need for all frequencies requested. Assignment of these six frequencies in the Gulf of Mexico Region is not subject to the conditions contained in § 87.261(c) and paragraph (a)(2) of this section. Frequency assignments are based on 25 kHz spacing. Use of these frequencies must be compatible with existing operations and must be in accordance with pertinent international treaties and agreements. For the purpose of this paragraph, the Gulf of Mexico Region is defined as an area bounded on the east, north and west by a line 288 km (180 miles) inland from the Gulf of Mexico shoreline. Inland stations using these frequencies must be located within forty-eight kilometers (30 miles) of the Gulf of Mexico shoreline.

* * * * *

APPENDIX.—U.S.A./CANADA CHANNELING ARRANGEMENT FOR 136–137 MHZ BAND

Freq. MHz	Within appropriate coordination zone		Beyond appropriate coordination zone
	U.S.A.	Canada	U.S.A.
136.000	X (F)	X	X (F)
136.025	X (F)	X	X (F)
136.050	X (F)	X	X (F)
136.075	X (F)	X	X (F)
136.100	X (R)	X	X (R)
136.125	X (F)	X	X (F)
136.150	X (F)	X	X (F)
136.175	X (F)	X	X (F)
136.200	X (R)	X	X (R)
136.225	X (F)	X	X (F)
136.250	X (F)	X	X (F)
136.275	X (R)	X	X (R)
136.300	X (F)	X	X (F)
136.325	X (F)	X	X (F)
136.350	X (F)	X	X (F)
136.375	X (R)	X	X (R)
136.400	X (F)	X	X (F)
136.425	X (F)	X	X (F)
136.450	X (F)	X	X (F)
136.475	X (R)	X	X (R)
136.500	X (A)	X	X (A)
136.525	X (A)		X (A)
136.550	X (A)	X	X (A)
136.575		X	X (A)
136.600	X (A)	X	X (A)
136.625	X (A)		X (A)
136.650	X (A)	X	X (A)
136.675		X	X (A)
136.700	X (A)	X	X (A)
136.725	X (A)		X (A)
136.750	X (A)	X	X (B)
136.775		X	X (B)
136.800	X (A)	X	X (B)
136.825	X (A)		X (B)
136.850	X (A)	X	X (B)
136.875		X	X (B)
136.900	X (A)	X	X (A)
136.925	X (A)		X (A)
136.950	X (A)	X	X (A)
136.975		X	X (A)

Notes 1. Letter in parenthesis indicates usage as follows:

(A) Enroute communications in accordance with § 87.261 of the Rules.

(B) Enroute communications in accordance with § 87.261 except as noted in § 87.263(a)(5) of the Rules.

(F) Available to the Government (FAA)/non-Government entities for air traffic control purposes (ATC), automatic weather observation services (AWOS), automatic terminal information services (ATIS) and airport control tower (ATC) communications.

(R) Reserved.

2. The frequencies 136.000 MHz through 136.475 MHz allocated for air traffic control (ATC) purposes will be shared by the United States and Canada on an equal basis without prejudging the needs of either Government.

3. When applicable, the frequencies 136.000 MHz through 136.475 MHz will be coordinated on the basis of required technical data and coordination zones as established in the October 24, 1962, agreement entitled "TELECOMMUNICATIONS-Coordination and Use of Radio Frequencies Above 30 Megacycles per Second" between the United States of America and Canada and any subsequent revisions thereto (U.S.A./Canada agreement).

4. When applicable, the frequencies 136.500 MHz through 136.975 MHz will be coordinated on the basis of the U.S.A./Canada agreement. The frequency coordination zones for co-channel assignments are:

Type of station	Altitude level (feet)	Coordination zone (n.m.)
Ramp	Ground level	50
Helicopter	0 to 2,000	150
Low level	0 to 10,000	250
Mid level	0 to 20,000	400
High level	Over 20,000	600

[FR Doc. 91–10828 Filed 5–6–91; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB42

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Cumberland Pigtoe Mussel

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines endangered status for the Cumberland pigtoe mussel (*Pleurobema gibberum*) under the Endangered Species Act (Act) of 1973, as amended. This species is endemic to the Caney Fork River system (a Cumberland River tributary) in Grundy, Van Buren, Warren, and White Counties, Tennessee. Although presumably once widely distributed in the Caney Fork system, the species now occurs in short reaches in only four Caney Fork River tributaries. The species has been and continues to be impacted by water quality deterioration resulting from siltation contributed by coal mining and poor land use practices, by other water pollutants, and by impoundments.

EFFECTIVE DATE: June 6, 1991.

ADDRESSES: The complete file of this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Asheville Field Office, 100 Otis Street, room 224, Asheville, North Carolina 28801.

FOR FURTHER INFORMATION CONTACT: Mr. Richard G. Biggins at the above address (704/259–0321 or FTS 672–0321).

SUPPLEMENTARY INFORMATION:

Background

The Cumberland pigtoe mussel (*Pleurobema gibberum*), which was described by Lea (1838), is apparently endemic to the Caney Fork River system above the Great Falls (the Great Falls Lake Dam is now located at the Great Falls), Cumberland River basin, Tennessee (Anderson 1990, Gordon and Layzer 1989). This small freshwater mussel (rarely exceeds 60 mm in length) has a triangular, compressed, somewhat heavy shell. The shell's outer surface on young individuals is a yellowish-brown color; adults have a dark mahogany shell. The inside of the shell is a distinctive peach to orange color (Anderson 1990). Like other freshwater mussels, this animal feeds by filtering food particles from the water. It has a complex reproductive cycle in which the mussel's larvae likely parasitize fish. The mussel's life span, parasitic host, and most aspects of its life history are unknown.

Historic mussel collection records reviewed by Anderson (1990) revealed that the Cumberland pigtoe has been reported from five Caney Fork River tributaries, all above the Great Falls Reservoir. Anderson (1990) conducted a mussel survey of the Caney Fork River system above and below the Great Falls Reservoir and reported that the species is now restricted to isolated populations in short reaches of four Caney Fork tributaries—Barren Fork, Warren County; Calfkiller River, White County; Cane Creek, Van Buren County; and Collins River, Warren and Grundy Counties. Although the species likely occurred in the main stem of the Caney Fork and has been historically collected from Hickory Creek, no specimens were taken at the four sampling stations in the Hickory Creek system, nor was the mussel collected in any unimpounded reaches of the Caney Fork River. It is believed that the species has now been extirpated from both of these areas. The mussel was also not taken in collections made in other Caney Fork tributaries—Big Creek, Big Hickory Creek, Charles Creek, Dry Branch Barren River, Falling Water River, Firescald Creek, Fultz Creek, Little Hickory Creek, Mountain Creek, Pine Creek, Rocky River, Sink Creek, Smith Fork, Smith Fork Creek, and West Fork Hickory Creek.

The Cumberland pigtoe's distribution has been reduced by such factors as impoundments and the general deterioration of water quality resulting from siltation and other pollutants contributed by coal mining, poor land use practices, and waste discharges. These factors continue to impact the species and its habitat. Because the populations inhabit only short river reaches, they are also very vulnerable to extirpation from accidental toxic chemical spills.

On December 8, 1989, the Service notified by mail (30 letters) appropriate interested individuals, Federal and State agencies, and local governments within the species' present range that a status review was being conducted specifically to determine if the Cumberland pigtoe should be proposed for protection under the Act. Five written responses were received in response to this notification. No objections to the potential listing of the Cumberland pigtoe were received. No additional information on the species' status and its former and present distribution was provided.

On October 15, 1990, the Service published in the **Federal Register** (55 FR 41718) a proposal to list the Cumberland pigtoe mussel as an endangered species. That proposal provided information on the species' biology, status, and threats to its continued existence.

Summary of Comments and Recommendations

In the October 15, 1990, proposed rule and associated notifications, all interested parties were requested to submit factual reports and information that might contribute to development of a final rule. Appropriate Federal and State agencies, county governments, scientific organizations, and interested parties were contacted by letter dated October 26, 1990, and requested to comment. A newspaper legal notice was published in the Southern Standard, McMinnville, Tennessee, on October 28, 1990.

Four written comments were received. The U.S. Army Corps of Engineers, Nashville District, stated, "There are no Corps of Engineers' projects or water planning studies in the upper Caney Fork River and therefore no district-related potential effects exist for the species." The U.S. Soil Conservation Service (SCS) responded that they have an ongoing Rural Abandoned Mine Program in the watershed that might cause some short-term negative impacts to the mussel, but long-term impacts would be positive. The SCS also stated that they were reviewing two applications for Caney Fork River watershed projects, but they did not expect these projects to cause any negative impacts to the mussel. The Tennessee Valley Authority stated they had no additional data on the species. The Tennessee Wildlife Resources Agency stated that they would cooperate in the protection of the species.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Cumberland pigtoe mussel should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Cumberland pigtoe mussel (*Pleurobema gibberum*) are as follows:

A. The present or threatened destruction, modification, or curtailment of its habitat or range. Based on historic mussel collection records from the Cumberland River system (Anderson 1990, Gordon and Layzer 1989), the Cumberland pigtoe is restricted to the Caney Fork River basin above the Great Falls. Within this isolated river basin the species has been reported from only five Caney Fork River tributaries. However, historic mussel collection records from the upper Caney Fork system are very limited. Thus,

considering the extent of the mussel's preferred habitat (riffle areas with sand and gravel with occasional mud and cobble substrates (Anderson 1990, Gordon and Layzer 1989)), which was inundated by the construction of the Great Falls Reservoir at the site of the Great Falls in the 1910s, the species was likely much more widely distributed within the upper Caney Fork system than available records indicate.

Presently, the species is restricted to isolated populations in short reaches of four Caney Fork tributaries—Barren Fork, Warren County; Calfkiller River, White County; Cane Creek, Van Buren County; and Collins River, Warren and Grundy Counties (Anderson 1990). These populations are adversely affected by impoundments and the general deterioration of water quality resulting from siltation and other pollutants contributed by coal mining, poor land use practices, and waste discharges. Mussel populations in adjacent watersheds with similar geology (upper Duck and Elk Rivers) have already lost much of their mussel fauna because of poor land management practices and impoundments (Anderson 1990).

B. Overutilization for commercial, recreational, scientific, or educational purposes. There is no indication that overutilization has been a problem for this species. However, because of the mussel's restricted range, its slow growth rate, and low reproductive capacity, collection of the species could be a problem if specific locations of populations were known. Therefore, the present range of the species has been described only in general terms.

C. Disease or predation. Although the Cumberland pigtoe is consumed by predatory animals, there is no evidence that predation is a serious threat to the species. However, freshwater mussel die-offs have recently (early to mid-1980s) been reported throughout the Mississippi River basin (Richard Neves, Virginia Polytechnic Institute and State University, personal communication, 1986). The cause of the die-offs has not been determined, but significant losses have occurred in some populations.

D. The inadequacy of existing regulatory mechanisms. The State of Tennessee prohibits taking fish and wildlife, including freshwater mussels, for scientific purposes without a State collecting permit. However, the species is generally not protected from other threats. Federal listing will provide additional protection for the species from mussel collectors by requiring a Federal endangered species permit to take the species and by requiring Federal agencies to consult with the Service when projects they fund, authorize, or carry out may affect the species.

E. Other natural or manmade factors affecting its continued existence. As the Cumberland pigtoe is presently restricted to short river reaches, it is also very vulnerable to extirpation from accidental toxic chemical spills; and as the populated reaches are physically isolated from each other by impoundments, recolonization of any extirpated population would not be possible without human intervention. Additionally, because natural gene flow among populations is no longer possible, the long-term genetic viability of these remaining isolated populations is questionable.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the Cumberland pigtoe mussel (*Pleurobema gibberum*) as endangered. Presently only four isolated populations are known to exist. Because of the restricted nature of these populations and their vulnerability, endangered status appears to be the most appropriate classification for the species. (See "Critical Habitat" section for a discussion of why critical habitat is not being designated for the Cumberland pigtoe mussel.)

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for this species. Such a determination would result in no known benefit to the species.

As part of the development of the proposed and final rule, Federal agencies were notified of the Cumberland pigtoe mussel's distribution, and they were requested to provide data on Federal actions that might adversely affect the species. No projects were identified that would have a significant impact on the species. Should any future projects occur in the Caney Fork system, the involved Federal agency will already have the distributional data needed to determine if the species may be impacted by their action. Thus, no additional benefits would accrue from critical habitat designation that would not also accrue from the listing of the species.

In addition, this species is rare, and taking for scientific purposes and private collection could be a threat. The publication of critical habitat maps and other publicity accompanying critical habitat designation could increase that threat. The locations of populations of this species were consequently described only in general terms in the proposed and final rule. Precise locality data would be available to appropriate Federal, State, and local governmental agencies from the Service office described in the "ADDRESSES" section.

For the reasons discussed above, it would not be prudent to determine critical habitat.

Available Conservation Measures

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

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

The Service notified Federal agencies that may have programs affecting the species. The U.S. Soil Conservation Service (SCS) informed the Service that they have some active Rural Abandoned Mine Programs in the watershed. However, SCS believed that, although minor short-term negative impacts might occur during the project, long-term impacts would be positive. The SCS also was reviewing two applications for watershed projects in the Caney Fork

River basin, but they felt these projects would not adversely affect the mussel. Other Federal activities that could occur and impact the species include, but are not limited to, the carrying out or the issuance of permits for hydroelectric facility construction and operation, reservoir construction, stream alterations, wastewater facility development, pesticide registration, and road and bridge construction. However, it has been the experience of the Service that nearly all section 7 consultations can be resolved so that the species is protected and the project objectives are met.

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

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

In some instances permits may be issued for a specified time to relieve undue economic hardship that would be suffered if such relief were not available. This species is not in trade, and such permit request are not expected.

National Environmental Policy Act

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

References Cited

Anderson, R.M. 1990. Status survey of the Cumberland pigtoe pearly mussel (*Pleurobema gibberum*). Tennessee Cooperative Fishery Research Unit, Tennessee Technological University, Cookeville, Tennessee. Unpublished report. Submitted to the U.S. Fish and Wildlife Service, Asheville Field Office, Asheville, NC. 10 pp.

Gordon, M.E., and J.B. Layzer. 1989. Mussels (BIVALVIA: UNIONOIDAE) of the Cumberland River: Review of life histories and ecological relationships. U.S. Fish and Wild. Serv. Biol. Rep. 89(15). 99 pp.

Author

The primary author of this final rule is Richard G. Biggins (see "**ADDRESSES**" section) (704/259–0321 or FTS 672–0321).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

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

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under CLAMS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Clams:							
*	*	*	*	*	*	*	
Mussel, Cumberland pigtoe	*Pleurobema gibberum*	U.S.A. (TN)	Entire	E	423	NA	NA
*	*	*	*	*	*	*	

Dated: April 10, 1991.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 91–10739 Filed 5–6–91; 8:45 am]

BILLING CODE 4310–55–M

---

50 CFR Part 17

RIN 1018–AB42

Endangered and Threatened Wildlife and Plants; Helianthus schweinitzii (Schweinitz's Sunflower) Determined to be Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the plant *Helianthus schweinitzii* (Schweinitz's sunflower), a perennial herb limited to 13 populations in North Carolina and South Carolina, to be an endangered species under the authority of the Endangered Species Act (Act) of 1973, as amended. *Helianthus schweinitzii* is endangered by the loss of historic levels of natural disturbance from fire and grazing by native herbivores, residential and industrial development, mining, encroachment by exotic species, highway construction

and improvement, and roadside and utility right-of-way maintenance. This action implements Federal protection provided by the Act for *Helianthus schweinitzii.*

EFFECTIVE DATE: June 6, 1991.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, 100 Otis Street, room 224, Asheville, North Carolina 28801.

FOR FURTHER INFORMATION CONTACT: Ms. Nora Murdock at the above address (704/259–0321 or FTS 672–0321).

SUPPLEMENTARY INFORMATION:

Background

Helianthus schweinitzii, described by John Torrey and Asa Gray (1841) from material collected in North Carolina, is a rhizomatous perennial herb. This sunflower grows from 1 to 2 meters tall from a cluster of carrot-like tuberous roots; stems are usually solitary, branching only at or above mid-stem, with the branches held in candelabrum-style arches. The narrowly lanceolate opposite leaves are scabrous above, resin-dotted and loosely soft-white-hairy beneath, entire (or occasionally with a few small teeth), 18 centimeters long, and 2.5 centimeters wide. The yellow flowers are approximately 5.5 centimeters in diameter and are borne from September to frost in a rather open system of upwardly arching heads. The fruit of this species is a smooth, dark gray-brown achene approximately 5 millimeters long (Kral 1983, Radford *et al.* 1964, Cronquist 1980). Stems are often a deep red color. The leaves are opposite on the lower parts of the stems, usually becoming alternate on the upper parts. *Helianthus schweinitzii* can be easily confused with several other similar species, including the sympatric *H. laevigatus* and narrow-leaved extremes of *H. microcephalus*. However, the tuberous root system and relatively small heads of *H. schweinitzii*, as well as the rather narrowly lanceolate leaf, which is revolute (at least when dry) and rather densely pubescent and resin-dotted beneath, combine to distinguish *H. schweinitzii* from its similar relatives.

Helianthus schweinitzii is endemic to the piedmont of the Carolinas, where it is currently known from 10 locations in North Carolina and 5 in South Carolina. The species occurs in clearings and edges of upland woods on moist to dryish clays, clay-loams, or sandy clay-loams that often have a high gravel content and are moderately podzolized. Soils supporting this species are mainly of the Iredell series. Like most sunflowers, this species is a plant of full sun or the light shade of open stands of oak-pine-hickory (Kral 1983). Natural fires as well as large herbivores, including elk and bison, are part of the history of the vegetation in this species' range. Many of the associated herbs are also cormophytic, sun-loving species which depend on periodic disturbances to reduce the shade and competition of woody plants (Kral 1983). The piedmont areas now occupied by remnant populations of *Helianthus schweinitzii* were characterized in early accounts (Brown 1953) as:

> Where the woodlands came to an end, [and] the open prairies began. We are informed by early writers that the Blackjack lands of Chester and York [Counties, South Carolina] were once prairies with no growth of trees, and covered in many places with maiden cane * * * Through this country, with its magnificent woods and wide prairies, roam the buffalo and the deer in large numbers, the luxuriant grass lands also feed the elk * * * The * * * region [is] now thickly covered with Blackjack, but at that time [(during the American Revolution)], [it was] an open prairie, on which persons could be seen at a great distance. The patriots coming to visit their families always endeavored to pass over this plain by night, to avoid detection by the Torries.

Logan (1859) similarly described this same region as a prairie where "vast brakes of cane [stretched] in unbroken lines of evergreen for hundreds of miles * * *." Schweinitz's sunflower, like other prairie species, is dependant upon some form of disturbance to maintain the open quality of its habitat. Currently, artificial disturbance, such as power line and road right-of-way maintenance (where they are accomplished without herbicides and at a season that does not interfere with the reproductive cycle of this sunflower) are maintaining some of the openings historically provided by naturally occurring periodic fires and native grazing animals.

Twenty-one populations of *Helianthus schweinitzii* have been reported historically from 10 counties in North Carolina and South Carolina. Earlier reports of the species from Georgia and Alabama are now believed to have been in error (Robert Kral, Vanderbilt University, personal communication, 1988). Of the 13 remaining populations (located in York County, South Carolina, and Stanly, Cabarrus, Mecklenburg, Rowan, and Union Counties, North Carolina), 5 are within rights-of-way maintained by the North Carolina Department of Transportation, 2 are in rights-of-way maintained by the South Carolina Department of Highways and Public Transportation, 1 is on land managed by the Rock Hill, South Carolina, Department of Parks, Recreation, and Tourism, and the remaining 5 are on privately owned lands usually in or near transmission line corridors of various utility companies. Extirpated populations are believed to have succumbed as a result of suppression of natural disturbance (fire and/or grazing), residential and industrial development, and highway construction and improvement. The continued existence of *Helianthus schweinitzii* is threatened by these activities, as well as by mining (part of one population exists near an active gravel quarry), herbicide use, and possibly by encroachment of exotic species.

Federal government actions on this species began with section 12 of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document number 94–51, was presented to Congress on January 9, 1975. The Service published a notice in the July 1, 1975, **Federal Register** (40 FR 27832) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) [now section 4(b)(3)] of the Act and of its intention thereby to review the status of the plant taxa named within.

On December 15, 1980, the Service published a revised notice of review for native plants in the **Federal Register** (45 FR 82480); *Helianthus schweinitzii* was included in that notice as a category 1 species. Category 1 species are those species for which the Service currently has on file substantial information on biological vulnerability and threats to support proposing to list them as endangered or threatened. Subsequent revisions of the 1980 notice have maintained *Helianthus schweinitzii* in category 1 until the February 21, 1990, publication of the revised notice of review for native plants in the **Federal Register** (55 FR 6184), in which this species' status changed to category 2 in recognition of the need for additional status surveys. Recent surveys have been conducted by Service and State personnel, and the Service now believes sufficient information exists to list *Helianthus schweinitzii* as endangered.

Section 4(b)(3)(B) of the Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the

case of *Helianthus schweinitzii* because of the acceptance of the 1975 Smithsonian report as a petition. On October 13, 1983, and in October of each year thereafter, through 1989, the Service found that the petitioned listing of *Helianthus schweinitzii* was warranted but precluded by other listing actions of a higher priority and that additional data on vulnerability and threats were still being gathered. The July 2, 1990, proposal for *Helianthus schweinitzii* to be listed as endangered (55 FR 27270) constituted the final 12-month finding for this species.

Summary of Comments and Recommendations

In the July 2, 1990, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comment were published in the Charlotte Observer (North Carolina), the Rock Hill Herald (South Carolina), and the McMinnville Southern Standard (Tennessee) on July 14, 1990, July 21, 1990, and July 15, 1990, respectively.

Twenty-three comments were received, all of which express support for the proposal.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Helianthus schweinitzii* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Helianthus schweinitzii* Torrey and Gray (Schweinitz' sunflower) are as follows:

A. The present or threatened destruction, modification, or curtailment of its habitat or range. Helianthus schweinitzii has been and continues to be endangered by destruction or adverse alteration of its habitat. Since discovery of this species, approximately one-third of the known populations have been extirpated, largely due to fire/grazing suppression, and conversion of the habitat for residential and industrial purposes. Fire suppression and absence of grazing by large native herbivores are a serious problem for this species and will be discussed in detail under Factor E below. At least 12 of the remaining 13 populations are currently threatened by habitat alterations (North Carolina Natural Heritage Program and South Carolina Heritage Trust Program, 1990).

Eight of these populations survive along roadsides, with an additional population being in a utility line right-of-way. Some of the roadside populations are also within utility line rights-of-way. Three others have been partially bulldozed in recent years. All of these populations are small, which increases their vulnerability to extirpation as a result of highway and right-of-way maintenance and improvement, particularly if herbicides are used. Significant declines have been noted within the last 3 years in six of the remaining populations, with decreases ranging from 9 to 89 percent. Since the publication of the proposed rule, two extant populations have been extirpated. During the past 3 years, increases in numbers of stems were noted at only three of the currently extant sites, ranging from 14 percent to 150 percent (the latter figure is from one unusually vigorous population located on a highly vulnerable site only a few feet from the edge of a paved highway). Four of the remaining populations are small, containing less than 40 plants each.

The limited geographic range and scarcity of seed sources, as well as appropriate habitat, increases the severity of the threats to *Helianthus schweinitzii*. As stated in the "Background" section above, this species requires some form of disturbance to maintain its open habitat and can withstand mowing an timber-harvesting operations, if done properly. It cannot withstand bulldozing or direct application of broadleaf herbicides. In addition, the small populations that survive on road edges could be easily destroyed by highway improvement projects or by right-of-way maintenance activities if these are not done in a manner consistent with protecting the species.

B. Overutilization for commercial, recreational, scientific, or educational purposes. Helianthus schweinitzii, although it is offered for sale by a few native plant nurseries, is not currently a significant component of the commercial trade in native plants. However, with its relatively showy flowers, the species has potential for horticultural use, and publicity could generate an increased demand which might exceed the currently available sources of cultivated material. Because of the species' easily accessible populations, it is vulnerable to taking and vandalism that could result from increased specific publicity.

C. Disease or predation. Not applicable to this species at this time.

D. The inadequacy of existing regulatory mechanisms. Helianthus schweinitzii is afforded legal protection in North Carolina by North Carolina general statutes, § 106–202.122, 106–202.19 (CUN.SUP.1985), which provides for protection from interstate trade (without a permit) and for monitoring and management of State-listed species and prohibits taking of plants without written permission of landowners. *Helianthus schweinitzii* is listed in North Carolina as endangered. The species is recognized in South Carolina as "threatened and of national concern" by the South Carolina Advisory Committee on Rare, Threatened, and Endangered Plants in South Carolina; however, this State offers no official protection. The Endangered Species Act would provide additional protection and encouragement of active management for *Helianthus schweinitzii*.

E. Other natural or manmade factors affecting its continued existence. As mentioned in Factor A, many of the remaining populations are small in numbers of individual stems and in terms of area covered by the plants. Therefore, there may be low genetic variability within populations, making it more important to maintain as much habitat and as many of the remaining colonies as possible. Much remains unknown about the demographics and reproductive requirements of this species in the wild, although germination tests and cultivation experiments have been conducted at the North Carolina Botanical Garden in cooperation with the Center for Plant Conservation, The Garden Club of America, and the Fauquier-Loudoun Garden Club of Virginia. A few commercial nurseries specializing in native plants are currently propagating this species and are offering cultivated specimens for sale.

In the absence of uncontrolled natural fires and grazing of the large, free-roaming herbivores now extirpated from the area, controlled burning or some other suitable form of disturbance, such as well-timed mowing or careful clearing, is essential to maintaining the prairie remnants occupied by *Helianthus schweinitzii*. Without such periodic disturbance, this type of habitat is gradually overtaken and eliminated by shrubs and trees of the adjacent woodlands. As the woody species

increase in height and density, they overtop *Helianthus schweinitzii*, which, like most other sunflowers, is shade intolerant. The current distribution of the species is ample evidence of its dependence on disturbance. Of the 15 remaining populations, 11 are in roadside or power line rights-of-way.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Helianthus schweinitzii* as endangered. With one-third of the species' populations already having been eliminated and only 13 remaining in existence, and based upon its dependence on some form of active management, it clearly warrants protection under the Act. Endangered status seems appropriate because of the imminent serious threats facing those populations. As stated by Kral (1983),

> The problem is that, this being a very localized species, * * * seed sources are usually * * * destroyed [thereby preventing recolonization of bulldozed or otherwise severely disturbed sites]; therefore large tracts of the former range of *H. schweinitzii* now lack it [the species].

Critical habitat is not being designated for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for *Helianthus schweinitzii*. As discussed in Factor B in the "Summary of Factors Affecting the Species," *Helianthus schweinitzii* is threatened by taking, an activity difficult to enforce and only regulated by the Act with respect to plants in cases of (1) removal and reduction to possession of endangered plants from lands under Federal jurisdiction, or their malicious damage or destruction on such lands; and (2) removal, cutting, digging up, or damaging or destroying endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. Because such provisions are difficult to enforce, publication of critical habitat descriptions and maps would make *Helianthus schweinitzii* more vulnerable and would increase enforcement problems. All involved parties and principal landowners have been notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will be addressed through the recovery process and through the section 7 consultation process. Therefore, it would not now be prudent to determine critical habitat for *Helianthus schweinitzii*.

Available Conservation Measures

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

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

Federal activities that could impact *Helianthus schweinitzii* and its habitat in the future include, but are not limited to, the following: Utility right-of-way construction, maintenance, and improvements; highway construction, maintenance, and improvement; and permits for mineral exploration and mining. The Service will work with the involved agencies to secure protection and proper management of *Helianthus schweinitzii* while accommodating agency activities to the extent possible.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. With respect to *Helianthus schweinitzii*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for endangered plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, damaging or destroying of endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances.

It is anticipated that few trade permits will be sought or issued because the species is not common in cultivation or in the wild. Requests for copies of the regulations on listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 (703/358–2104).

National Environmental Policy Act

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

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Asheville Field Office (see "**ADDRESSES**" section).

Author

The primary author of this final rule is Ms. Nora Murdock (see "**ADDRESSES**" section) (704/259–0321 or FTS 672–0321).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

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

PART 17—[AMENDED]

(1) The authority citation for 50 CFR part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

(2) Amend § 17.12(h) by adding the following, in alphabetical order under the family Asteraceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Asteraceae—Aster family:						
*	*	*	*	*	*	
Helianthus schweinitzii	Schweinitz's sunflower	U.S.A. (NC, SC)	E	424	NA	NA
*	*	*	*	*	*	

Dated: April 10, 1991.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 91–10740 Filed 5–6–91; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

RIN 1018–AB52

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Scirpus ancistrochaetus (Northeastern Bulrush)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service determines *Scirpus ancistrochaetus* Schuyl. (Northeastern bulrush), a perennial herb of the sedge family (Cyperaceae) to be an endangered species pursuant to the Endangered Species Act of 1973 (Act), as amended. Thirteen extant populations of *Scirpus ancitrochaetus* are found in open shallow ponds, wet depressions, and marshes in Virginia, West Virginia, Maryland, Pennsylvania, Massachusetts, and Vermont; the species is also known historically from New York. Eight of the thirteen extant populations are extremely small, each having less than 70 flowering culms. The species is threatened by habitat loss and modification through residential, agricultural and recreational development. This listing implements protection and recovery provisions afforded by the Act to *Scirpus ancistrochaetus*. Critical habitat has not been determined.

EFFECTIVE DATE: June 6, 1991.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the New England Field Office, U.S. Fish and Wildlife Service, 22 Bridge St., Concord, New Hampshire 03301.

FOR FURTHER INFORMATION CONTACT: Susanna L. von Oettingen at the above address (telephone: 603/225–1411 or FTS 834–4411).

SUPPLEMENTARY INFORMATION:

Background

Scirpus ancistrochaetus (Northeastern bulrush), a perennial member of the sedge family (Cyperaceae), was described as a new species by A.E. Schuyler in 1962. Though *Scirpus ancistrochaetus* is closely related to *Scirpus antrovirens* Willd. and *Scirpus hattorianus* Mak., Kartesz and Kartesz (1980) also acknowledged *S. ancistrochaetus* as a distinct species. The Northeastern bulrush is a tall, leafy plant, generally 80 to 120 cm (30 to 47 inches) in height. Flowering culms (stems) are produced from short, woody, underground rhizomes. The lower leaves are 40 to 60 times as long as wide; the uppermost leaves are 30 to 50 times as long as wide (Schuyler 1962). A distinctive field characteristics that aids in separating this species from other bulrushes is the arching rays of the inflorescence. The flowers have six, small, rigid perianth bristles each covered to the base with thick-walled, sharply pointed barbs projecting downward. The yellow-brown achenes (fruits) are mostly ovate, and thickened and tough at the top. *S. ancistrochaetus* flowers from mid-June to July, and sets fruit between July and September (Crow 1982).

The reproductive mechanism of *S. ancistrochaetus* is not clearly understood. It appears to most often reproduce vegetatively, with new plants developing from the nodes and culms of recumbent stems. The absence of isolated individuals suggests that sexual recruitment may not be occurring (Bartgis, Maryland Natural Heritage Program, pers. comm., 1990). Seeds of S. ancistrochaetus can be easily germinated *in vitro*, an experimental evidence indicates that seeds will remain viable for many years (W. Brumback, New England Wildflower Society, Inc., *in litt.*, 1991; A Schuyler, Academy of Natural Sciences of Philadelphia, *in litt.*, 1991).

Schuyler (1963, 1967) investigated the relationship between *Scirpus ancistrochaetus* and two closely related species, *S. atrovirens* and *S. hattorianus* and observed that *S. ancistrochaetus* will hybridize with both species, generally producing a sterile hybrid. When in its vegetative form, *S. atrovirens* is very similar in appearance to *S. ancistrochaetus*, while hybrids between these two species are morphologically intermediate, both in vegetative and reproductive forms. The ancestral relationship of *Scirpus ancistrochaetus* to *S. atrovirens*, as well as its scarcity and scattered occurrence in isolated wetlands in areas where the flora has been well researched, suggests that *S. ancistrochaetus* is a relict species (Schuyler, pers. comm., 1990).

The Northeastern bulrush is found at the unshaded water's edge of acidic to circumneutral natural ponds, wet depressions or shallow sinkholes. The ponds are often clustered and separated by a few hundred feet or yards. *S. ancistrochaetus* may be found in one or more ponds within a wetland complex, though rarely, if ever, occurring in all of the ponds. These wetlands, generally less than one acre in size, appear to occur primarily in low-lying areas in hilly country (Schuyler 1962) and have seasonally variable water levels, ranging from inundation to desiccation (Rawinski 1990). The ponds and depressions where *S. ancis'rochaetus* may be found are considered unusual habitats, especially in the southern

portion of its range. Though the habitat does not appear to have distinctive characteristics, many statewide rare plants such as *Potamageton pulcher* Tuckerm., *Scirpus torreyi* Olney, and *Glyceria acutiflora* Torr. are often found in association with *S. ancistrochaetus*, indicating that there may be subtle, and as yet unknown properties of the habitat (T. Rawinski, The Nature Conservancy, pers. comm., 1990). Schuyler (*in litt.*, 1991) states that *Scirpus ancistrochaetus* is rarely found in human-disturbed habitats and it may be adapted to naturally fluctuating water regimes and subject to elimination and replacement by competing species if the habitat becomes consistently drier or wetter. Other members of the genus *Scirpus* found with *S. ancistrochaetus* are *S. atrovirens*, *S. cyperinus* (L.) Kunth, *S. pedicellatus* Fern., *S. hattorianus* and *S. atrocinctus* Fern.

Schuyler (1962) first discovered *S. ancistrochaetus* in Rockingham, Windham County, Vermont, which is considered the type locality. Emergence of the plant at a location may be unpredictable from year to year. Nonetheless, historical records of leafy *Scirpus* species are useful in indicating whether *S. ancistrochaetus* is more common than believed. In Schuyler's (1963, 1967) extensive review of *Scirpus* herbaria specimens, few misidentified *S. ancistrochaetus* were documented and only five historical localities were identified. In 1986 and 1989 the Fish and Wildlife Service (Service) contracted with The Nature Conservancy's Eastern Regional Office to conduct status surveys for *Scirpus ancistrochaetus* (Rawinski 1986, 1990). All extant and historic sites, and a majority of the sites identified as potential habitat were surveyed in Virginia, West Virginia, Maryland, Pennsylvania, New York, Massachusetts, and Vermont. At present, there are 13 extant populations and nine historical localities. Four of the historical populations were confirmed to have been destroyed or have failed.

Approximately half of the suitable habitat in Virginia has been surveyed; of the twenty-one ponds identified as potential habitat and surveyed for *S. ancistrochaetus* in 1989, only one was found to be a new occurrence. There are now four extant populations known in Rockingham, Bath, Alleghany and Augusta Counties. One of the sites has fewer than 25 plants. The plants are found in shallow, oligotrophic sinkholes overlying sandstone in the Blue Ridge Mountains. A number of rare and unusual species occur in association with *S. ancistrochaetus* on the Virginia sites, including *Helenium virginicum* Blake, a Category 1 Federal candidate species (a candidate for which the Service has sufficient information to support a proposal to list), and *Glyceria acutiflora* and *G. septentrionalis* Hitchc., two species diagnostic of this habitat type (Rawinski 1990). Three of the occurrences are on privately owned land, the fourth is located in the George Washington National Forest.

Prior to 1988, *Scirpus ancistrochaetus* had not been found in Maryland or West Virginia. Using aerial photographs to identify potentially suitable habitat, all potential habitat in Maryland and approximately ninety percent of the potential habitat in West Virginia was surveyed. Three populations were discovered, two in West Virginia and one in Maryland. These populations are found relatively close together in the Appalachian Mountains. West Virginia's two extant populations are located in Berkeley County, both on privately owned land. They are found in shallow, centripetally-drained sinkholes perched atop flat ridges and are part of wetland complexes containing three or more ponds. One site consists of two ponds in a cluster of seven, with stands totaling over 1400 stems. The second site has over 400 stems in three discrete patches within one pond (Bartgis 1989). Maryland's occurrence, in Washington County, consists of a very small stand of approximately 100 stems. The small, shallow, successional pond is located on private property lying within the acquisition boundary of a State Wildlife Management Area (Bartgis 1989).

All but one of the historical *S. ancistrochaetus* sites and much of the potential habitat in Pennsylvania have been surveyed for *S. ancistrochaetus*. The two occurrences in Lackawanna and Clinton Counties are still recorded as "extant", although three years of surveys have been unable to reconfirm the plants' presence. The Lackawanna County site, a bog lying between sandstone ridges on private land, had one plant in 1985 and was severely burned in 1988. The Clinton County site, lying within the Bald Eagle State Forest, was reported to have had two plants in 1985. A newly discovered third population is located in a privately owned, shallow, kettle lake in the Ridge and Valley province in Monroe County. The Monroe County site has between 25 and 50 clumps of *S. ancistrochaetus* growing at the edge of the lake.

Most of the potential habitat for *Scirpus ancistrochaetus* has been surveyed in Massachusetts; no new sites have been discovered, though one historical population was confirmed extant in 1989. The extant population of four plants in Franklin County, Massachusetts is found in a shallow, bowl-shaped depression, which is part of a privately owned wetland complex. The depression is inundated with water during periods of ample rainfall and dries out during droughts (Rawinski 1990).

The two Vermont occurrences are both in Windham County. One is an emergent marsh in an alluvial meadow of the Connecticut River. Sixty-nine plants were observed in 1985; 10 plants were observed in 1989. Currently, The Nature Conservancy holds a management agreement with the landowner. The second site, also located on privately owned land, is part of a wetland complex consisting of natural depressions and abandoned beaver ponds. In 1985, 12 plants were observed, while no plants were observed in 1989 (Thompson 1990). All suitable habitat within the Connecticut River drainage in Vermont was surveyed; no new occurrences of *Scirpus ancistrochaetus* were found.

Five historical collections of *Scirpus ancistrochaetus* are known from New York (Washington County) and Pennsylvania (Blair, Lehigh, Monroe and Northampton Counties). The Nature Conservancy and Natural Heritage Program botanists undertook extensive surveys of these states in 1989, including all historical sites and a significant portion of the suitable habitat. Surveys have not relocated *S. ancistrochaetus* at any of the historical localities in New York and Pennsylvania.

Scirpus ancistrochaetus and its habitat are highly vulnerable to destruction and disturbance. The majority of the occurrences are in wetlands that currently have little State or Federal protection. Of the 13 existing populations, two are located on Federal lands and one population is located on State land. The remaining populations situated on private lands are subject to obliteration or degradation through filling and dredging activities for development, agriculture and recreation purposes. Other adverse impacts to the species can occur through direct physical damage to the plants by recreational vehicles or through water quality degradation from non-point source pollution.

There is little available information on the life history of this species. It is not known how the water regime affects *Scirpus ancistrochaetus* and what specific ecological factors are required for the establishment of new populations. Extremely high water levels may be responsible for the lack of reproduction in a given year, while drier

conditions may be conducive to good reproductive output (Rawinski, pers. comm., 1990). There is no data on the impact of fire on *Scirpus ancistrochaetus*. The site of one extant population was completely burned in 1988 and plants have not been observed subsequently.

Federal consideration of this plant for listing began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on the plants considered to be endangered, threatened or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975 and subsequently published (Ayensu and DeFilipps 1978). It recommended *Scirpus ancistrochaetus* for "endangered" status. Service acceptance of the Smithsonian report as a petition within the context of section 4 of the Act and its intention to review the status of plant taxa named within was published July 1, 1975 (40 FR 27823). The Service's subsequent actions in relation to the Smithsonian petition are explained in detail in the "Relationship to Petition Requirements" section of the February 21, 1990 (55 FR 6184) comprehensive plant notice of review.

On April 7, 1988, the Service received a second petition, submitted by The Vermont Natural Heritage Program, requesting that *Scirpus ancistrochaetus* be federally listed. In accordance with its established policy, the Service treated this second petition as a public comment to be considered in evaluating the original listing petition. The additional information about the status and threats to *S. ancistrochaetus* provided by this petition increased the species' priority for listing.

Additional petition findings involving *Scirpus ancistrochaetus* were published on January 20, 1984 (49 FR 2485), May 10, 1985 (50 FR 19761), January 9, 1986 (51 FR 996), June 30, 1987 (52 FR 24312), July 7, 1988 (53 FR 25511), December 29, 1988 (53 FR 52746), and April 25, 1990 (55 FR 17475). The November 8, 1990, (55 FR 46963) proposal to classify *Scirpus ancistrochaetus* as endangered constituted the final required petition finding for this species.

Summary of Comments and Recommendations

In the November 8, 1990 proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. During the period from November 19 through November 26, 1990, newspaper notices inviting general public comment were published in the Staunton, Virginia, Daily News Leader; the Waynesboro, Virginia, Waynesboro New-Virginian; the Martinsburg, West Virginia, Martinsburg Journal; the Frederick, Maryland, The News-Post; the Lock Haven, Pennsylvania, Lock Haven Express; the Scranton, Pennsylvania, Scranton Times; the Northampton, Massachusetts, Daily Hampshire Gazette; the Brattleboro, Vermont, Brattleboro Reformer; and the Springfield, Vermont, Springfield Reporter.

Sixteen written comments were received, including letters from five Federal agencies, six State agencies, three private organizations and two individuals. Twelve letters supported the proposal; the remaining four letters were from the U.S. Army Corps of Engineers acknowledging receipt of the proposal and the need to coordinate section 7 consultations on activities under Nationwide Permit 26. Minor comments regarding new species status information, life history observations and additional State protection were included in four letters. All additional data have been incorporated into the final rule as deemed appropriate.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Scirpus ancistrochaetus* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531–1544) and regulations promulgated to implement the listing provisions of the Act (50 CFR part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Scirpus ancistrochaetus* Schuyler (Northeastern bulrush) are as follows:

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

Ten of the thirteen extant populations occur in private lands. Residential development activities, particularly at the southern portion of its range, are responsible for extensive destruction and modification of *Scirpus ancistrochaetus* habitat. During the 1989 status survey in Virginia, nine of twenty-one ponds believed to be suitable habitat for *S. ancistrochaetus* were found to be degraded from fill. partial excavation, and eutrophication due to non-point source discharges, or were destroyed by total excavation and diking activities (Rawinski 1990). The two extant populations in West Virginia are also located in areas of increasing residential development and may suffer degradation or destruction if not protected. Both occurrences are surrounded by subdivided lands currently being marketed for housing developments.

Construction or agricultural activities occurring near populations may indirectly impact the habitat unless specific measures to prevent or minimize siltation or contamination are implemented. Four of eight historical sites in eastern Pennsylvania have been destroyed or degraded, primarily by agricultural activities. Sedimentation of the wetlands, discharges of herbicides or fertilizers, and alteration of the hydrological regime of *Scirpus* wetlands are actions which can alter the physical and biological makeup of the habitat, creating an unsuitable environment for the continued existence of the species.

During droughts, the wetlands in which the populations are found dry out, allowing vehicular access to the habitat. Use of off-road and all-terrain vehicles may result in the degradation of the habitat through soil compaction, destruction of vegetation, and the direct loss of plants. Heavy off-road vehicle use was observed at one *Scirpus ancistrochaetus* site in West Virginia during a dry period in 1989, but actual destruction of this species was not observed.

B. Overutilization for Commercial, Recreational, Scientific or Educational Purposes

Taking of the species for these purposes has not been documented as being a factor in its decline. In the past, scientific collections have been inadvertent. Relatively few specimens have been collected in recent years. However, future collections could seriously threaten populations, especially at those sites consisting of only a few plants or occupying a very small area.

C. Disease or Predation

Disease and predation have not been documented as factors in the decline of this species.

D. The Inadequacy of Existing Regulatory Mechanisms

In Virginia, *Scirpus ancistrochaetus* is listed as endangered and is protected under the Endangered Plant and Insect

Species Act of Virginia (1979, c. 372). This law prohibits taking without permits, except by private landowners. Virginia law also gives the Department of Agriculture and Consumer Services the authority to regulate the sale an movement of listed plants and to establish programs for the management of listed plants.

Scirpus ancistrochaetus receives protection in Pennsylvania as an endangered species under the regulations of the Wild Resources Conservation Act (25 Pa. Code, chapter 82). Permits are required to collect, remove, or transplant wild plants classified as threatened or endangered, though landowners are exempt from these requirements. Pennsylvania regulations also provide for the establishment of native wild plant sanctuaries on private lands where there is a management agreement between the landowner and the State Department of Environmental Resources.

Under the Vermont Endangered Species Law (10 V.S.A. chapter 123), *Scirpus ancistrochaetus* is listed as threatened and is afforded protection from taking, possession or transport by any person, unless exempted, or authorized by certificate or permit. Permits may be granted for scientific purposes, enhancement of survival of the species, economic hardship, educational purposes or special purposes consistent with the purposes of the Federal Endangered Species Act. Vermont is currently proposing to list *S. ancistrochaetus* as endangered; this change will provide a higher degree of protection.

Maryland is in the process of designating *Scirpus ancistrochaetus* as endangered. The endangered species designation of *S. ancistrochaetus* in Maryland will provide additional protection at the State level. Upon final listing the State will be able to regulate activities involving State funding and permitting, will regulate trade and commerce of the species and will prohibit taking without the written permission of the landowner.

Recently, the State of Massachusetts passed an Endangered Species Act (chapter 131A), though regulations have not been promulgated at this time. Under the Massachusetts Endangered Species Act, *Scirpus ancistrochaetus* is listed as endangered and will be protected from take, unless a permit has been issued by the Director of the Division of Fisheries and Wildlife. Additional protection may be afforded *S. ancistrochaetus* if the State designates significant habitat for this species. Under the new State law, there may be no alteration of significant habitat.

There is no State endangered species legislation in West Virginia. New York has a law protecting State listed plants, but has not listed *Scirpus ancistrochaetus* since there are no extant populations. Upon the Federal listing of *S. ancistrochaetus*, the species will be automatically listed as a Protected Native Plant under State regulation and will be protected from take or destruction without the permission of the landowner.

Though the majority of the states with extant *Scirpus ancistrochaetus* populations have legislation protecting endangered plants from taking or transport, no protection is afforded the habitat. The primary threat to *S. ancistrochaetus* is from habitat degradation.

Under current Federal regulations, a Department of the Army permit is required for the discharge of dredged or fill material into waters of the United States including adjacent and isolated wetlands where the majority of *S. ancistrochaetus* populations occur. However, Nationwide Permit 26 exempts wetland fills smaller than 10 acres from the individual permit process provided they are (a) located above headwaters (5 cfs or less) and (b) not part of a surface tributary system to interstate waters or navigable waters. Deposit of up to one acre of dredge or fill material in such wetlands does not require the prior notification of the Army Corps of Engineers. Without Federal listing of the species, the 404 regulatory process provides very limited protection for the habitat of *S. ancistrochaetus*.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Six of the 13 known occurrences of *S. ancistrochaetus* consist of fewer than 25 plants. These isolated and critically small populations are highly vulnerable to extinction. Extreme isolation, whether by geographic distance, ecological factors or reproductive strategy, prevents the influx of new genetic material and can result in a highly inbred population with low viability and/or fecundity (Chesser 1983). In addition, current knowledge of the species biology and population dynamics is insufficient to assess whether *S. ancistrochaetus* is likely to persist following natural events such as drought, flooding and fire.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Scirpus ancistrochaetus* as an endangered species. Only thirteen occurrences are known, and plants were not found at three of these sites during the most recent status survey (Rawinski 1990). Due to the small number of populations and the continuing threats to its habitat, the plant is in need of protection if it is to survive. These factors support listing as an endangered species. Critical habitat is not being designated for reasons discussed in the following section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Scirpus ancistrochaetus* at this time. Most populations of this species are small to moderate in size, are widely scattered throughout its range and are located on private property, for which there is no regulation to prevent taking by the landowner or others. while collecting for scientific and educational purposes has not contributed to the decline of the species, taking due to vandalism or private collections could eliminate some populations if their locations are publicized. Publication of critical habitat descriptions and maps in the **Federal Register** could increase these threats to the survival of the species, overriding any protection that such designation might provide.

Designation of critical habitat primarily affects Federal agencies. Since the majority of the occurrences are on privately owned land, critical habitat designation would have little impact on the management or protection of this species. The designation of critical habitat would not provide additional benefits to populations that do not already accrue from listing through section 7 consultation and the recovery process. The Service will coordinate with the U.S. Army Corps of Engineers by providing locational information on *S. ancistrochaetus* in an effort to prevent destruction of existing sites under Nationwide Permit 26 activities. The U.S. Forest Service has been notified of the presence of *Scirpus ancistrochaetus* on its properties and of the section 7 requirements. The population located on State property is managed and protected by the State landowning agency.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. Through *Scirpus ancistrochaetus* is not currently listed as endangered in New York State, Federal listing will result in the species being listed as a Protected Native Plant in New York. Listing will provide additional protection from collection or destruction throughout its range. The Nature Conservancy is currently working to protect all known populations and listing will enhance these efforts. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Scirpus ancistrochaetus is a wetland plant, therefore, activities which involve filling of these wetlands (including filling authorized under Nationwide 26) would be regulated by the U.S. Army Corps of Engineers and would require section 7 consultation. The Service is not presently aware of any specific proposed projects that might affect known populations of *Scirpus ancistrochaetus*.

Listing *Scirpus ancistrochaetus* will encourage research on critical aspects of its life history, ecology and population biology. Information is needed regarding the relationship of fertile culm production to the hydrologic regime of its habitat, reproduction strategies and population recruitment. These factors will be important for the development of recovery strategies and long-term management considerations for individual populations.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62 and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for listed plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of listed plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and state conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits will ever be sought or issued because the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquires regarding them may be addressed to the office of Management Authority, U.S. Fish and Wildlife Service, room 432, 4401 N Fairfax Dr., Arlington, VA 22203–3507 (703/358–2104).

National Environmental Policy Act

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

References Cited

Ayensu, R.E., and R.A. DeFilipps. 1978. Endangered and threatened plants of the United States. Smithsonian Institution and World Wildlife Fund. 403 pp.

Bartgis, R. 1989. Status survey summary: *Scirpus ancistrochaetus* in Maryland and West Virginia. Unpub. rept. Maryland Natural Heritage Program, Maryland Department of Natural Resources. 8 pp.

Chesser, R.K. 1983. Isolation by distance: relationship to the management of genetic resources. pp. 66–77 *in* C. Schonewald-Cox, S.M. Chambers, B. MacBryde and L. Thomas (eds), Genetics and Conservation: A Reference for Managing Wild Animal and Plant Populations. The Benjamin/Cummings Pub. Co., Inc.

Crow, G.E. 1982. New England's Rare and Endangered Vascular Plants. U.S. Dept. of the Interior. Fish and Wildlife Service, Northeast Region. Washington, DC 130 pp.

Kartesz, J.T., and R. Kartesz. 1980. A synonymized checklist of the vascular flora of the United States, Canada and Greenland. Volume II. The Biota of North America. University of North Carolina Press, Chapel Hill. 498 pp.

Rawinski, T. 1986. Range-wide status summary: *Scirpus ancistrochaetus*. Unpub. rept. Eastern Heritage Task Force, The Nature Conservancy. 5 pp.

Rawinski, T. 1990. Final status survey report: distribution and abundance of Northeastern bulrush (*Scirpus ancistrochaetus*). Unpub. rept. Eastern Heritage Task Force, The Nature Conservancy. 5 pp.

Schuyler, A.E. 1962. A new species of *Scirpus* in the northeastern United States. Rhodora 64: 43–49.

Schuyler, A.E. 1963. Notes on five species of *Scirpus* in the eastern North America. Bartonia No. 33: 1–6.

Schuyler, A.E. 1967. A taxonomic revision of North American leafy species of *Scirpus*. Proc. of the Acad. of Nat. Sci. of Phil. Vol. 119: 295–323.

Thompson, L. 1990. Vermont status report: *Scirpus ancistrochaetus*. Unpub. rept. 14 pp.

Author

The primary author of this final rule is Susanna L. von Oettingen (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Exports, Imports, Reporting and record keeping requirements, and Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal

Regulations, is amended as set forth below:

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under the family Cyperaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Cyperaceae—Sedge family:						
*	*	*	*	*	*	
Scirpus ancistrochaetus	Northeastern bulrush (=Barbed bristle bulrush).	U.S.A. (VA, MD, WV, PA, NY, MA, VT).	E	425	NA	NA
*	*	*	*	*	*	

Dated: April 10, 1991.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 91–10741 Filed 5–6–91; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 901231–1099]

Taking and Importing of Marine Mammals

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

ACTION: Notice of embargo and revocation of findings.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, (Assistant Administrator) announces that on March 26, 1991, the United States District Court for the Northern District of California ordered a prohibition on the importation of all yellowfin tuna and yellowfin tuna products harvested with purse seines in the eastern tropical Pacific Ocean (ETP) by any foreign nation whose vessels intentionally set purse seine nets on marine mammals, and the revocation of any certification for any foreign nation currently importing commercial yellowfin tuna or yellowfin tuna products harvested with purse seines in the ETP. Such certifications are therefore revoked and an embargo on such products has been implemented and will remain in effect unless and until the Secretary of Commerce (Secretary) makes a positive finding based upon documentary evidence provided by the government of the exporting nation that the average rate of the incidential taking by vessels of such foreign nation is no more than 1.25 times that of U.S. vessels during the same period, or until the Secretary makes a positive finding that the government of the exporting nation has taken sufficient steps to prohibit the fishing vessels of such country from intentionally setting purse seine nets on marine mammals in the course of harvesting yellowfin tuna in the ETP.

DATES: This importation prohibition became effective on April 3, 1991, when it was directed by the U.S. customs service. The revocation of findings is effective as of the date of publication.

FOR FURTHER INFORMATION CONTACT: E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, CA 90731, Phone: (213) 514–6196.

SUPPLEMENTARY INFORMATION: On March 26, 1991, the District Court for the Northern District of California ordered an embargo of yellowfin tuna and yellowfin tuna products harvested with purse seines in the ETP. The embargo is to remain in effect unless and until the Secretary makes an affirmative finding based upon documentary evidence provided by the government of the exporting nation that the average rate of the incidential taking by vessels of such foreign nation is no more than 1.25 times that of U.S. vessels during the same period, or until the Secretary makes a positive finding that the government of the exporting nation has taken sufficient steps to prohibit the fishing vessels of such country from intentionally setting purse seine nets on marine mammals in the course of harvesting yellowfin tuna in the ETP.

The countries of Panama, Ecuador, Mexico, Vanuatu, and Venezuela harvest, or in the recent past have harvested, yellowfin tuna in the ETP by means of purse seines, and export yellowfin tuna or yellowfin tuna products to the United States. On November 15, 1990, and on March 15, 1991, the Secretary made affirmative findings for Panama and Ecuador, respectively. The Secretary found that these countries have taken sufficient steps to prohibit their respective fishing vessels from intentionally setting purse seine nets on marine mammals in the course of harvesting yellowfin tuna in the ETP. At the time of the order the Court recognized that the Secretary made an affirmative finding on November 15, 1990, that Panama had taken sufficient steps to prohibit Panamanian fishing vessels from intentionally setting purse seine nets on marine mammals in the course of harvesting yellowfin tuna in the ETP. Therefore, Panama was not included in the Court's embargo order.

On March 15, 1991 (56 FR 12367), the Secretary announced that Ecuador submitted documentation that it is in compliance with the yellowfin tuna importation regulations for nations that have acted to ban purse seine sets on marine mammals in the ETP. Therefore, the Secretary has determined that yellowfin tuna and yellowfin tuna products from Ecuador are not embargoed pursuant to the court order of March 26, 1991.

The Assistant Administrator announces, therefore, that the comparability findings for Mexico, Venezuela, and Vanuatu, which were extended on December 27, 1990 (55 FR 53160) (effective on December 20, 1990), to May 31, 1991, are hereby revoked. As a result of the court order the interim fnal rule of December 27, 1990, has been invalidated, and the importation of yellowfin tuna and yellowfina tuna products harvested by purse seine in the eastern tropical Pacific Ocean is prohibited from any foreign nation, unless and until the Secretary makes a positive finding that the incidental taking of marine mammals by vessels of such foreign nation is no more than 1.25 times that of the United States vessels during the same period, or that the

government of the exporting nation has taken sufficient steps to prohibit the fishing vessels of such country from intentionally setting purse seine nets on marine mammals in the course of harvesting yellowfin tuna in the ETP. The court order of March 26, 1991, necessitates amendment of NMFS regulations published on December 27, 1990, amending the schedule for completing findings affecting the importation of yellowfin tuna into the United States. The Assistant Administrator will shortly issue new regulations to conform to the order.

Dated: May 1, 1991.

Samuel W. McKeen,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 91-10808 Filed 5-6-91; 8:45 am]

BILLING CODE 3510-22-M

---

50 CFR Part 380

[Docket Number 910378-1078]

Antarctic Marine Living Resources Convention Act of 1984

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

ACTION: Final rule.

SUMMARY: The Secretary of Commerce (Secretary) amends the regulations governing the harvesting and reporting of Antarctic finfish catches and reserves a section in the regulations for the protection of land-based ecosystem monitoring sites. The regulations implement conservation and management measures promulgated by the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR or Commission) and accepted in whole by the Government of the United States to regulate catches in Convention for the Conservation of Antarctic Marine Living Resources (Convention) statistical reporting subareas (subareas) 48.1, 48.2, 48.3 and 58.4. These measures restrict the use of gear, restrict the directed taking any bycatch of certain species of fish, prohibit the taking of other species, require real-time and other reporting of the harvest of certain species and establish a prodecure for according protection to CCAMLR Esosystem Monitoring Program (CEMP) sites.

EFFECTIVE DATE: May 7, 1991.

ADDRESSES: A copy of the framework environmental assessment may be obtained from the Assistant Administrator for Fisheries, NOAA, National Marine Fisheries Service 1335 East-West Highway, Silver Spring, MD 20910.

Comments regarding burden estimates or collection of information aspects of this rule should be sent to Robin Tuttle, National Marine Fisheries Service , 1335 East-West Highway, Room 7256, Silver Spring, MD 20910, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Paperwork Reduction Act Project 0648-0194.

FOR FURTHER INFORMATION CONTACT: Robin Tuttle (NMFS International Organizations and Agreements Division), 301-427-2282.

SUPPLEMENTARY INFORMATION:

Background

At its annual meeting in Hobart, Tasmania, in 1986, CCAMLR, of which the United States is a member, adopted a conservation measure requiring the Commission at subsequent meetings to adopt limitations on catch, or equivalent measures, binding for species upon which fisheries are permitted in Convention subarea 48.3 (South Georgia), depicted at Figure 1 of 50 CFR part 380. The system for imposing these limitations and measures is described at 50 CFR 380.26.

The resolution and measures concerning the 1990/91 fishing season adopted by CCAMLR at its annual meeting in 1990 are based upon the advise of its Scientific Committee and take into account research conducted by Commission members and the report and recommendations of the Scientific Committee's Working Groups of Fish Stock Assessment and CEMP. The resolution and measures were announced and public comments invited (until January 16, 1991) by **Federal Register** notice on December 17, 1990 (55 FR 51783). No comments were received.

(1) Marine Debris Information Brochure and Placard

The Commission in 1986 at its Fifth Meeting agreed to the texts of an information brochure advising fishermen, researchers and others working in the Convention Area of the sources, fates and effects of potentially hazardous marine debris and of a placard that could be displayed in appropriate places aboard ships operating in the Convention Area, describing "do's and don'ts" with respect to handling, storing and discarding refuse. Members have been urged by the Commissin to distribute the brochure widely among their nationals working in Antarctica and to ensure that all vessel operators were provided with the placard. Distribution of the placard among crew members and display of the placard aboard vessels under U.S. jurisdiction operating within the Convention Area are thus required by these regulations.

(ii) Subarea 48.3

The Commission took most of its actions with respect to subarea 48.3.

For the 1990/91 fishing season, the total catch of *Champsocephalus gunnari* (mackerel icefish) in subarea 48.3 has been limited by the Commission to an amount not to exceed 26,000 metric tons, an increase of 18,000 metric tons over the total allowable catch for the 1989/90 fishing season. The use of bottom trawls in the directed fishery for *C. gunnari* is prohibited in subarea 48.3. Directed fishing on *C. gunnari* in subarea 48.3 is prohibited between April 1 and November 4, 1991.

Directed fishing on *Notothenia rossii* (marbled rockcod), *Nothothenia gibberifrons* (humped rockcod), *Chaenocephalus aceratus* (blackfin icefish), *Pseudochaenichthys georgianus* (South Georgia icefish), *Notothenia squamifrons* (grey rockcod) and *Patagonotothen brevicauda guntheri* (Patagonian rockcod) is prohibited at any time in subarea 48.3 during the 1990/91 season.

The total catch of *Dissostichus eleginoides* (Patagonian toothfish) in subarea 48.3 caught in the 1990/91 season is limited to 2,500 metric tons. The seasons for this species is the period from November 2, 1990 through November 1, 1991.

The bycatch of *N. gibberifrons* in subarea 48.3 is limited to an amount not to exceed 500 metric tons and the bycatch of any of the species of *N. rossii, N. squamifrons, C. aceratus* and *P. georgianus* in subarea 48.3 is limited to an amount not to exceed 300 metric tons.

The fishery in subarea 48.3 will be closed if the limit on any of the bycatch species is reached or if the total catch of *C. gunnari* reaches 26,000 metric tons, whichever comes first. If the fishery is closed before the end of the fishing season, NMFS will notify the designated representative of the holder of a permit to fish in subarea 48.3 of the date of closure of the fishery.

If, in the course of the directed fishery for *C. gunnari*, the bycatch of any one haul of any of the named bycatch species exceeds 5 percent, the fishing vessel is required to move to another fishing ground within the subarea.

The reporting system for all catch and effort in subarea 48.3 adopted by the Commission for the 1989/90 fishing season is extended, with changes to the species to which it applies, to the 1990/

91 season. This is an every-6-day reporting requirement. It applies to catch and effort on *C. gunnari*, *N. gibberifrons*, *N. rossii*, *N. squamifrons*, *C. aceratus*, *P. georgianus*, and *D. eleginoides*. It does not apply to the catches of *N. squamifrons* taken in subarea 58.4.

Section 380.26 of the regulations describes the process by which the Commission will specify and the Executive Secretary of CCAMLR and NMFS will give effect to limitations on catch or equivalent measures for species on which fisheries are permitted around South Georgia. It was prospective in nature and is no longer necessary. The measures which the Commission has adopted using this procedure are described in sections of the regulations on catch restrictions, closures and gear restrictions. Thus, existing § 320.26 is removed from the regulations.

(iii) Subareas 48.1 and 48.2

The Commission prohibited the taking of all species of finfish, other than for scientific research purposes, in subareas 48.1 and 48.2 in the 1990/91 season.

(iv) Subarea 58.4

The Commission limited the total catch of *N. squamifrons* in statistical division 58.4.4 not to exceed 305 metric tons on the Lena Bank and not to exceed 267 metric tons on the Ob Bank.

(v) Protection of CEMP Sites

The Commission adopted detailed procedures for the proposal, registration and management of land-based CEMP sites. The registration and resulting management plans are designed to protect these sites from certain forms of human interference. Once approved, plans will be reviewed every 5 years to determine whether they require revision and whether continued protection is necessary. A section is reserved in 50 CFR part 380 for identifying protected CEMP sites and the activities prohibited within them by CCAMLR-approved management plans.The section will also establish a system for issuing permits authorizing U.S. nationals to carry out activities consistent with provisions of the management plans and ensuring compliance with the plans.

(vi) Driftnet Fishing

The Commission adopted a resolution noting Contracting Party agreement not to expand large-scale pelagic driftnet fishing into the Convention Area. Because Public Law 101–627, the "Fishery Conservation Amendments of 1990," effective November 28, 1990, prohibits large-scale driftnet fishing by fishing vessels of the United States in fisheries subject to U.S. jurisdiction, regulations prohibiting their use in the Convention Area are not included in these regulations.

Classification

The Secretary has determined that this rule is necessary to implement the Antarctic Marine Living Resources Convention Act of 1984 (the Act) and to give effect to the conservation and management measures adopted by CCAMLR and agreed to by the United States.

The Assistant Administrator for Fisheries, NOAA, (Assistant Administrator) prepared a framework environmental assessment (EA) for the Act in 1987. NMFS reviewed this rule and determined that the actions it requires were generally summarized in the framework EA and are thus excluded from further National Environmental Policy Act analysis.

This action is exempt from Executive Order 12291 and section 553 of the Administrative Procedure Act because it involves a foreign affairs function of the United States.

Because notice and comment rulemaking is not required for this rule, the Regulatory Flexibility Act does not apply; therefore, a regulatory flexibility analysis has not been prepared. At present, except for research purposes, there is only one U.S. vessel subject to the jurisdiction of the United States harvesting Antarctic marine living resources within the area to which these regulations apply. The one commercial vessel holding a harvesting permit will be engaged in a 30-day catch-and-release exploratory crab fishery. The only other Antarctic marine living resources affected are scientific specimens taken under National Science Foundation permits and by the U.S. Antarctic Marine Living Resources directed research program.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act. The collection of information has been approved by the Office of Management and Budget under OMB Control Number 0648–0194, which expires September 30, 1991.

The annual reporting burden for this collection of information is estimated to average one-half hour per harvester, 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 Robin Tuttle, National Marine Fisheries Service, and to the Office of Information and Regulatory Affairs (see **ADDRESSES**).

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

This rule does not directly affect the coastal zone of any state with an approved coastal zone management program.

List of Subjects in 50 CFR Part 380

Antarctic, Fish and wildlife, Reporting and recordkeeping requirements.

Dated: May 1, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 380 is amended as follows:

PART 380—ANTARCTIC MARINE LIVING RESOURCES CONVENTION ACT OF 1984

1. The authority citation for part 380 continues to read as follows:

Authority: 16 U.S.C. 2431 *et seq.*

2. Section 380.9 is amended by adding new paragraph (c) to read as follows:

§ 380.9 Gear disposal.

* * * * *

(c) The operator of a harvesting vessel must provide a copy of the CCAMLR information brochure "Marine Debris—A Potential Threat to Antarctic Marine Mammals" to each member of the crew of the harvesting vessel and must display copies of the CCAMLR placard "Avoidance of Incidental Mortality of Antarctic Marine Mammals" in the wheelhouse and crew quarters of the harvesting vessels. Copies of the brochure and placard will be provided to each holder of a harvesting permit by NMFS when issuing the permit.

3. In § 380.22, paragraph (a) is revised to read as follows:

§ 380.22 Mesh size.

(a) The use of pelagic and bottom trawls having the mesh size in any part of a trawl less than indicated is prohibited for any directed fishing for the following Antarctic finfishes:

(1) *Notothenia rossii* and *Dissostichus eleginoides*–120 mm;

(2) *Champsocephalus gunnari* –90 mm; and

(3) *Notothenia gibberifrons*, *Notothenia kempi* and *Notothenia squamifrons*–80 mm.

* * * * *

4. Section 380.23 is revised to read as follows:

§ 380.23 Catch restrictions.

(a) The following catch restrictions apply to subarea 48.3 during the 1990/91 fishing season:

(1) The total catch of *C. gunnari* in subarea 48.3 for the 1990/91 season shall not exceed 26,000 metric tons (see Figure 1).

(2) The total catch of *D. eleginoides* in subarea 48.3 for the 1990/91 season shall not exceed 2,500 metric tons. For purposes of this fishery the 1990/91 fishing season is defined as the period from November 2, 1990 through November 1, 1991.

(3) Directed fishing for *N. rossii, N. gibberifrons, C. aceratus, P. georgianus, N. squamifrons* and *P. b. guntheri* is prohibited in subarea 48.3 during the 1990/91 fishing season.

(4) The bycatch of *N. gibberifrons* in subarea 48.3 shall not exceed 500 metric tons during the 1990/91 fishing season.

(5) The bycatch in subarea 48.3 of any of the following species: *N. rossii, N. squamifrons, C. aceratus* and *P. georgianus* shall not exceed 300 metric tons during the 1990/91 fishing season.

(6) If, in the course of the directed fishery for *C. gunnari,* the bycatch of any one haul of any of the species *N. gibberifrons, N. rossii, N. squamifrons, C. aceratus* or *P. georgianus* exceeds 5 percent, the fishing vessel must move to another fishing ground within the subarea.

(7) The bycatch limit of *P. b. guntheri* in subarea 48.3 during the 1990/91 fishing season is 1 percent of all Antarctic finfishes onboard a vessel in the subarea.

(b) The taking of finfish, other than for scientific research purposes, in subareas 48.1 and 48.2 is prohibited during the 1990/91 season.

(c) The following catch restrictions apply to subarea 58.4 during the 1990/91 fishing season:

(1) The total catch of *N. squamifrons* on the Lena Bank of division 58.4.4 shall not exceed 305 metric tons during the 1990/91 season.

(2) The total catch of *N. squamifrons* on the Ob Bank of division 58.4.4 shall not exceed 267 metric tons during the 1990/91 season.

(d) Directed fishing for *N. rossii* is prohibited in subarea 58.5. The catch limit for *N. rossii* in subarea 58.5 is 1 percent of all Antarctic finfishes onboard a vessel fishing in subarea 58.5.

5. Section 380.24 is revised to read as follows:

§ 380.24 Reporting requirements for Convention statistical reporting subarea 48.3.

(a) The calendar month is divided into six reporting periods: Day 1 to day 5 is period A, day 6 to day 10 is period B, day 11 to day 15 is period C, day 16 to day 20 is period D, day 21 to day 25 is period E, and day 26 to the last day of the month is period F.

(b) The operator of any vessel fishing in subarea 48.3 must, within 2 days of the end of a reporting period, report his or her catch and bycatch of *C. gunnari, N. gibberifrons, N. rossii, N. squamifrons, C. aceratus, P. georgianus* and *D. eleginoides* to NMFS. The report must be made in writing, by cable, telex, rapidfax or other appropriate method to the address or number specified in the vessel's permit, and must include the vessel name, permit number, month and reporting period, and its catch in metric tons (to the nearest tenth of a metric ton) of *C. gunnari, N. gibberifrons, N. rossii, N. squamifrons, C. aceratus, P. georgianus* and *D. eleginoides* taken in subarea 48.3 If none of these species is taken during a reporting period, the operator must submit a report showing no catch.

(c) This catch reporting system applies to the reporting of *D. eleginoides* during the 1990/91 fishing season commencing November 2, 1990

§ 380.26 [Removed]

6. Section 380.26 is removed.

§ 380.27 [Redesignated as § 380.26]

7. Section 380.27 is redesignated as § 380.26 and is revised to read as follows:

§ 380.26 Closures.

(a) The fishery in subarea 48.3 will close if the bycatch of *N. gibberifrons* reaches 500 metric tons, the bycatch of any of the species *N. rossii, N. squamifrons, C. aceratus* or *P. georgianus* reaches 300 metric tons or the total catch of *C. gunnari* reaches 26,000 metric tons, whichever comes first. NMFS will notify harvesting permit holder representatives of such closure.

(b) Directed fishing on *C. gunnari* in subarea 48.3 between April 1 and November 4, 1991 is prohibited.

§ 380.28 [Redesignated as § 380.27]

7. Section 380.28 is redesignated as § 380.27 and is revised to read as follows:

§ 380.27 Gear restrictions.

(a) Longline fishing is prohibited in Convention waters.

(b) The use of bottom trawls in the directed fishery for *C. gunnari* in subarea 48.3 is prohibited during the 1990/91 fishing season.

8. A new section 380.28 is added and reserved to read as follows:

§ 380.28 Procedure for according protection to CCAMLR Ecosystem Monitoring Program Sites. [Reserved]

[FR Doc. 91–10809 Filed 5–6–91; 8:45 am]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 56, No. 88
Tuesday, May 7, 1991

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 JUSTICE

Immigration and Naturalization Service

8 CFR Part 212

[INS No. 1344-91; AG ORDER NO. 1492-91]

Mariel Cuban Parole Determinations

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule revises and expands the discretionary authority of the Immigration and Naturalization Service (the Service) under the Cuban Review Plan to withdraw parole approval for excludable Mariel Cubans where circumstances make it impossible to execute the parole decision, and release of the detainee is contrary to the public interest. It further provides for flexibility in the scheduling of parole reviews in the case of a new or returning Mariel Cuban detainee whose previous immigration parole has been revoked. These changes are necessary to reduce administrative costs and to clarify the status of the detainee whose parole decision cannot be implemented.

DATES: Written comments must be received no later than June 6, 1991.

ADDRESSES: Please submit written comments, in triplicate, to Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street NW., room 5304, Washington, DC 20536. To ensure proper handling, please reference INS number 1344–91 on your correspondence.

FOR FURTHER INFORMATION CONTACT: Joan Lieberman, Assistant General Counsel, Office of the General Counsel, room 7048, Immigration and Naturalization Service, 425 I Street NW., room 7048, Washington, DC 20536, telephone (202) 514–2895.

SUPPLEMENTARY INFORMATION: This proposed rule would amend 8 CFR 212.12 to permit the Service a wider range of discretionary authority to revoke parole approval previously authorized for excludable Mariel Cubans where circumstances warrant a reversal of the parole approval decision. Currently, 212.12(e) contains an admonition that a detainee approved for parole must maintain proper behavior while awaiting suitable sponsorship or placement, or risk parole revocation. Section 212.12(f) prohibits release absent suitable sponsorship or placement. The present regulation makes no provision for cases where sponsorship is declined or appropriate sponsorship is unavailable, despite repeated attempts by the Service to locate placement. Administration of the Cuban Review Program has been severely handicapped by cases with placement problems. In such cases, numerous attempts to place certain detainees with appropriate sponsors have met with failure, since no program will accept these individuals due to their criminal histories. In many cases, the Service has requested aliens' rights groups to secure appropriate sponsorship or placement for these individuals, but without success. The current amendment to the regulation is designed to remedy the uncertainty surrounding the detainee's status where a release decision has been made by the Associate Commissioner for Enforcement, but that decision cannot be implemented. This regulatory change is also designed to allow for flexibility in meeting unusual or changing circumstances, in foreign affairs or domestic conditions, which indicate that the parole determination is no longer in the public interest. The proposed change conforms the language of § 212.12(e) to the language that currently exists in § 212.13(i), governing the authority of Departmental Panels to withdraw parole approval.

This rule also amends 8 CFR 212.12(g) by inserting flexibility into the parole review process for Mariel Cubans who are subject to repatriation. The class of Mariel Cubans immediately affected by this proposed rule change are those individuals whose return has been agreed to by the government of Cuba, pursuant to the Migration Agreement of 1984, whose previous immigration parole has been revoked, and who have been placed in the custody of the Service. The amendment to the regulation clarifies that the Cuban Review Plan Director, in the exercise of discretion, may suspend the parole review process in order to commence the repatriation process. Rather than scheduling a file review within three months after parole is revoked, the Service may begin the repatriation process immediately. In this manner, the return of the individual to Cuba may be accomplished within the time that it would ordinarily take to complete the parole review process. This approach is consistent with the preamble to the regulation, at 52 FR 48800, December 28, 1987, that an excludable Mariel Cuban may be deported from the United States and repatriated to Cuba without first receiving a parole review pursuant to 8 CFR part 212.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule will not have a significant economic impact on a substantial number of small entities.

This rule is not a major rule within the meaning of section 1(b) of Equal Opportunity 12291, nor does this rule have Federalism implications warranting the preparation of a Federal Assessment in accordance with Equal Opportunity 12612.

List of Subjects in 8 CFR Part 212

Administrative practice and procedure, Aliens, Detention, Exclusion, Immigration, Parole, Passports and visas, Reporting and recordkeeping requirements.

Accordingly, part 212 of chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1228, 1252.

2. Section 212.12 is amended by revising paragraph (e), and by adding a new sentence at the end of paragraph (g)(1) to read as follows:

§ 212.12 Parole determinations and revocations respecting Mariel Cubans.

* * * * *

(e) Withdrawal of parole approval. The Associate Commissioner for Enforcement may, in his discretion, withdraw his approval for parole of any detainee prior to release when, in his

opinion, the conduct of the detainee, or any other circumstance, indicates that parole would no longer be appropriate.

* * * * *

(g) * * *

(1) * * * In the case of a Mariel Cuban whose previous immigration parole has been revoked, and who has been placed in the custody of the Service, the Cuban Review Plan Director may, in his or her discretion, suspend or postpone the parole review process if such detainee's return to Cuba has been negotiated.

* * * * *

Dated: April 30, 1991.

Dick Thornburgh,

Attorney General.

[FR Doc. 91-10783 Filed 5-6-91; 8:45 am]

BILLING CODE 4410-10-M

---

8 CFR Part 217

[INS No. 1406-91]

RIN 1115-AB93

Visa Waiver Pilot Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule amends 8 CFR part 217 to enhance the Visa Waiver Pilot Program by permitting nationals of countries designated for the program to apply for admission at land border ports as well as at airports and seaports. This rule will simplify the forms required of an applicant by combining two forms into one and will reduce the paperwork for the inspections process under the Pilot Program.

DATES: Written comments must be received no later than May 22, 1991.

ADDRESSES: Please submit written comments, in triplicate, to the Records Systems Division, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., room 5304, Washington, DC 20536. Please include INS number 1406-91 on the mailing envelope to ensure proper and timely handling .

FOR FURTHER INFORMATION CONTACT: Y. Peggy Wong, Acting Deputy Assistant Commissioner, Inspections Division, Immigration and Naturalization Service, 425 I Street NW., room 7123, Washington, DC 20536, telephone number (202) 514-4033.

SUPPLEMENTARY INFORMATION: Under the Visa Waiver Pilot Program, authorized by Congress in section 217 of the Immigration and Nationality Act, nonimmigrant visitors from countries designated jointly by the Attorney General and the Secretary of State are eligible to apply for admission into the United States as nonimmigrant visitors for business or pleasure for ninety (90) days or less without obtaining nonimmigrant visitor visas at United States embassies or consulates. The primary goal of the pilot program is to promote international travel and tourism.

The Visa Waiver Pilot Program, as implemented on July 1, 1988, allowed applicants to apply for admission at air and sea ports via signatory carriers. However, many nationals from the designated countries commence their journeys by traveling to Canada or to Mexico then make their initial application for admission to the United States at land border ports of entry. Because they did not arrive aboard a signatory carrier, they were not eligible for entry under the Visa Waiver Pilot Program. This rule expands the avenues by which these nonimmigrants may enter the country and now allows them to make an initial entry at land border ports.

The proposed amendment of this section also eliminates the Visa Waiver Pilot Program Information Form and replaces it with a Visa Waiver Pilot Program Arrival/Departure Record. This will reduce the amount of paperwork that must be completed by applicants and immigration officers under this program, thereby streamlining the inspection process.

This rule defines the return passage requirement in accordance with established policy. The requirement may be met by possession of a round trip transportation ticket, airline passes indicating return passage, individual vouchers, group vouchers for charter flights, or United States military travel orders which include military dependents showing return to duty stations outside the United States on United States military flights.

Title 8 CFR 217.4 is amended to establish a uniform format by which the Service will notify carriers that an alien is not found to be admissible under the program. Currently, there is no consistent manner in which the carriers are notified. The regulations now propose a single form for that purpose, the Notice to Detain, Deport, Remove or Present Alien, Form I-259, already in use.

Title 8 CFR 217.6 is amended by requiring the carrier to ensure that the Visa Waiver Pilot Program Arrival/Departure Record is completed and signed prior to boarding the aircraft or vessel as the alien's prima facie evidence of eligibility under the program.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

The information collection requirement contained in this regulation has been submitted to the Office Of Management and Budget (OMB) for review under the provisions of the Paperwork Reduction Act.

List of Subjects in 8 CFR Part 217

Administrative practice and procedures, Aliens, Passports and visas, Reporting and record keeping requirements.

Accordingly, part 217 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 217—VISA WAIVER PILOT PROGRAM

1. The authority citation for part 217 continues to read as follows:

Authority: 8 U.S.C. 1103, 1187; 8 CFR part 2.

2. Section 217.2 is amended by revising paragraph (a) introductory text; revising paragraph (a)(4); removing paragraphs (a)(5) and (a)(6); redesignating paragraphs (a)(7) and (a)(8) as (a)(5) and (a)(6) respectively and revising them; revising paragraphs (b) through (d) to read as follows:

§ 217.2 Eligibility.

(a) *General.* Notwithstanding the provisions of section 212(a)(7)(B)(i)(II) of the Act, a nonimmigrant visa may be waived for an alien who is a national of a country enumerated in § 217.5 of this part regardless of place of residence or point of embarkation who:

* * * * *

(4) Is in possession of a completed and signed Visa Waiver Pilot Program Arrival/Departure Record;

(5) Waives any right otherwise provided in the Act to administrative or judicial review or appeal of an immigration officer's determination as to admissibility other than on the basis of an application for asylum in the United States as provided in section 208 of the Act; and

(6) Waives any right to contest any action for deportation.

(b) *Applicants arriving by air or sea.* (1) Applicants must be in possession of a return trip ticket which will transport the traveler out of the United States to any foreign port or place. A return trip ticket includes any of the following:

(i) A round trip transportation ticket which is valid for a period of not less than one year;

(ii) Airline passes indicating return passage;

(iii) Individual vouchers;

(iv) Group vouchers for charter flights only;

(v) Military travel orders which include military dependents for return to duty stations outside the United States on United States military flights.

(2) Applicants must arrive in the United States on a carrier which has enterd into an agreement as provided in § 217.6 of this part.

(c) *Applicants arriving at land border ports of entry.* Any applicant arriving at a land border port of entry must provide evidence to the immigration officer of financial solvency and a domicide abroad to which the applicant intends to return.

(d) *Aliens in transit.* An alien who is in transit through the United States is eligible to apply for admission under the Visa Waiver Pilot Program, provided the applicant meets the eligibility criteria set forth in this section.

3. Section 217.4 is amended by revising paragraphs (b) and (d) and by adding a new paragraph (e) to read as follows:

§ 217.4 Excludability and deportability.

* * * * *

(b) *Determination of excludability and inadmissibility.* (1) An alien who applies for admission under the provisions of section 217 of the Act, who is determined by an immigration officer not to be eligible for admission under that section or to be excludable from the United States under one or more of the grounds of excludability listed in section 212 of the Act (other than for lack of a visa), or who is in possession of and presents fraudulent or counterfeit travel documents will be refused admission into the United States and removed. Such refusal and removal shall be made by the district director and shall be effected without referring the alien to an immigration judge for further inquiry, examination, or hearing.

(2) The removal of an alien under this section may be deferred if the alien is paroled into the custody of a federal, state, or local law enforcement agency for criminal prosecution or punishment. This section in no way diminishes the discretionary authority of the Attorney General enumerated in section 212(d) of the Act.

* * * * *

(d)(1) *Removal of excludable and deportable aliens who arrived by air or sea.* The carrier which transported to the United States an alien who is to be removed pursuant to this section will be notified immediately of the determination to remove such alien by means of a Notice to Detain, Deport, Remove, or Present Alien, Form I–259. Removal from the United States under this section may be effected using the return portion of the round trip passage presented by the alien at the time of entry to the United States as required in § 217.2(b)(1) of this part. Such removal will be on the first available means of transportation to the alien's point of embarkation to the United States. Nothing in this part absolves the carrier of the responsibility to remove any excludable or deportable alien at carrier expense, as provided in § 217.6(b) of this part.

(2) *Removal of excludable and deportable aliens who arrived at land border ports of entry.* Removal will be by the first available means of transportation deemed appropriate by the district director.

(e) *Applicants for asylum.* An applicant for admission under section 217 of the Act who applies for asylum in the United States must be referred to an asylum officer for further inquiry on the claim for asylum. Such applicant may appeal a decision denying asylum directly to the Board of Immigration Appeals. Such appeal must be filed within ten (10) days of the asylum officer's decision by filing a notice of appeal on Form I–290A with the district director, who shall immediately forward the notice to the asylum officer. The asylum officer shall transit the notice of appeal, his or her decision, and the record on which that decision was based, to the Board of Immigration Appeals. The filing of a notice of appeal shall stay the exclusion or deportation of the applicant pending a decision on the appeal by the Board.

4. Section 217.6 is amended by revising paragraphs (a), (b)(1)(ii), (iv) and (v); by revising paragraph (b)(2)(i) and (iv); and by adding a new paragraph (b)(2)(vi) to read as follows:

§ 217.6 Carrier agreements.

(a) *General.* The carrier agreements referred to in section 217(e) of the Act shall be made by the Commissioner in behalf of the Attorney General and shall be on Form I–775, Visa Waiver Pilot Program Agreement. The term "carrier" as used in this part refers to the owner, charterer, lessee or authorized agent of any commercial vessel or commercial aircraft engaged in transporting passengers to the United States from a foreign place.

(b) * * *

(1) * * *

(ii) Is in possession of a completed and signed Visa Waiver Pilot Program Arrival/Departure Record;

* * * * *

(iv) Is in possession of round trip passage that is valid for one year, issued by a carrier signatory on Form I–775, or by authorized agents who are subcontractors to such a carrier, and guaranteeing transportation from the United States;

(v) Agrees that the return portion of such passage may be used to effect removal from the United States based on a finding of excludability or deportability under § 217.4 of this part.

* * * * *

(2) The carrier further agrees to:

(i) Submit to the Immigration and Naturalization Service the Visa Waiver Pilot Program Arrival/Departure Record as required by sections 231 and 217(e)(1)(B) of the Act;

* * * * *

(iv) Retain the responsibilities and obligations enumerated in this part should the alien under the Visa Waiver Pilot Program depart temporarily for a visit to foreign contiguous territory during the period of authorized stay in the United States;

* * * * *

(vi) Ensure that the Visa Waiver Pilot Program Arrival/Departure Record is complete and signed by the alien prior to boarding the aircraft or vessel.

* * * * *

Dated: March 18, 1991.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 91–10912 Filed 5–6–91; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–NM–80–AD]

Airworthiness Directives: Boeing Model 737–300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede two existing airworthiness directives (AD), one of which is applicable to Boeing Model 737–300 series airplanes and the other to Boeing Model 737–400 series airplanes, which currently require repetitive inspections for chafing between the number two engine throttle cable and the adjacent right wing front spar bracket. These conditions, if not corrected, could result in throttle cable separations and subsequent loss of engine throttle control. This action would require modifications to the engine's throttle control cables. In addition, this notice proposes to include the Boeing Model 737–500 series airplanes in the applicability. This proposal is prompted by the manufacturer's development of a modification which eliminates the cable accelerated wear condition, subject of the existing AD's, and a condition referred to as "engine throttle cable ratcheting."

DATES: Comments must be received no later than June 24, 1991.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 91–NM–80–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The applicable service information may be obtained from Boeing commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Bray, Seattle Aircraft Certification Office, Propulsion Branch, ANM–140S; telephone (206) 227–2681. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056 .

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91–NM–80–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On June 8, 1989, the FAA issued AD 89–13–05, Amendment 39—6240 (54 FR 26021, June 21, 1989) applicable to Boeing Model 737–300 series airplanes; and on October 11, 1989, the FAA issued AD 89–23–05, Amendment 39–6367 (54 FR 43046, October 20, 1989), applicable to Boeing Model 737–400 series airplanes. These AD's require repetitive inspections for chafing between the number two engine throttle cable and adjacent right wing front spar bracket, and replacement of the cable, if necessary. Those actions were prompted by one report of throttle cable failure and several reports of significantly worn or frayed cables on Model 737–300 series airplanes. In this area, the Model 737–300 is similar to the Model 737–400 and the Model 737–500.

During the research and development phase of the modification to correct the chafing problems, the manufacturer's flight test uncovered an operational deficiency in the engine throttle control cable systems in which the cables transmit "ratcheting feedback" to the flight compartment isle stand thrust levers during flight at certain flap positions. The ratcheting phenomenon, on the Model 737–300, –400, and –500, as well as the premature cable failure is the result of an aerodynamically-induced cable vibration transmitted through the engine throttle control cable system when the wing leading edge kreuger flaps are extended. Throttle controls are designed to operate smoothly. These conditions, if not corrected, could result in separation of the throttle cable and subsequent loss of engine throttle control, or could distract the flightcrew from their primary responsibility during the high workload phase of flight, such as approach or landing, which unduly jeopardizes safe operation of the airplane.

Since issuance of those AD's, the manufacturer has developed a modification which eliminates the accelerated wear condition and corrects the ratcheting condition.

The FAA has reviewed and approved Boeing Service Bulletin 737–76–1023, dated February 14, 1991, which describes a modification to the engine throttle control cables in the left and right wing leading edge, to prevent chafing of the throttle cable and to eliminate cable ratcheting by relocating the cable tensioning turnbuckles from the wing leading edges to within the body of the airplane.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would supersede AD's 89–13–05 and 89–23–05 with a new AD that would require modification of the affected engine throttle control cables, in accordance with the service bulletin previously described and thus would terminate the need for the existing repetitive inspections.

There are approximately 1,069 Model 737–300, –400, and –500 series airplanes of the affected design in the worldwide fleet. It is estimated that 418 airplanes of U.S. registry would be affected by this AD, that it would take approximately 16 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. Modification parts are estimated to cost $400 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $535,040.

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

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

A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation. Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendments 39–6240 (54 FR 26021, June 21, 1989), AD 89–13–05; and 39–6367 (54 FR 43046, October 20, 1989), AD 89–23–05; with the following new airworthiness directive:

Boeing: Applies to Model 737–300, –400, and –500 series airplanes, as listed in Boeing Service Bulletin 737–76–1023, dated February 14, 1991, certificated in any category. Compliance required as indicated, unless previously accomplished.

To minimize the potential for cable separation due to the number two engine throttle cable chafing against the right wing front spar bracket, and prevent engine throttle control cable ratcheting feedback, accomplish the following:

A. For Model 737–300 series airplanes: Prior to the accumulation of 300 flight hours after July 24, 1989 (the effective date of Amendment 39–6240), unless previously accomplished within the previous 700 flight hours, and thereafter at intervals not to exceed 1,000 flight hours, gain access to the fuel shutoff cable pulley bracket near the right wing front spar station 124 and inspect the number two engine throttle cable for wear. Replace the cable, before further flight, if cable wear exceeds acceptable wear limits specified in Section 20–20–31 of the Model 737 Maintenance Manual.

B. For Model 737–400 series airplanes: Prior to the accumulation of 300 flight hours after November 27, 1989 (the effective date of Amendment 39–6367), unless previously accomplished within the previous 700 flight hours, and thereafter at intervals not to exceed 1,000 hours, gain access to the fuel shutoff cable pulley bracket near the right wing front spar station 124 and inspect the number two engine throttle cable for wear. Replace the cable, before further flight, if cable wear exceeds acceptable wear limits specified in Section 20–20–31 of the Model 737 Maintenance Manual.

C. For all airplanes: Within 18 months after the effective date of this AD, modify the engine throttle control cable system in accordance with Boeing Service Bulletin 737–76–1023, dated February 14, 1991. This modification constitutes terminating action for the repetitive inspections required by paragraphs A. and B. of this AD.

D. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue S.W., Renton, Washington.

Issued in Renton, Washington, on April 24, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 91–10764 Filed 5–6–91; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 39

[Docket No. 91–NM–61–AD]

Airworthiness Directives; Boeing Model 747–400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 747–400 series airplanes, which would require rerouting and adding shielded wiring associated with the differential protection current transformers in the P6 panel. This proposal is prompted by the results of a Model 747–400 electrical system safety assessment, which demonstrated that the potential exists for a single event causing the loss of all normal sources of airplane electrical power. This condition, if not corrected, could result in the loss of all normal sources of electrical power to the airplane essential busses, limiting power availability to that provided by the standby system.

DATES: Comments must be received no later than June 24, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 91–NM–61–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Slotte, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM–130S: telephone (206) 227–2797. Mailing addresss: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91–NM–61–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

A Boeing Model 747–400 electrical system safety assessment was recently conducted by the manufacturer. One result of this assessment demonstrated that the potential exists for the loss of all normal AC and DC power under certain failure conditions.

The AC bus differential protection current transformers (DPCT) in the P6 electrical panel for channels 1, 2, and 3 are routed in a common bundle. The circuits for the individual channels are neither sleeved nor separated by space. An open circuit fault on any one of these channels will cause the associated generator control relay, generator circuit breaker, and bus tie breaker to trip, causing loss of the associated bus for the duration of the flight. All three channels could experience such a fault as the result of a hot short or other failure of the common wire bundle in which they are routed. Loss of electrical channels 1, 2, and 3 would cause all airplane power to be derived from the standby system, powered by the battery, which is limited to 30 minutes of operation. A hot short on these wires will cause at least a momentary loss of the associated bus. The bus may be restored by cycling the generator control switch if the fault is momentary and has not caused an open circuit fault. These conditions assume that integrated drive generator (IDG) 4 was disconnected prior to dispatch, a condition allowed by the Master Minimum Equipment List.

This condition, if not corrected, could result in the loss of all normal sources of electrical power to the airplane essential busses, limiting power availability to that provided by the standby system.

The FAA has reviewed and approved Boeing Service Bulletin 747–24–2154, dated February 7, 1991, which describes the necessary instructions for rerouting wires and adding protective sleeves to wiring associated with AC channels 1, 2, and 3 DPCT circuitry in order to provide adequate wire separation.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require operators to correct the inadequate wire separation of the AC DPCT circuits associated with AC channels 1, 2, and 3 within the P6 panel in accordance with the service bulletin previously described.

There are approximately 107 Model 747–400 series airplanes of the affected design in the worldwide fleet. It is estimated that 18 airplanes of U.S. registry would be affected by this AD, that it would take approximately eight manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. The cost of required parts per airplane is estimated to be $20. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $8,280.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Boeing: Applies to Model 747–400 series airplanes, as identified in Boeing Service Bulletin 747–24–2154, dated February 7, 1991, certified in any category. Compliance required within 180 days after the effective date of this AD, unless previously accomplished.

To prevent the loss of essential airplane electrical busses, accomplish the following:

A. Reroute and add protective sleeving to provide adequate separation between wiring associated with the differential protection current transformers for AC channels 1, 2, and 3, located in the P6 panel, in accordance with Boeing Service Bulletin 747–24–2154, dated February 7, 1991.

B. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector who may concur or comment and then send it to the Seattle ACO.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on April 24, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–10763 Filed 5–6–91; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 39

[Docket No. 91–NM–83–AD]

Airworthiness Directives; Fokker Model F–28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Fokker Model F–28 Mark 0100 series airplanes, which would require replacement of the audio control panels with modified units. This proposal is prompted by reports of audio failure following the selection of certain control settings. This condition, if not corrected, could result in loss of communications and reduced capability to comply with air traffic control separation procedures.

DATES: Comments must be received no later than June 24, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 91–NM–83–AD 1601 Lind Avenue SW., Renton, Washington 98055–4056. The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest

Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM–113; telephone (206) 227–2145. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91–NM–83–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Rijksluchvaartdienst (RLD), which is the airworthiness authority of the Netherlands, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Fokker Model F–28 Mark 0100 series airplanes.

There have been recent reports of audio control panel failure following the selection of certain control settings. The circuit breaker must be reset to correct the failure. This condition, if not corrected, could result in loss of communications and reduced capability to comply with air traffic control separation procedures.

Fokker has issued Service Bulletin F100–23–014, dated November 7, 1990, which describes procedures for removal of the audio control panels and replacement with modified units. The Fokker service bulletin references Gables Service Bulletins G6937–XX SB #2, G6939–12 SB#3, and G6968–02 SB#2 for additional instructions. The RLD has classified the Fokker service bulletin as mandatory, and has issued Netherlands Airworthiness Directive BLA No. 90–131 addressing this subject.

This airplane model is manufactured in the Netherlands and type certificated in the United States under the provisions of section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, and AD is proposed which would require removal of the audio control panels and replacement with modified units in accordance with the Fokker service bulletin previously described.

It is estimated that 12 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. The cost for required parts is negligible. Based on these figures, the total cost impact of the AD of U.S. operators is estimated to be $1,320.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Fokker Applies to Model F–28 Mark 0100 series airplanes; Serial Numbers 11244 through 11264, 11268 through 11283, 11286, 11289, 11291, 11293, 11295, and 11297; certificated in any category. Compliance is required within one year after the effective date of this AD, unless previously accomplished.

To prevent loss of communications and reduced capability to comply with air traffic control separation procedures, accomplish the following:

A. Remove all audio control panels and replace with modified audio control panels, in accordance with Fokker Service Bulletin F100–23–014, dated November 7, 1990.

Note: The Fokker service bulletin references Gables Service Bulletins G6937XX SB#2, Revision 1, dated March 1, 1991; G6939–12 SB#3, dated February 6, 1990; and G6968–02 SB#2, dated February 6, 1990; for additional instructions.

B. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Avionics Inspector, who may concur or comment and then send it to the Manger, Standardization Branch, ANM–113.

C. special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on April 24, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-10765 Filed 5-6-91; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 91-NM-77-AD]

Airworthiness Directives; Lockheed Model L-1011 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to Lockheed Model L-1011 series airplanes, which would require that all landing gear brakes be inspected for wear and replaced if the wear limits prescribed in this proposal are not met, and that the new landing gear brake wear limits be incorporated into the FAA-approved maintenance inspection program. This proposal is prompted by an accident in which a transport category airplane executed a rejected takeoff (RTO) and was unable to stop on the runway due to worn brakes. This condition, if not corrected, could result in loss of brake effectiveness during a high energy RTO and could cause the airplane to leave the runway surface, possible resulting in injuries to passengers and crew.

DATES: Comments must be received no later than June 24, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-77-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Razzeto, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM-131L; FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5355.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-77-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

In 1988, a McDonnell Douglas Model DC-10 series airplane was involved in an aborted takeoff accident in which eight of the ten brakes failed, and the airplane ran off the end of the runway. Investigation revealed that there were failed pistons on each of the eight brakes, with O-rings damaged by over-extension due to extensive wear. Fluid leaking from the damaged pistons caused the hydraulic fuses to close, releasing all brake pressure.

This accident prompted a review of the methodology used in the determination of the allowable wear limits for all transport category airplane brakes. Worn brake rejected takeoff (RTO) dynamometer testing and analyses were conducted for the Model DC-10 series brakes and a new set of reduced allowable wear limits was established; the use of these limits for the Model DC-10 is required by AD 90-01-01, Amendment 39-6431 (54 FR 53048, December 27, 1989).

The FAA and the Aerospace Industries Association (AIA) jointly developed a set of dynamometer test guidelines that could be used to validate appropriate wear limits for all airplane brakes. It should be noted that this worn-brake accountability determination validates brake wear limits with respect to brake energy capacity only, and is not meant to account for any reduction in brake force due solely to the wear state of the brake. Any reduction in brake force (or torque) that may develop over time as a result of brake wear is to be evaluated and accounted for as part of a separate rulemaking project. The guidelines for validating brake wear limits allow credit for use of reverse thrust to determine energy level absorbed by the brake during the dynamometer test.

The FAA has requested that U.S. airframe manufacturers (1) determine required adjustments in allowable wear limits for all of its brakes in use, (2) schedule dynamometer testing to validate wear limits as necessary, and (3) submit information from items (1) and (2) to the FAA so that appropriate rulemaking action(s) can be initiated.

Lockheed Aeronautical System Company has submitted, and the FAA has evaluated, the dynamometer test data and analyses concerning brakes installed on Model L-1011-385-1, L-1011-385-1-14, L-1011-385-1-15, and L-1011-385-3 series airplanes. The dynamometer test was completed in November 1990. Based on this data, the FAA has determined that the brake wear limits currently recommended in the Component Maintenance Manuals for Model L-1011 series airplanes are not acceptable as they relate to the effectiveness of the brakes during a high energy RTO. Further, these limits are only recommended values. The FAA has determined that the following criteria for the Model L-1011 brakes, specifically the new maximum brake wear limits indicated in the last column, are necessary:

Model airplane	Brake part No.	Type of brake	Total No. of airplanes	Planes of U.S. registry	Maximum wear limit (inches)
L-1011, -385-1,	2-1195-1	Steel	126	79	2.10
	2-1195-5	Steel			2.10
	2-1195-6	Steel			2.10
	2-1195-7	Steel			2.10
	2-11.95-8	Steel			2.10
	2-1367	Steel			3.00

Model airplane	Brake part No.	Type of brake	Total No. of airplanes	Planes of U.S. registry	Maximum wear limit (inches)
	2-1367-1	Steel			3.00
	2-1367-2	Steel			3.00
	2-1367-3	Steel			2.60
	2-1367-4	Steel			2.60
	2-1367-5	Steel			2.60
L-1011, 385-1, -14 & -15	2-1367	Steel	67	19	3.00
	2-1367-1	Steel			3.00
	2-1367-2	Steel			3.00
	2-1367-3	Steel			2.60
	2-1367-4	Steel			2.60
	2-1367-5	Steel			2.60
L-1011, -385-3	2-1367	Steel	50	11	3.00
	2-1367-1	Steel			3.00
	2-1357-2	Steel			3.00

Since this condition is likely to exist on other airplanes of this same type design, an AD is proposed which would require (1) inspection of certain Model L-1011 landing gear brake part numbers for wear, and replacement if the new wear limits are not met; and (2) incorporation of specified maximum wear limits into the FAA-approved maintenance inspection program.

There are approximately 243 Model L-1011 series airplanes of the affected design in the worldwide fleet. It is estimated that 109 airplanes of U.S. registry would be affected by this AD, that it would take approximately 30 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. The cost of parts to accomplish the change (cost resulting from the requirement to change the brakes before they are worn to their previously approved limits for a one-time change) is estimated to be $4,096 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $626,314.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Lockheed: Applies to Model L-1011 series airplanes equipped with brake part numbers identified in paragraph A. of this AD, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent the loss of main landing gear braking effectiveness, accomplish the following:

A. Within 180 days after the effective date of this AD, inspect the brake part numbers shown below for wear. Any brake worn more than the maximum wear limit specified below must be replaced, prior to further flight, with a brake within this limit.

Brake part No.	Maximum wear limit
2-1195-1	2.10 inches.
2-1195-5	2.10 inches.
2-1195-6	2.10 inches.
2-1195-7	2.10 inches.
2-1195-8	2.10 inches.
2-1367	3.00 inches.
2-1367-1	3.00 inches.
2-1367-2	3.00 inches.
2-1367-3	2.60 inches.
2-1367-4	2.60 inches.
2-1367-5	2.60 inches.

B. Within 180 days after the effective date of this AD, incorporate the maximum brake wear limits specified in paragraph A. of this AD into the FAA-approved maintenance inspection program.

C. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

Issued in Renton, Washington, on April 24, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-10766 Filed 5-6-91; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 91-NM-78-AD]

Airworthiness Directives; McDonnell Douglas Model DC-9 Series Airplanes, Model DC-9-80 Series Airplanes, Model MD-88 Airplanes, and C-9 (Military) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directives (AD), applicable to certain McDonnell Douglas Model DC–9 series airplanes, which would require that all landing gear brakes be inspected for wear and replaced if the wear limits prescribed in this proposal are not met, and that the new wear limits be incorporated into the FAA-approved maintenance inspection program. This proposal is promptly by an accident in which a transport category airplane executed a rejected takeoff (RTO) and was unable to stop on the runway due to worn brakes. This condition, if not corrected, could result in loss of brake effectiveness during a high energy RTO and cause further incidents/accidents.

DATES: Comments must be received no later than June 24, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 91–NM–78–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

FOR FURTHER INFORMATION CONTACT: Mr. Any Gfrefer, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM–131L, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806–2324; telephone (213) 988–5338.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91–NM–78–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

In 1988, a McDonnell Douglas Model DC–10 series airplane was involved in an aborted takeoff accident in which eight of the ten brakes failed, and the airplane ran off the end of the runway. Investigation revealed that there were failed pistons on each of the eight brakes, with O-rings damaged by over-extension due to extensive wear. Fluid leaking from the damaged pistons caused the hydraulic fuses to close, releasing all brake pressure.

This accident prompted a review of the methodology used in the determination of the allowable wear limits for all transport category airplane brakes. Worn brake rejected takeoff (RTO) dynamometer testing and analyses were conducted for the Model DC–10 series brakes and a new set of reduced allowable wear limits was established; the use of these limits for the Model DC–10 is required by AD 90–01–01, Amendment 39–6431 (54 FR 53048, December 27, 1989).

The FAA and the Aerospace Industries Association (AIA) jointly developed a set of dynamometer test guidelines that could be used to validate appropriate wear limits for all airplane brakes. It should be noted that this worn brake accountability determination validates brake wear limits with respect to brake energy capacity only, and is not meant to account for any reduction in brake force due solely to the wear state of the brake. Any reduction in brake force (or torque) that may develop over time as a result of brake wear is to be evaluated and accounted for as part of a separate rulemaking project. The guidelines for validating brake wear limits allow credit for use of reverse thrust to determine energy level absorbed by the brake during the dynamometer test.

The FAA has requested that U.S. airframe manufacturers (1) determine required adjustments in allowable wear limits for all of its brakes in use, (2) schedule dynamometer testing to validate wear limits as necessary, and (3) submit information from items (1) and (2) to the FAA so that appropriate rulemaking action(s) can be initiated.

McDonnell Douglas Corporation has submitted, and the FAA has evaluated, a series of dynamometer test data and analyses concerning brakes installed on Model DC–9 series airplanes. The FAA also witnessed some of the dynamometer tests, which were conducted in October 1990. Based on this data, the FAA has determined that the maximum brake wear limits currently recommended in the Component Maintenance Manuals for Model DC–9 series airplanes are not acceptable as they relate to the effectiveness of the brakes during a high energy RTO. Further, these limits are only recommended values. The FAA has determined that the following criteria for Model DC–9 brakes, specifically the new maximum brake wear limits indicated in the last column, are necessary:

Series airplane	Douglas brake part No.	Maximum wear limit (inches)
DC–9–10	9560746A	0.3
	B9560746A	0.3
	9560743	0.3
	A9560743	0.3
	B9560743	0.3
DC–9–20/30	9560786	0.3
	A9560786	0.3
	B9560786	0.3
DC–9–30	9560955	0.3
	9560788	0.3
	A9560788	0.3
	B9560788	0.3
	9560788–2/–3/–5/–6	0.3
	9560788–8	0.7
DC–9–30/40/50	B9560861	0.3
	9560861–1	0.2

Series airplane	Douglas brake part No.	Maximum wear limit (inches)
DC-9-81/82/87 and MD-88	9560861-2	0.3
	2608892-1	1.0
	5004321-3/-4/-5, all trapezoid	0.8
	5004321-6, bullnose	1.0
	5004321-6, trapezoid	0.8
	500431-10, bullnose	0.9
	500432-11, trapezoid (standard)	1.0
	5004321-11, trapezoid (rebalanced)	1.2
	500432-12, trapezoid	0.9
	5007898, trapezoid	1.1
	5007898-1, trapezoid	1.1
DC-9-83	2608892-1	1.0
	5007898, bullnose	1.1
	5007898-1, trapezoid	1.1

Since this condition is likely to exist on other airplanes of same type design, an AD is proposed which would require (1) inspection of certain Model DC-9 landing gear brake part numbers for wear, and replacement if the new wear limits are not met, and (2) incorporation of specified maximum wear limits for certain Model DC-9 brake part numbers into the FAA-approved maintenance inspection program.

There are approximately 1,800 Model DC-9 series airplane [including Model DC-9-80 series, Model MD-88 airplanes, and C-9 (military), airplanes] of the affected design in the worldwide fleet. It is estimated that 859 Model DC-9 series airplanes of U.S. registry would be affected by this AD, that it would take approximately 40 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per hour. The cost of parts to accomplish the change (cost resulting from the requirement to change the brakes before they are worn to their previously approved limits for a one-time change) is estimated to be $12,000 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $12,197,800.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Applies to Model DC-9 series, including C-9 (military), DC-9-80 series, including MD-88 airplanes, equipped with brake part numbers identified in paragraph A of the AD, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent the loss of main landing gear braking effectiveness, accomplish the following:

A. Within 180 days after the effective date of this AD, inspect the brake part numbers below for wear. Any brake worn more than the maximum wear limit specified below must be replaced, prior to further flight, with a brake within this limit.

Series airplanes	Douglas brake part No.	Maximum wear limit (inches)
DC-9-10	9560746A	0.3
	B9560746A	0.3
	9560743	0.3
	A9560743	0.3
	B9560743	0.3
DC-9-20/30	9560786	0.3
	A9560786	0.3
	B9560786	0.3
DC-9-30	9560955	0.3
	9560788	0.3
	A9560788	0.3
	B9560788	0.3
	9560788-2/-3/-5/-6	0.3
	9560788-7	0.7
DC-9-30/40/50	B9560861	0.3
	9560861-1	0.2
	9560861-2	0.3
DC-9-81/82/87, and MD-88	2608892-1	1.0

Series airplanes	Douglas brake part No.	Maximum wear limit (inches)
DC-9-83	5004321-3/-4/-5, all trapezoid	0.8
	5004321-6, bullnose	1.0
	5004321-6, trapezoid	0.8
	5004321-10, bullnose	0.9
	5004321-11, trapezoid (standard)	1.0
	5004321-11, trapezoid (rebalanced)	1.2
	5004321-12, trapezoid	0.9
	5007898, trapezoid	1.1
	5007898-1, trapezoid	1.1
	2608892-1	1.0
	5007898, bullnose	1.1
	5007898-1, trapezoid	1.1

B. Within 180 days after the effective date of this AD, incorporate the maximum brake wear limits specified in paragraph A. of this AD into the FAA-approved maintenance inspection program.

C. An alternative method of compliance or adjustment of the compliance time which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: the request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

Issued in Renton, Washington, on April 24, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-10767 Filed 5-6-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

Proposed Extension of Eagle Pass, Texas Port Limits

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations to extend the boundaries of the Eagle Pass, Texas, port of entry. This proposed extension of boundaries is part of the ongoing efforts of Customs to improve the efficiency of its field operations. The extension of port limits will be operationally advantageous to the Customs Service and will benefit the importing public.

DATES: Comments must be received on or before July 8, 1991.

ADDRESSES: Written comments may be submitted to and inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, room 2119, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Linda Walfish, Office of Workforce Effectiveness and Development, Office of Inspection and Control (202) 566-9425.

SUPPLEMENTARY INFORMATION:

Background

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide a better service, Customs is proposing to amend § 101.3, Customs Regulations (19 CFR 101.3), to extend the geographical limits of the port of entry of Eagle Pass, Texas. The port of Eagle Pass, Texas is currently described as "the territory within the corporate limits of the city which includes any incorporated areas therein." This description has resulted in uncertainty as to the Customs services available in areas surrounding Eagle Pass. The proposed boundary would include areas beyond the city limits which would facilitate further commercial activity, such as bonded warehouses, cattle pens, and a foreign trade zone.

The proposed revised boundary is as follows: Beginning at the point of intersection of the Rio Grande River and the county line between Maverick County and Kinney County proceed in an easterly direction to the intersection of the county lines of Maverick County, Kinney County, Uvalde County and Zavala County; then in a southern direction along the county line between Maverick County and Zavala County to its intersection with F.M. 2644; then in a westerly direction along F.M. 2644 to its intersection with F.M. 1021; then due west to the water's edge of the Rio Grande River; then in a northwesterly direction along the meanders of the Rio Grande River to its intersection with the county line between Maverick County and Kinney County and Point-of-Beginning.

Comments

Prior to final determination, consideration will be given to any written comments timely submitted to Customs. Submitted comments will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552, section 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, room 2119, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC.

Authority

Customs ports of entry are established under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by Executive Order 10289, September 17, 1951 (3 CFR 1949-1953 Comp., ch. II), and pursuant to authority provided by Treasury Department Order No. 101-5, February 17, 1987 (52 FR 6282).

Executive Order 12291 and Regulatory Flexibility Act

Because the document relates to agency organization and management, it is not subject to Executive Order 12291 or the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*).

Drafting Information

The principal author of this document was Earl Martin, Regulationss and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Organization and functions (Government agencies).

It is proposed to amend part 101, Customs Regulations (19 CFR part 101), as set forth as follows:

PART 101—GENERAL PROVISIONS

1. The authority citation for part 101, Customs Regulations (19 CFR part 101), continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1623, 1624, unless otherwise noted.

§ 101.3 [Proposed Amendment]

2. It is proposed to amend § 101.3(b) Customs Regulations (19 CFR 101.3(b)), by adding immediately after "Eagle Pass" in the column headed "Ports of entry", in the Laredo, Texas, Customs District of the Southwest Region, the phrase, "including the territory described in T.D. 91-_____."

Approved: May 1, 1991.

Carol Hallett,

Commissioner of Customs.

[FR Doc. 91-10791 Filed 5-6-91; 8:45 am]

BILLING CODE 4820-02-M

Internal Revenue Service

26 CFR Part 1

[FI-189-84]

RIN 1545-AH46

Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property; Potentially Abusive Situation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains amendments to the proposed regulations relating to certain determinations under the original issue discount rules. In the case of any "potentially abusive situation," the imputed principal amount of a debt instrument issued in consideration for the sale or exchange of property is limited to the fair market value of the property. Under proposed regulations issued under section 1274, a situation involving nonrecourse financing is a potentially abusive situation. The amendments to the proposed regulations clarify that an exchange of a nonrecourse debt instrument for an outstanding debt instrument (or a modification of a nonrecourse debt instrument that causes a deemed exchange) is not a potentially abusive situation by reason of "nonrecourse financing." The amendments to the proposed regulations also clarify that the term "debt instrument" as used for purposes of the original issue discount rules includes only instruments constituting valid indebtedness under general principles of Federal income tax law. These amendments to the proposed regulations provide guidance to those who need to make determinations under the original issue discount rules.

DATES: Written comments and requests for a public hearing must be received by June 6, 1991.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Benjamin Franklin Station, Attn: CC:CORP:T:R (FI-189-84), room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Robert N. Deitz, 202-566-3803 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On April 8, 1986, the **Federal Register** published a notice of proposed rulemaking (51 FR 12022) under sections 1271 through 1275 and certain related provisions of the Internal Revenue Code, relating to original issue discount. Proposed § 1.1274-4(g) provides rules concerning potentially abusive situations. Proposed § 1.1275-1(b) defines a debt instrument in general. This document proposes amendments to those provisions of the proposed regulations.

Explanation of Provisions

If a debt instrument is issued in exchange for property, the issue price of the debt instrument, as determined under the original issue discount ("OID") rules, determines the cost of the property to the purchaser. See S. Prt. No. 169 (Vol. I), 98th Cong. 2d Sess. 256 (1984) (the "Senate Report"). In determining the issue price of a debt instrument given in exchange for nonpublicly traded property, section 1274 generally respects the stated principal amount of the debt instrument if it bears interest at a rate at least equal to the applicable Federal rate ("AFR"). Thus, in general, the issue price of a debt instrument is the lesser of the stated principal amount or the present value of all payments due under the debt instrument, discounted at the AFR.

Congress recognized that using the AFR as a test rate would provide a liberal estimate of principal amount (and thus of the value of the property), see *id.* at 254 n.13, and that this result may not be appropriate in certain "potentially abusive situations." Accordingly, Congress provided in section 1274(b)(3) that in the case of any potentially abusive situation, the stated principal amount of the debt instrument generally is not respected in determining issue price even if the stated interest rate is at least equal to the AFR. In such a case, the issue price of the debt instrument may not exceed the fair market value of the property for which it is issued, adjusted to take into account other consideration involved in the exchange.

Section 1274(b)(3) defines a potentially abusive situation as including any situation which, by reason of nonrecourse financing, is of a type which the Secretary specifies by regulations as having potential for tax avoidance. Under this authority, proposed § 1.1274-4(g) specifies that a situation involving nonrecourse financing has the potential for tax avoidance.

If a debt instrument (the "new debt") is issued in exchange for an outstanding debt instrument (the "old debt"), the amount of discharge of indebtedness income realized by the debtor is measured by reference to the new debt's issue price, which is determined under section 1274 if neither the old debt nor the new debt is publicly traded. See section 108(e)(11). In addition, proposed § 1.1274-1(c) provides that if the issuer and holder modify a debt instrument, the modified instrument is treated as a new debt instrument given in consideration for the unmodified debt instrument.

The amendment to proposed § 1.1274-4(g)(2) clarifies that an exchange of a nonrecourse debt instrument for an outstanding debt instrument (or a modification of an outstanding debt instrument) is not a situation involving nonrecourse financing within the meaning of proposed § 1.1274-4(g). Thus, the fact that the new debt instrument (or the modified debt instrument) is nonrecourse will not cause the transaction to be classified as a potentially abusive situation.

The amendment to proposed § 1.1275-1(b)(1) clarifies that the OID rules apply only to the extent that an obligation represents valid indebtedness of the debtor under general principles of tax law.

Effective Dates

The amendment to proposed § 1.1274-4(g)(2) is proposed to be effective in accordance with the rules set forth in proposed § 1.1274-1(e) (generally, for

sales or exchanges of property occurring after December 31, 1984), and the amendment to proposed § 1275–1(b)(1) is proposed to be effective for debt instruments issued after July 1, 1982.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these amendments to the proposed regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these amendments will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before these amendments to the proposed regulations are adopted, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Internal Revenue Service by any person who also submits timely written comments. If a public hearing is held, prior notice of the time, place and date will be published in the Federal Register.

Drafting Information

The principal author of these proposed regulations is Robert N. Deitz, Office of the Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, other personnel from the Service and Treasury Department participated in their development.

List of Subjects in 26 CFR 1.1231–1 through 1.1297–3

Income taxes.

Proposed Amendments to the Regulations

Accordingly, the proposed amendments to 26 CFR, part 1, are as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 *** § 1.1274–4(g)(2)(iv) also issued under 26 U.S.C. 1274(b)(3).

Par. 2 A new paragraph (g)(2)(iv) is added to § 1274–4 as proposed at 51 FR 12073, April 8, 1986, to read as follows:

§ 1.1274–4 Debt instruments without adequate stated interest.

* * * * *

(g) * * *

(2) * * *

(iv) *Exchange or modification of nonrecourse financing.* For purposes of paragraph (g)(2)(ii)(B) of this section, the term "nonrecourse financing" does not include an exchange of nonrecourse debt instrument for an outstanding debt instrument or a modification of a nonrecourse debt instrument treated as an exchange under § 1274–1(c).

* * * * *

Par. 3. A new sentence is added to the end of § 1.1275–1(b)(1) as proposed at 51 FR 12083, April 8, 1986, to read as follows:

§ 1.1275–1 Definitions relating to treatment of debt instruments.

* * * * *

(b) *Debt instrument*—(1) * * * An instrument is not a debt instrument unless it constitutes valid indebtedness under general principles of Federal income tax law.

* * * * *

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 91–10663 Filed 5–6–91; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Ohio Permanent Regulatory Program; Evaluation of Revegetation Success

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

ACTION: Proposed rule; withdrawal of proposed rule revisions and Administrative Record information.

SUMMARY: OSM is announcing the withdrawal of proposed rule changes and Administrative Record information submitted by the State of Ohio in connection with Revised Program Amendment No. 25 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Seibel, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232, Telephone: (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, an 935.16.

II. Discussion of the Proposed Amendments

On December 15, 1989 (54 FR 51397), the Director of OSM announced his decision on Ohio's initial submission of Revised Program Amendment No. 25. In that decision, the Director found that Ohio had not demonstrated that its method of evaluating the success of revegetation is no less effective than the Federal rules at 30 CFR 816.116(a). The Director therefore continued the requirement at 30 CFR 935.16(f) that Ohio amend its program to include a statistically valid technique to evaluate revegetation success and provided additional time for Ohio to amend its program.

By letter dated December 12, 1989 (Administrative Record No. OH–1245), Ohio proposed a continuation of Revised Program Amendment Number 25. In this continuation, Ohio proposed to revise section 1501:13–9–15 of the Ohio Administrative Code (OAC) to include a statistically valid method of evaluating revegetation success in order to satisfy the OSM requirement at 30 CFR 935.16(f).

By letter dated March 23, 1990 (Administrative Record No. OH–1292), OSM notified Ohio that the proposed revisions to OAC section 1501:13–9–15 were less effective then the Federal

regulations at 30 CFR 816.116(a) because Ohio proposed to use statistically valid sampling methods only on "questionable" areas.

By letter dated July 24, 1990 (Administrative Record No. OH–1343), Ohio submitted further proposed revisions to OAC section 1501:13–9–15 which were intended to respond to OSM's comments of March 23, 1990. Ohio proposed to revise paragraph (I)(1) to specify that success of revegetation shall be measured using a statistically valid sampling technique with a ninety per cent statistical confidence interval (i.e., one-sided test with 0.10 alpha error). Ohio also proposed to revise paragraph (I)(3)(c)(iv) to delete the requirement that, for Phase III bond release, species planted must meet the standard that no single area with less than thirty percent cover shall exceed the lesser of three thousand square feet or 0.3 percent of the land affected.

On August 10, 1990, OSM published a notice in the **Federal Register** (55 FR 32643) announcing receipt of Ohio's further revisions to the continuation of Revised Program Amendment No. 25 and inviting public comment on its adequacy. The public comment period ended on September 10, 1990. The public hearing scheduled for September 4, 1990, was not held because no one requested an opportunity to testify.

By letter dated October 24, 1990 (Administrative Record No. OH–1398), OSM provided Ohio with its questions and comments about the additional revisions submitted on July 24, 1990. OSM requested that Ohio provide the details of Ohio's statistically valid sampling method for OSM's review and approval. OSM also requested that Ohio provide a justification for the proposed deletion of the vegetation standard limiting the size of areas with less than thirty percent vegetative cover.

By letter dated March 1, 1991 (Administrative Record No. OH–1471), Ohio submitted administrative record information in support of the revisions proposed on July 24, 1990 and intended to respond to OSM's comments of October 24, 1990. This administrative record information provided the details of Ohio's proposed statistically valid sampling method which was modeled on the Rennie-Farmer Stick Method. The additional information also proposed justification to support Ohio's proposed deletion of its vegetation standard limiting the size of areas with less than thirty percent vegetative cover.

On March 27, 1991, OSM published a notice in the **Federal Register** (56 FR 12691) announcing receipt of Ohio's March 1, 1991, Administrative Record information in support of Revised Program Amendment No. 25.

By letter dated March 21, 1991 (Administrative Record No. OH–1489), Ohio withdrew its March 1, 1991, submission of Administrative Record information providing the details of the statistically valid method of sampling revegetation success and justifying the deletion of the standard for areas with less than thirty percent vegetative cover. Ohio also withdrew the revisions to Ohio Administrative Code section 1501:13–9–15 paragraphs (I)(1) and (I)(3)(c)(iv) which the State proposed on July 24, 1990.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 25, 1991.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 91–10672 Filed 5–6–91; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD09–91–03]

Drawbridge Operation Regulations Cheboygan River, MI

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the Michigan Department of Transportation, the Coast Guard is considering a change to the operating regulations governing the US–23 highway bridge at mile 0.9 across the Cheboygan River in Cheboygan, Michigan, by extending the period of time when the bridge opens for the passage of recreational vessels on a regulated schedule. This proposal is being made because of a steady increase of both land and water traffic. This action should accommodate the needs of vehicular traffic and should still provide for the reasonable needs of navigation.

DATES: Comments must be received on or before June 21, 1991.

ADDRESSES: Comments should be mailed to Commander (obr), Ninth Coast Guard District, 1240 East Ninth Street, Cleveland, Ohio 44199–2060. Any comments received as a result of this proposed rule and other materials referenced in this notice will be available for inspection and copying at 1240 East Ninth Street, room 2083D, Cleveland, Ohio. Normal office hours are between 6:30 a.m. and 3 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Robert W. Bloom, Jr., Chief, Bridge Branch, telephone (216) 522–3993.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names, addresses, identify the bridge, and give reasons for concurrence with or any recommended changes in the proposal.

The Commander, Ninth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Fred H. Mieser, project officer, and Lieutenant Commander M. Eric Reeves, U.S. Coast Guard, project attorney.

Discussion of Proposed Regulations

Presently, the US–23 highway bridge opens on signal from March 16 through December 14; however, from May 15 through September 15, the draw need open only from three minutes before to three minutes after the quarter hour and three-quarters hour, from 7:18 a.m. to 6:12 p.m., Monday through Friday, and from 11:18 a.m. to 5:12 p.m. on Saturdays. From December 15 through March 15, the draw is not required to open for the passage of vessels unless notice is given at least 24 hours in advance of a vessel's time of intended passage through the draw. At all times, the draw is required to open on signal as soon as possible for the passage of public vessels of the United States, state or local government vessels used for public safety, commercial vessels, and vessels in distress.

The proposed operating regulations would expand the times for regulated openings during the period from May 16 through September 15. The draw would be required to open on signal from three minutes before to three minutes after the quarter hour and three-quarters hour

between the hours of 6 a.m. and 6 p.m., seven days a week. From 6 p.m. to 6 a.m., seven days a week, the draw would be required to open on signal for the passage of a vessel. The proposal does not change the requirement of the owner to open the draw as soon as possible at all times for the passage of public vessels of the United States, state or local government vessels used for public safety, commercial vessels, and vessels in distress, nor does it change the two periods of time from March 16 through May 15 and from September 16 through December 14, when the bridge is required to open on signal for the passage of vessels.

Statistics provided by the bridge owner show that there are between 300 and 500 cars per hour crossing over the bridge between the hours of 6 a.m. and 6 p.m. on Saturdays and Sundays. Delays that cause traffic tie-ups are caused when the bridge opens for the passage of masted recreational vessels on a random basis. There are times during the navigation season when the bridge opened for the passage of masted recreational vessels as many as six times within a forty-five minute period with as few as five minutes between some openings. Operating regulations identical to the ones in this proposal were issued on a temporary basis for the 1989 navigation season for evaluation purposes. The temporary regulations were published in the Ninth Coast Guard District *Local Notice to Mariners*, LNM–11/89, dated May 11, 1989, with a request for comments from the marine community. No comments were received.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulators and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation in unnecessary. The additional regulated periods will help to alleviate vehicle traffic tie-ups while still allowing vessel traffic to navigate the river. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism Implication Assessment

This action has been analyzed under the principles and criteria in Executive Order 12612, and it has been determined that this proposed regulations does not have sufficient federalism implications to warrant preparation of a federal assessment.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. Section 117.627 is revised to read as follows:

§ 117.627. Cheboygan River.

The draw of the US 23 bridge, mile 0.9 at Cheboygan, shall operate as follows:

(a) From March 16 through May 15 and from September 16 through December 14, the draw shall open on signal.

(b) From May 16 through September 15—

(1) Between the hours of 6 p.m. and 6 a.m., seven days a week, the draw shall open on signal.

(2) Between the hours of 6 a.m. and 6 p.m., seven days a week, the draw need open only from three minutes before to three minutes after the quarter and three-quarters hour.

(c) From December 15 through March 15, no bridgetender is required to be at the bridge and the draw need not open unless a request to open the draw is given to the Cheboygan Police Department at least 24 hours in advance of a vessel's time of intended passage through the draw.

(d) At all times, the draw shall open as soon as possible for the passage of public vessels of the United States, State or local vessels used for public safety, commercial vessels, and vessels in distress.

Dated: April 26, 1991.

G. A. Penington,

Rear Admiral, U.S. Coast Guard Commander, 9th Coast Guard District.

[FR Doc. 91–10753 Filed 5–6–91; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPTS–42123A/42134A; FRL 3893–8]

RIN 2070–AC27

Multi-Substance Rules for the Testing of Developmental/Reproductive Toxicity and Neurotoxicity; Proposed Test Rules; Extension of Comment Periods

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rules; extension of comment periods.

SUMMARY: EPA is extending the comment periods for the proposed multi-substance test rules for developmental/reproductive toxicity and neurotoxicity testing published in the **Federal Register** of March 4, 1991. The extension responds to a request by the Chemical Manufacturers Association (CMA) and others for additional time to comment on the rules and prepare oral testimony for a public meeting.

DATES: Written comments on either proposed rule must be submitted on or before June 3, 1991. Public meetings have been requested for both proposed rules and will be held no earlier than June 3, 1991.

ADDRESSES: Submit written comments, identified by the applicable document control number [OPTS–42123A or OPTS–42134A], in triplicate to: TSCA Public Docket Office (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, rm. NE–G004, 401 M St., SW., Washington, DC 20460. A public version of the administrative record supporting this action is available for inspection in rm. NE–G004 at the above address from 8 a.m. to noon, and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, rm. E–543B, 401 M St., SW., Washington, DC 20460, Phone: (202) 554–1404 TDD: (202) 554–0551

SUPPLEMENTARY INFORMATION: EPA issued proposed rules on the testing of substances for developmental/reproductive toxicity and neurotoxicity, simultaneously published in the **Federal Register** of March 4, 1991 (56 FR 9092 and 56 FR 9105). CMA and others have requested a 60–day extension of both comment periods and dates for public meetings. EPA has agreed to a 30–day extension that will extend the end of the comment period for both of the rules

from May 3, 1991, to June 3, 1991. Public meetings have been requested for both rules and will be held no earlier than the close of the comment period.

Authority: 15 U.S.C. 2603.
Dated: April 30, 1991.

Mark A. Greenwood,
Director, Office of Toxic Substances.

[FR Doc. 91-10801 Filed 5-6-91; 8:45 am]
BILLING CODE 6560-50-F

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 32

[CGD 90-071]

RIN 2115-AD69

Tank Level or Pressure Monitoring Devices

AGENCY: Coast Guard, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Coast Guard is soliciting comments relating to tank level or pressure monitoring devices on tank vessels carrying oil. Regulations to require installation of these devices on tank vessels are mandated by the Oil Pollution Act of 1990. The purpose of requiring these devices is to reduce the impact of oil spillage.

DATES: Comments must be received on or before October 4, 1991.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA-2/3406) (CGD 90-71), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Thomas J. Felleisen, Marine Technical and Hazardous Materials Division (202) 267-1217.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views or arguments. Persons submitting comments should include their name and address, identify this rulemaking (CGD 90-71) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Persons wanting acknowledgement of receipt of comments should enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments received during the period.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under "ADDRESSES." If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a date and place announced by a later notice in the Federal Register.

Drafting Information

The principal persons involved in drafting this rulemaking are Thomas J. Felleisen, Project Manager, and Nicholas E. Grasselli, Project Counsel, Office of Chief Counsel.

Background and Purpose

Regulations for tank level or pressure monitoring devices are required by section 4110 of Public Law 101-380, the Oil Pollution Act of 1990 (Act). The Act is based on H.R. 1465. During consideration of H.R. 1465, the Committee of the Whole House agreed to an amendment from the Committee on Public Works and Transportation which added, *inter alia*, the Act's requirements for tank level or pressure monitoring devices. The intent of requiring those devices was:

> "so that tanks and tankers and barges carrying oil would have a monitoring device similar to the monitoring device that we have in our automobiles to warn a crew when, in fact, there is oil that is leaking." (Congressional Record, November 9, 1989, p. H 8254.)

The amendment mandating tank level or pressure monitoring devices also included requirements for gauging of tank plating and overfill devices which are not contained within this rulemaking. The Coast Guard's implementation of those requirements will be undertaken separately.

As amended, H.R. 1465 passed the House of Representatives. Subsequently, the House and Senate agreed to a conference on H.R. 1465. The conferees made no major change to the tank level or pressure monitoring device requirement, and the President signed the Act on August 18, 1990.

This statutory requirement for tank level or pressure monitoring device regulations was mentioned next to a discussion of the slick from Tank Barge 565. During a thunderstorm in August 1988, the hull of that 37-year-old barge failed while being towed up the Chesapeake Bay. The barge was being towed on a 600-foot hawser when it nearly broke in two causing both of its ends to rise up out of the water and oil to spill. Because the storm reduced visibility to near zero, the towing vessel's crew was unaware of the spill until notified by a passing vessel as the storm was abating.

The usefulness of tank level or pressure monitoring devices is that they might inform the master of a leak so that appropriate action can be taken. The master's actions would include performing the notification required by 33 CFR 153.203 and navigating clear of areas with especially sensitive environments. Under some circumstances, the master might even be able to transfer enough cargo from the leaking tank into a tight tank, and thereby stop the outflow of oil on the basis of hydrostatic balance (cf. Congressional Record, November 9, 1989, pp. H 8265-6.). However, use of the devices will not normally prevent pollution: The vessel's crew cannot immediately stop a leak by repairing the vessel's hull because of the nature of those repair operations.

The Coast Guard interprets the term, "pressure devices," to mean devices which monitor the hydrostatic head above a tank bottm and which are conceptually modelled after devices used to remotely monitor ocean dumping from barges.

This advance notice of proposed rulemaking is intended to provide environmental groups, industry, and other interested parties the opportunity to comment on how to best implement the Act's requirements for tank level or pressure monitoring devices. The Coast Guard invites comments on all aspects of these requirements, and particularly on the following five topics.

1. Preliminary research suggested that existing level detectors are not sufficiently sensitive to indicate leakage before a large spill occurs. That conclusion was verified by consulting internationally recognized experts in the field of marine environmental protection and marine vessel design. The Coast Guard is contracting for a study to determine if there are existing devices which can indicate small rates of leakage from a vessel's tanks, or devices which could be modified to indicate small leakage rates. Has the Coast Guard overlooked any existing devices which have both a high sensitivity and a proven shipboard performance record while carrying liquids with the viscosity of gasoline or crude oil? (Manufacturers' claims of high sensit vity should be

thoroughly documented. Documentation should contain endorsements of vessel operators which specifically mention the sensitivity of the devices.)

2. As indicated above, minimizing the time between the start of a leak and the notification of the master is a requirement for limiting a pollution incident. It follows that tank level or pressure monitoring devices ought to be sensitive to small changes in tank levels. Therefore, the Coast Guard is asking the following questions: How sensitive should these devices be? What criteria should be used to quantify a permissible tank level change before a tank level or pressure monitoring device indicates leakage? How can the change in tank level be transmitted to a towboat from an unmanned barge, whether on a hawser or when shoved either singly or in a tow of two or more barges?

3. Certain technical obstacles hinder the devices' ability to sense small changes in level. These obstacles must be surmounted in order to meet the statutory requirement to specify design and operation standards for these devices. For example, one technical hurdle arises because a vessel's tanks and their contents move constantly and irregularly. Because of this sloshing within the tank, measurement of a fine change in tank level is difficult, so a leak can go undetected for a long time, and become a large spill, before a monitoring device can accurately detect a change in tank level or pressure. The Coast Guard is developing and evaluating a list of other factors which affect the performance of tank level or pressure monitoring device. For the purpose of compiling a complete list, the Coast Guard is asking: What other factors should be addressed in developing standards for these devices? How do these factors affect the performance of tank level or pressure monitoring devices?

4. While drafting the standards for tank level or pressure monitoring devices, the Coast Guard wants to encourage involvement of all interested parties. The participation of those parties will be used to the extent the Coast Guard deems practical. For other rulemakings, standing advisory committees and national standards organizations have assisted in drafting standards. Consequently, the Coast Guard asks: What forum should be used to develop standards for design or operation of tank level or pressure monitoring devices? What characteristics of these devices must be specified by regulations and what aspects can be left to the manufacturer or customer?

5. The Act's legislative history shows that tank level or pressure monitoring devices were intended to prevent tanks from leaking oil into the water. Carriage of oil within a double containment system seems sufficient to obviate any need for those devices in order to prevent pollution. The existence of redundant anti-pollution requirements may be explained in light of the legislative history. The amendment calling for tank level or pressure monitoring devices preceded one calling for double hulls. Ultimately, the Act will require that all new tank vessels have double containment systems. Hence the Coast Guard is asking: How is pollution prevention improved by the installation of tank level or pressure monitoring devices on tanks on double containment system vessels? Should regulations insist that tanks which cannot leak into the water be equipped with tank level or pressure monitoring devices?

Preliminary Regulatory Evaluation

At this early stage in the rulemaking process, the Coast Guard anticipates that its final rules will not be considered major under Executive Order 12291, or significant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979).

The primary impact of any rules resulting from this advance notice of proposed rulemaking would be on operators of tank vessels carrying oil. These vessel operators would be required to install additional equipment on their vessels in order to comply with the Act.

The benefit derived from installing tank level or pressure monitoring devices depends upon the standards for those devices which result from this rulemaking. At this time, the economic impact of any regulations which result from this rulemaking cannot be accurately determined. As a result of the comments received on this advance notice of proposed rulemaking and a concurrent study for the Coast Guard, a regulatory assessment will be made and placed in the public docket. If the Coast Guard learns that the financial impact of these regulations would be more than minimal, a detailed regulatory evaluation will be performed.

Environment

The Coast Guard will consider the environmental impact of the proposed rule which results from this advance notice of proposed rulemaking. Before a proposed rule for tank level or pressure monitoring devices is published, a document will be prepared in accordance with the Coast Guard publication, COMDTINST M16475.1B. That document, which will describe the anticipated environmental effects resulting from the proposed rulemaking, will be placed in the docket for inspection or copying at a location indicated in the proposed rule. The type of environmental document that will be prepared depends upon the type of devices which are ultimately proposed and their efficacy.

Small Entities

This advance notice of proposed rulemaking addresses standards for tank level or pressure monitoring devices on tanks of tank vessels carrying oil in accordance with 46 U.S.C. 3703. These standards will impact vessels currently in operation, some of which may be owned by small entities. Agencies may delay the completion of the initial regulatory analysis under section 608(a) of the Regulatory Flexibility Act (5 U.S.C. 601*et seq.*). To assist in its determination, the Coast Guard invites comments on the impact of these standards on small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and otherwise qualify as small business concerns under section 3 of the Small Business Act (15 U.S.C. 632).

Collection of Information

The Coast Guard anticipates that the rules being considered will result in no new collection of information requirements under the Paper Work Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this advance notice of proposed rulemaking in accordance with the principles and criteria contained in Executive Order 12612 and has determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Dated: April 26, 1991.

D.H. Whitten,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 91-10752 Filed 5-6-91; 8:45 am]

BILLING CODE 4910-14-M

Maritime Administration

46 CFR Part 309

[Docket No. R-137]

RIN 2133-AA89

Values for War Risk Insurance; Review of War Risk Insurance Valuation Methodology

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Maritime Administration (MARAD) is soliciting input from interested persons concerning the need for and content of a revised ship valuation methodology for the purpose of issuing war risk insurance. The existing methodology is established by a procedure that has been in effect since 1959.

DATES: All information and comments concerning the need for and content of a rulemaking must be received on or before July 8, 1991.

ADDRESSES: Send an original and two copies of comments to the Secretary, Maritime Administration, room 7300, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. To expedite review of the comments, the agency requests, but does not require, submission of an additional ten (10) copies. All comments will be made available for inspection during normal business hours at the above address. Commenters wishing MARAD to acknowledge receipt of comments should enclose a stamped, self-addressed envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Edmond J. Fitzgerald, Director, Office of Trade Analysis and Insurance, Maritime Administration, Washington, DC 20590, tel. (202) 366-2400.

SUPPLEMENTARY INFORMATION: In administering its War Risk Insurance Program (46 App. U.S.C. 1281 et seq.) MARAD's valuation system is implemented by a Ship Valuation Committee (Committee) authorized by a procedure dated October 12, 1959 (Procedure). Although the Procedure sets out a number of factors and criteria that could be utilized in determining values, the methodology that has been followed by the Committee over a long period of time is based on the guidance provided in section VI A 4 of the Procedure. The Procedure is published in its entirety as Exhibit A.

Subpart 3 of section VI B of the Procedure provides: "Independent valuations shall be obtained from three qualified commercial ship appraisers or brokers."

In subpart C.2 of section VI 4, it also provides:

> "The four valuations submitted by the three commercial appraisers and the Office of Ship Construction and any other data and/or information pertinent to the valuation of the ship shall be analyzed by the Committee. In the absence of special circumstances, the Committee shall adopt the commercial valuation nearest to the average of the four valuations. However, an exception shall be made where in the opinion of the Committee special circumstances exist so that using the valuation nearest to the average does not produce a proper value."

MARAD is considering whether to conduct a rulemaking with respect to its present methodology of determining vessel valuations for war risk insurance purposes. Specifically, MARAD is considering giving specific instructions to the commercial ship appraisers to consider factors other than sales of similar or comparable ships. Other factors that MARAD might require that the commercial ship appraisers consider would include:

(1) The term and rate of long term characters or other employment contracts;

(2) The depreciated replacement cost of the vessel; and

(3) Any unique characteristics of the vessel-specialty ship. (e.g., liquefied natural gas carrier).

Guidance might also be given to the commercial ship appraisers on how to handle vessels with different characteristics:

(1) Jones Act vessels with full domestic trading rights;

(2) Vessels built with construction-differential subsidy (CDS) with limited domestic trading rights;

(3) Vessels built with capital construction funds (CCF) with limited domestic trading rights; and

(4) Foreign-built vessels with no domestic trading rights.

In addition, should vessels built under section 615 of the Merchant Marine Act, 1936, as amended (Act), be valued differently than foreign-built vessels not constructed under that authority?

War Risk Insurance

War risk insurance that is available from the U.S. Government under title XII of the Act, has two basic categories:

(1) Insurance which is written on the basis of an indemnity from another Government agency that employs the vessels, usually the Department of Defense under section 1205 of the Act, and

(2) Insurance which is provided on the basis of the market risk, with the Department of Transportation collecting a premium from the assured and being fully liable for any losses. This second category is authorized under section 1202 of the Act. It is further subdivided into (a) a Standby Insurance Program, and (b) Direct Insurance, which had not been active since the early 1960s during the Cuban Missile Crisis, but was activated in response to the invasion of Kuwait by Iraq.

Indemnity Underwriting (Section 1205)

This type of underwriting is fairly straightforward. Under section 1205 of the Act the Secretary of Transportation (Secretary) is authorized to provide war risk insurance provided an agency, such as the Department of Defense, has sought and received approval from the President to procure such insurance from the Secretary. In addition, the Secretary is authorized to write the war risk insurance requested by the Secretary of Defense or such other agency, without the payment of a premium, provided the Secretary of Defense or other agency indemnifies the Secretary "against all losses covered by such insurance" and provides an indemnity agreement.

This type of insurance would be written under two major scenarios:

(1) Limited war or potential hostilities, such as Vietnam and the Desert Shield/Desert Storm situation; and

(2) Rapid reinforcement of Europe by sealift ships, with all vessels chartered to the U.S. Government being covered by Government war risk insurance under section 1205.

Shortly after the invasion of Kuwait, the Secretary of Defense requested that the Secretary of Transportation provide war risk insurance under section 1205. That request was approved by President Bush on August 20, 1990. A similar approval was granted by President Bush for section 1202 insurance on August 29, 1990 (Approval).

The authority granted by the August 20, 1990 Approval, authorized the Secretary to provide war risk insurance on behalf of the Secretary of Defense for vessels entering the Middle East region for so long as the Secretary of Defense determines such insurance to be necessary. In response, MARAD has issued war risk insurance policies at the request of the Department of Defense on a total of 325 vessels and is in the process of providing insurance on another 25 vessel requested by the Department of Defense. Under the authority granted by the August 29, 1990, Approval, four war risk insurance policies for premium were written.

Market Underwriting (Section 1202)

As indicated previously, this category of war risk insurance is subdivided into the Standby and Direct Programs.

Standby Program

Under 46 CFR part 308, the MARAD has set forth such an insurance program as authorized by title XII, including an interim war risk insurance binder program for all U.S.-flag vessels and certain U.S. citizen-owned or controlled vessels that have been deemed best suited to augment the U.S. merchant fleet in times of national emergency.

The interim binder program assures that entered vessels will be covered for war risks for a period of 30 days following the termination of commercial war risk insurance through operation of the automatic termination clauses of those policies. All commercial war risk insurance provides that the insurance will automatically terminate "upon and simultaneously with the occurrence of any hostile detonation of any nuclear weapon of war as defined above (any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter), wheresoever or whensoever such detonation may occur and whether or not the Vessel may be involved" or "upon and simultaneously with the outbreak or war, whether there be a declaration of war or not, among any of the following countries: United States of America; United Kingdom; France; the Union of Soviet Socialist Republics or the People's Republic of China."

The 30-day binder period has two purposes. First, it permits those vessels for which interim binders have been issued to proceed, wherever possible, to their destination with the knowledge that the vessel and its crew (if hull, protection and indemnity and second seamen's binders have been secured) will be insured against loss for a period of at least 30 days. Second, the 30-day period permits the military authorities to screen and requisition for title or for use those vessels deemed best fitted for augmenting the naval forces and enable those vessels to proceed to designated ports for takeover while still insured for war risks.

Premiums will be assessed on a mutual basis during the 30-day binder period. At the end of the binder period, a full war risk insurance program will be in place to provide such coverage for those vessels which are not requisitioned for title or for use and which the owners wish to continue to use in the waterborne commerce of the United States. Premiums during the full insurance program will be charged on an actuarial basis, with rates being changed from time to time as loss experience dictates. There are presently under war risk "Binders," 268 U.S.-flag vessels, 1,070 U.S.-flag barges, and 14 U.S.-owned foreign-flag vessels.

The values of vessels for which binders are issued under the section 1202 Standby program are determined by the methodology outlined in subpart 3 section VI 4 of the Procedure. These values are then published as of January 1 and July 1 of each year.

Direct Program

This methodology for establishing war risk values under section 1202 for the Standby program is different from that employed during Operation Desert Shield/Desert Storm for the Section 1205 program. During Operation Desert Shield/Desert Storm, the Department of Defense, through the Military Sealift Command (MSC) instructed MARAD to utilize the commercial insurance war risk hull value in effect on August 1, 1990, in setting the war risk values under section 1205. MARAD has insured over 350 vessels under section 1205 using that methodology. One of the questions that needs to be addressed in this ANPRM is whether the criteria for sections 1202 and 1205 of the Act should be identical, or at least similar.

The final area that MARAD is considering with respect to rulemaking deals with the proper insurance levels for war risk P&I and Second Seamen's insurance. Under the section 1205 program, MSC initially authorized Second Seamen's insurance at only $5,000 per crew member, which was modified to $50,000 and later to $150,000 per crew member. The war risk P&I level was initially as low as $3 million for some vessels, later modified to a minimum of $10 million and later modified to $45 million per vessel for the section 1205 program. The question to be addressed here is what are adequate levels of war risk P&I and Second Seamen's insurance for the risks involved.

In order to administer the war risk insurance program on a consistent and effective basis, it may be necessary to change the present methodology of determining vessel valuations for war risk insurance purposes. Therefore, any comments on the proposed change in methodology should specifically address any existing problems with the present methodology and a rationale for acceptance of any proposed criteria. Such comments will aid in the development of any criteria for valuations or any action deemed appropriate. MARAD is, therefore, requesting that any person, corporation or other entity having any interest or desiring to offer views and comments on MARAD's war risk valuation methodology submit them in writing. After reviewing the comments, MARAD will decide whether to propose a change in valuation methodology with respect to war risk insurance valuations.

The public is advised that MARAD is not, through the issuance of this ANPRM, committed to the initiation of a rulemaking on the subject. The purpose of this ANPRM is merely to solicit information and views from commenters that MARAD can use in evaluating its policy with respect to the placement of hull insurance, and in deciding whether to proceed with a rulemaking.

Administrative Notices

A. Executive Order 12291

The effect of this advance notice of proposed rulemaking does not meet the criteria specified in section 1(b) of Executive Order 12291 and is, therefore, not a major rule. It is not a significant rule under the regulatory procedures of the Department of Transportation (44 FR 11034). This advance notice of proposed rulemaking does not require a Regulatory Impact Analysis, or an environmental assessment or impact statement under the National Environmental Policy Act (42 FR 4321 et seq.). A preliminary regulatory evaluation will be prepared based on comments to this advance notice of rulemaking.

B. Executive Order 12612

This advance notice of proposed rulemaking has been analyzed in accordance with the principles and criteria in Executive Order 12612 and MARAD does not believe that this advance notice of proposed rulemaking would have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

C. Impact on Small Entities

This advance notice of proposed rulemaking will not, if a rule based on it is promulgated, have a significant economic impact on a substantial number of small entities under criteria of the Regulatory Flexibility Act.

Exhibit A

Maritime Administration

Procedure for Determining Values of Large Vessels for War Risk Insurance (Pursuant to General Order 82)

October 12, 1959.

I. *Purpose*

This statement prescribes the procedure to be followed within the Maritime Administration under General Order 82 to determine the values for war risk insurance purpose of ships of 1500 gross tons or more.

II. *Statutory Requirements*

A. Section 1209(a), Merchant Marine Act, 1936, as amended, requires determination of a value (exclusive of national defense features paid for by the Government) which shall not exceed the amount payable if the vessel had been requisitioned for title under section 902(a) of the Act, with appropriate adjustment in the case of a construction-subsidized vessel.

B. Comptroller General interpretations and opinions are contained in decisins B–107600 dated February 11, 1952, and March 31, 1955.

C. A pertinent Supreme Court decision is contained in *United States* v. *Cors*, 337 U.S. 325.

III. *General Principles*

A. Values shall be determined within the framework of pertinent Rules of the Advisory Board on Just Compensation, appointed on October 15, 1943, by the President by Executive Order 9387.

1. Rules pertinent to valuations for war risk hull insurance purposes:

a. Value U.S. flag vessels on the American market, not foreign.

b. If there are insufficient sales or hirings, consider construction cost, acquisition cost, improvements, replacement cost depreciated, earnings, physical condition, appraisals, etc, as judgment indicates.

c. Deduct enhancement due to the Government's need for taking, to previous takings or to prospective takings, but not enhancement due to a general rise in prices or earnings.

2. The Advisory Board was re-established on September 10, 1945, and issued Supplementary Rules for determining values of foreign-flag vessels requisitioned. The most pertinent is that, as applied to foreign vessels, value means value in the port where taking occurs with regard for any available foreign market value.

B. The values determined, therefore, shall be domestic market values, except when foreign-flag vessels are concerned.

IV. *Collection of Data*

A. An index of United States shipbuilding cost shall be maintained.

B. A record of bulk cargo and time charter rates shall be maintained.

C. A record of all available sales prices and sales particulars on ships of 1500 gross tons or more shall be maintained.

V. *Categories of Ships to Which General Order 82 and this Procedure Apply*

A. Under § 309.3(b) of General Order 82—standard types of war-built (World War II) vessels.

B. Under § 309.3(c) of General Order 82—other vessels built during or after 1938.

C. Under § 309.4 of General Order 82—vessels built prior to 1938.

D. § 309.2(b) of General Order 82 describes types of vessels excluded from the above provisions.

VI. *Procedure for Standard War-Built Ships*

A. The Office of Ship Construction shall estimate current values using the following data as applicable to each ship:

1. Recent sales prices and sales conditions of similar ships. The terms and rate of charter, credit and other terms of sale, and delivery date shall be evaluated under current market conditions and appropriate adjustments made to reflect the cash value of the ship with prompt charter free delivery.

2. If there have been no recent reported sales of similar ships, sales prices of comparable ships shall be used. These shall be adjusted for age, speed, tonnage, and other factors relevant to the specific ships involved, using one or more of the following:

a. Dry Cargo Ships
(1) Deadweight ton/mile/year factor
(2) Bale/mile/year factor
b. Tank Ships
(1) Deadweight ton/mile/year factor
(2) Barrel/mile/year factor
c. Passenger Ships
(1) Gross ton/mile/year factor
(2) Passenger/mile/year factor
d. Other factors to be considered include reefer space, cargo gear, number of cargo holds, number of decks, type of passenger vessel, special survey position, and special features for a specific service.

3. If non-current sales must be used, the sales prices shall be further adjusted to reflect the difference in market conditions at the time of valuation, based on the general trend of the market as ascertained from bulk cargo rates, time charter rates, shipbuilding cost, sales of other types of ships, and any other factors (e.g., general economic or international) that would influence the used ship market.

4. In cases where actual sales prices are inadequate to establish market values, reproduction cost of the ship shall be determined by utilizing the shipbuilding index and/or the current estimated building cost and depreciated by an appropriate depreciation rate to date of original construction adjusted for betterments. This shall be taken as evidence of what a willing buyer would pay to a willing seller for the ship and thus is evidence of market value. Consideration shall also be given to other factors available that would reflect on the price, e.g., age, physical characteristics, and availability or shortage of the particular type. One of the following depreciation methods shall be used as appropriate:

a. Straight-line—an equal amount per year for the estimated economic life of the ship. This method shall generally be used for comparatively new ships.

b. Martin scale—5% per year of the undepreciated balance. This method shall generally be used in depreciating older ships and in comparing similar ships of different ages.

B. Independent valuations shall be obtained from three qualified commercial ship appraisers or brokers.

C. Ship Valuation Committee.

1. This committee was established by Administrator's Order No. 113, amended, and is charged with the function of developing and recommending to the Administrator the market values of ships for various purposes. The committee is made up of the following members: Chief Office of Ship Construction—Chairman, Chief, Office of Government Aid, Chief, Office of Ship Operations, General Counsel, Comptroller.

2. The four valuations submitted by the three commercial appraisers and the Office of Ship Construction and any other data and/or information pertinent to the valuation of the ship shall be analyzed by the Committee. In the absence of special circumstances, the Committee shall adopt the commercial valuation nearest to the average of the four valuations. However, an exception shall be made where in the opinion of the Committee special circumstances exist so that using the valuation nearest to the average does not produce a proper value.

4. After thorough consideration of all of the above factors, the value considered by the majority of the Committee to represent the proper market value of the ships shall be determined.

VII. *Procedure for Other Vessels Built During or After 1938*

A. The Office of Ship Construction shall proceed as prescribed in VI.A.;

B. Independent valuations shall be obtained approximately every six months from one to three qualified commercial ship appraisers or brokers when one ship is typical of or comparable with a group of ships to be valued.

C. In the case of a specialized ship such independent appraisals shall be obtained for initial valuation and only once every two years thereafter.

D. The Ship Valuation Committee shall proceed as prescribed in VI.C. with appropriate modification for the handling of commercial appraisals consistent with VII. B. and C, above.

VIII. *Procedure for Vessels Built Prior to 1938.*

A. The procedure described in VI shall be followed except that valuations and independent appraisals shall be made on a deadweight ton basis in terms of a typical or average ship in each category (dry cargo, tank, or collier) built in 1937.

B. The Office of Ship Construction shall then

1. Determine the average age at which ships of each category have most recently been scrapped.

2. Determine the current value of ship scrap based on recent scrap sales or, if none, on the published heavy melting scrap index at Pittsburgh.

3. Pro-rate the values obtained under VIII.A downward for each additional year of age until scrap value is reached using the following formula:

$$\text{VIII.A.} \quad \frac{\text{Value minus Scrap Value}}{\text{Age of Specific Ship minus Age of Typical Ship}}$$

C. Adjustments under § 309.5 of General Order 82.

1. Refrigeration—Adjustment for refrigeration shall be based on the reproduction cost of such equipment depreciated in the same percentage as the reproduction cost of the entire ship is depreciated.

2. Speed—Over 11 knots and under 9 knots—Adjustment for excess or deficient speed shall be determined as follows:

a. The difference between the basic values per deadweight ton of a typical ship built in 1937 with a speed of 11 knots and a similar ship with a speed of 15 knots divided by 4 shall be added to the basic value for each knot over 11 knots or deducted from the basic value for each knot under 9 knots (fractions of knots to be prorated to the nearest ¼).

b. The basic value per deadweight ton for ships of 11 knots built in 1937 will be the value used in section 309–4(a). To determine the value of the 15-knot ship, that value will be increased by the ratio of the ton-mile-year factor of the 11-knot ship to the ton/mile/year factor of the 15-knot ship.

IX. *Prohibited Enhancement*

A. Comptroller General's letter B–107600 dated March 31, 1955, established a critical date of January 1, 1955, for the determination of prohibited enhancement. Each time war risk insurance values are prescribed in General Order 82 and amendments thereto this critical date is brought forward. Therefore, the Ship Valuation Committee shall determine whether there is prohibited enhancement, and the amount if any, from the date of the previous finding.

B. A finding of "no prohibited enhancement" shall be made if there have been no takings or requisitioning of vessels in the period under review and if there is no reasonable prospect of the condemnation of vessels. If there has been any requisitioning or if there is prospect thereof, a determination as to enhancement shall be made in terms of the types of vessels involved, location, and other circumstances.

X. *Final Determination.*

A. If any evidence of the value of the vessel in addition to that described in this statement comes to the attention of the Ship Valuation Committee or the Maritime Administrator, such weight shall be given to the evidence as is deemed appropriate by the Committee and the Administrator.

B. The proper valuation, exclusive of prohibited enhancement shall be submitted by the Ship Valuation Committee to the Maritime Administrator with an appropriate recommendation and sufficient data for his final determination.

C. The Maritime Administrator may authorize deviations from this procedure in special situations.

Dated: May 2, 1991.

By order of the Maritime Administrator.

James E. Saari,

Secretary.

[FR Doc. 91–10733 Filed 5–6–91; 8:45 am]

BILLING CODE 4910–81–M

DEPARTMENT OF DEFENSE

48 CFR Parts 215, 237 and 252

Department of Defense Federal Acquisition Regulation Supplement; Evaluation and Identification of Uncompensated Overtime

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule and request for comments.

SUMMARY: The Defense Acquisition Regulations (DAR) Council is proposing changes to the Defense FAR Supplement to amend parts 215, 237, and 252 to implement section 834 of the FY 1991 DoD Authorization Act (Pub. L. 101–510) which requires, to the maximum extent practicable, DoD to acquire services on the basis of the task to be performed rather than on the basis of the number of hours of services provided.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before June 6, 1991, to be considered in the formulation of the final rule. Please cite DAR Case 90–316 in all correspondence related to this issue.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, ATTN: Ms. Barbara Young, Procurement Analyst, DAR Council, OUSD(A)DP(DARS), room 3D139, The Pentagon, Washington, DC 20301–3062.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Young, Procurement Analyst, DAR Council, (703) 697–7266.

SUPPLEMENTARY INFORMATION:

A. Background

Section 834 of the FY 1991 DoD Authorization Act (Pub. L. 101–510) requires the Secretary of Defense to prescribe regulations to ensure, to the maximum extent practicable, that services are acquired on the basis of the task to be performed rather than on the basis of the number of hours of services provided. DFARS 215.605 is amended to require contracting officers to ensure that proposals, which include unrealistically low rates, whether based on uncompensated overtime or other techniques, are considered in a risk assessment and evaluated accordingly. DFARS 237.102 is amended by adding DoD policy that services should be acquired, to the maximum extent practicable, on the basis of the task to be performed rather than on a labor-hour basis. DFARS 237.170 is added to provide guidance and prescribe a new solicitation provision and contract clause on uncompensated overtime.

This proposed rule is based on and when finalized will amend the 1991 Edition of DFARS. The 1991 edition is scheduled for publication this summer.

B. Regulatory Flexibility Act

The proposed changes are expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 60 *et seq.* An initial Regulatory Flexibility Analysis has been performed. Comments from small entities concerning the affected DFARS section will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DAR Case 90–316 in all correspondence.

C. Paperwork Reduction Act

The proposed rule does impose reporting or recordkeeping requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.* A request for an information collection requirement will be submitted to OMB for review and approval.

List of Subjects in 48 CFR Parts 215, 237 and 252

Government procurement.

Nancy L. Ladd,

Colonel, USAF Director, Defense Acquisition Regulatory Council.

Therefore, it is proposed that 48 CFR parts 215, 237, and 252 which were proposed at 56 FR 6056 on February 14, 1991 would be further amended as follows:

1. The authority citation for 48 CFR parts 215, 237, and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

PART 215—CONTRACTING BY NEGOTIATION

2. Section 215.605 is added to read as follows:

§ 215.605 Evaluation Factors.

(c) In competitive acquisitions of services—

(1) Evaluation and award should be based, to the maximum extent practicable, on best overall value to the Government in terms of quality and other factors.

(2) The weighting of costs must be commensurate with the nature of the services being procured.

(3) It may be appropriate to award to the technically acceptable offeror with the lowest price when—

(i) Services being procured are of a routine or simple nature,

(ii) Highly skilled personnel are not required, and

(iii) The product to be delivered is clearly defined at the outset of the procurement.

(4) It may be appropriate to award to an offeror, based on technical and quality considerations, at other than the lowest price when—

(i) The effort being contracted for departs from clearly defined efforts, and

(ii) Highly skilled personnel are required.

(e) When acquiring services, contracting officers shall ensure that proposals which include unrealistically low rates, whether based on uncompensated overtime or other technique, which do not otherwise demonstrate cost realism, are considered in a risk assessment and evaluated accordingly. See 237.170 for requirements regarding uncompensated overtime.

PART 237—SERVICE CONTRACTING

3. Section 237.102 is added to read as follows:

237.102 Policy.

To the maximum extent practicable, acquire services on the basis of the task to be performed rather than on a labor-hour basis.

4. Sections 237.170 thru 237.170–2 are added to read as follows:

237.170 Uncompensated Overtime.

237.170–1 General.

(a) Uncompensated overtime means the hours worked in excess of the normal 8 hours per day or 40 hours per week by employees who are exempt from the Fair Labor Standards Act (FLSA), without additional compensation. The uncompensated overtime rate is the rate which results from multiplying the hourly rate calculated based on a 40-hour work week by 40 hours divided by the proposed hours per week.

(b) Solicitations shall require offerors to identify uncompensated overtime hours and the uncompensated overtime rate for FLSA-exempt personnel included in their proposals or subcontractor's proposals. If compensated overtime hours are accounted for in indirect rates, the contractor must also disclose that information separately.

(c) The contracting officer shall ensure that the use of uncompensated overtime will not degrade the level of technical expertise required to fulfill the government's needs.

237.170–2 Solicitation provision and contract clause.

(a) Use the provision at 252.237–XXXX, Identification of Uncompensated Overtime, in all solicitations for services estimated at $1,000,000 or more.

(b) Use a clause substantially the same as the clause at 252.237–XXXX, Uncompensated Overtime, in cost-type contracts for services estimated at $1,000,000 or more.

5. Sections 252.237–XXXX and 252.237–XXXX are added to read as follows:

252.237–XXXX Identification of Uncompensated Overtime.

As prescribed at 237.170–2(a), use the following provision:

Identification of Uncompensated Overtime (XXX 1991)

(a) Definitions.

As used in this provision—

Uncompensated overtime means the hours worked in excess of the normal 8 hours per day or 40 hours per week by employees who are exempt from the Fair Labor Standards Act, without additional compensation.

Uncompensated overtime rate is the rate which results from multiplying (1) the hourly rate calculated based on a 40 hour work week by (2) 40 hours divided by the proposed hours per week. For example, 45 hours proposed on a 40 hour work week basis at $20.00 would be converted to an uncompensated overtime hourly rate of $17.78 per hour. (40 divided by 45)×$20=$17.78.

(b) For any hours proposed against which an uncompensated overtime rate is applied, offerors shall identify in their proposals the hours for FLSA-exempt employees in excess of 8 hours per day or 40 hours per week, by labor category, and the uncompensated overtime rate per hour, whether at the prime or subcontract level, regardless of the method for accounting for those hours.

(c) Proposals which include unrealistically low rates, whether based on uncompensated overtime or other technique, which do not otherwise demonstrate cost realism, will be considered in a risk assessment and evaluated accordingly.

(d) If uncompensated overtime hours are accounted for in indirect rates, the contractor must also disclose that information separately.

(e) Offerors shall include a copy of their corporate policy addressing uncompensated overtime with their proposals.

(End of clause)

252.237–XXXX Uncompensated Overtime.

As prescribed at 237.170–2(b), use a clause substantially the same as the following:

Uncompensated Overtime (XXX 1991)

(a) The following proposed compensated hours and uncompensated overtime hours will be delivered under this contract:

Labor category	Compensated hours	Uncompensated overtime hours

(b) The contractor shall indicate on each invoice the total number of hours provided during the period covered by the invoice and shall separately identify compensated hours and uncompensated overtime hours by labor category. Contractors proposing uncompensated overtime agree that, while individual invoices may vary, final reconciliation of the uncompensated overtime hours will be predicted upon the ratio of compensated and uncompensated hours proposed and the hours delivered and accepted.

(c) The accounting system of the contractor proposing uncompensated overtime must be acceptable to the Defense Contract Audit Agency and the administrative contracting officer. All hours shall be burdened and in the baseline for the allocation of general and administrative and overhead expenses.

(End of clause)

[FR Doc. 91-10678 Filed 5-6-91; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB

Endangered and Threatened Wildlife and Plants; Public Hearings and Correction of Locations for Public Hearings on Proposed Determination of Critical Habitat for the Northern Spotted Owl (Strix occidentalis caurina)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearings and correction of locations for public hearings.

SUMMARY: The U.S. Fish and Wildlife Service (Service), under the Endangered Species Act (Act), gives notice that public hearings will be held on the proposed designation of critical habitat for the northern spotted owl (*Strix occidentalis caurina*), a threatened species. The hearings will allow all interested parties to submit oral or written comments on the proposal. In addition, the Service corrects the hearing locations as follows: from Arcata, California to Eureka, California and from Springfield, Oregon to Creswell, Oregon.

DATES: Hearing dates and locations are as follows: Monday, May 20, 1991, in Eureka, California; Wednesday, May 22, 1991, in Creswell, Oregon; Thursday, May 23, 1991, in Olympia, Washington; and Friday, May 24, 1991, in Portland, Oregon. Each public hearing will be held from 1:00 p.m. to 4:00 p.m. and from 6:00 p.m. to 9:00 p.m.

ADDRESSES: The public hearings will be held in the following locations: in Eureka, California at the Red Lion Inn, 1929 Fourth Street, Eureka, California; in Creswell, Oregon at the Emerald Valley Resort, 83293 Dale Kuni Road, Cresell, Oregon; in Olympia, Washington at the Washington Center for the Performing Arts, 512 South Washington Street, Olympia, Washington; and in Portland, Oregon at the Ramada Inn at the airport, 6221 Northeast 82 Avenue, Portland, Oregon. Written comments and materials may be submitted to the Assistant Regional Director for Fish and Wildlife Enhancement, 911 Northeast 11th Avenue, Portland, Oregon 97232-4181. Written submissions will be given the same weight and consideration as oral comments presented at the hearings.

FOR FURTHER INFORMATION CONTACT: Mr. Dale Hall, Assistant Regional Director for Fish and Wildlife Enhancement, Portland, Oregon (see ADDRESSES section), telephone (503) 231-6159 or FTS 429-6159.

SUPPLEMENTARY INFORMATION:

Background

The Service proposes to designate critical habitat for the northern spotted owl (*Strix occidentalis caurina*), a subspecies federally listed as threatened under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act). The northern spotted owl is a medium-sized owl with dark eyes, dark-to-chestnut brown coloring, whitish spots on the head and neck, and white mottling on the abdomen and breast. The current range of the northern spotted owl extends from southwestern British Columbia through western Washington, western Oregon, and the Coast Ranges area of northwestern California south to San Francisco Bay. Located primarily on Federal land, and to a lesser extent on State and private lands, this proposed critical habitat designation would result in additional protection requirements under section 7 of the Act with regard to activities that involve Federal agency action. Section 4 of the Endangered Species Act requires the Service to consider economic impacts prior to making a final decision on the size and scope of critical habitat. The Service solicits data and comments from the public on all aspects of this proposal, including additional data on the economic impacts of the designation and a valuation technique for determining benefits.

Section 4(b)(5)(E) of the Act requires that a public hearing be held, if requested, within 45 days of the publication of a proposed rule. Due to a large number of anticipated requests for public hearings, the Service has scheduled hearings for May 20, 1991, in Eureka, California; May 22, 1991, in Creswell, Oregon; May 23, 1991, in Olympia, Washington; and May 24, 1991, in Portland, Oregon.

Parties wishing to make statements for the record should bring a copy of their statements to the hearing. In anticipation of a large number of parties at each hearing, oral statements will be limited in length to 3 minutes. If time does not allow everyone who has registered to present an oral statement, written comments may be submitted to the Service at the above address. Written submissions will be given the same weight and consideration as oral comments presented at the hearings. The comment period closes on June 5, 1991.

Author

The primary author of this notice is Karla Kramer, U.S. Fish and Wildlife Service, Fish and Wildlife Enhancement, Portland, Oregon (see ADDRESSES section).

Authority

The authority for this section is the Endangered Species Act (16 U.S.C. 1361-1407; (16 U.S.C. 1531-1544; (16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.)

List of Subjects in 50 CFR Part 17

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

Dated: May 2, 1991.

Marvin L. Plenert,

Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 91-10871 Filed 5-6-91; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 56, No. 88
Tuesday, May 7, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Hamlin Elementary Critical Area Treatment RC&D Measure Plan, West Virginia

AGENCY: U.S. Department of Agriculture, 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 Hamlin Elementary Critical Area Treatment RC&D Measure Plan, Town of Hamlin, Lincoln County, West Virginia.

FOR FURTHER INFORMATION CONTACT: Rollin N. Swank, State Conservationist, Soil Conservation Service, 75 High Street, room 301, Morgantown, West Virginia 26505, Telephone (304) 291–4151.

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, Mr. Rollin N. Swank, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The purpose of the measure is critical area treatment. The measure is designed to stabilize by regarding, shaping, and revegetating approximately .5 acres of land that has an average erosion rate of 20 tons per acre per year. Conservation practices include heavy use area protection and critical area treatment.

The Notice of a Finding of No Significant Impact 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 Rollin N. Swank, State Conservationist.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Dated: April 24, 1991.

Rollin N. Swank,

State Conservationist.

[FR Doc. 91–10685 Filed 5–6–91; 8:45 am]

BILLING CODE 3410–18–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the West Virginia Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the West Virginia Advisory Committee to the Commission will convene at 9 a.m. and adjourn at 5 p.m. on Tuesday, May 21, 1991, at the Alumni Lounge, Marshall University, 400 Hall Greer Blvd., Huntington, West Virginia 25755. The Committee will hold a community forum on law enforcement policies and practices in the State, as they are directed toward racial, religious, and ethnic groups.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson, Marcia Pops (304/291–7254) or John I. Binkley, Director of the Eastern Regional Division (202/523–5564; TDD 202/376–8117). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Eastern Regional Division office at least five (5) working days before the scheduled date of the meeting.

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

Dated: at Washington, DC, May 2, 1991.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91–10719 Filed 5–6–91; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket No. 7103–01]

Motion To Modify Privileges: Werner Ernst Gregg

Summary

The March 28, 1991 recommended Decision of the Administrative Law Judge (ALJ), which is attached hereto, is hereby affirmed. Pursuant to the Decision, the request to modify the duration or quality of the sanctions is denied.

Order

On March 28, 1991, the ALJ entered his recommended Decision in the above-referenced matter. The Decision, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. Having examined the record and based on the facts in this case, I hereby affirm the Decision of the ALJ.

This constitutes final agency action in this matter.

Dated: April 29, 1991.

Dennis E. Kloske,

Under Secretary for Export Administration.

Decision on Motion to Modify Sanctions

In the matter of: Werner Ernst Gregg, Respondent, Docket No. 7103–01.

Appearance for Respondent: Kathleen C. Little, Esq., Howery & Simon, 1730 Pennsylvania Avenue, NW., Washington, DC 20006–4793.

Appearance for Agency: Louis K. Rothberg, Esq., Office of the Chief Counsel for Export Administration, U.S. Department of Commerce, Room H–3839, 14th & Constitution Ave., NW., Washington, DC 20230.

Preliminary Statement

This is part of a follow up administrative proceeding to a criminal conviction of the Arms Export Control Act, 22 U.S.C.A. 2778; the Export Administration Act of 1979, 50 U.S.C.A. app. 2410 and 18 U.S.C. 1001, 1002. Based upon that Criminal Conviction a summary denial of export privileges was issued in April 1987. As outlined in the Background which follows, the Order was subsequently modified. The principal party thereto now seeks a modification of the period of the sanctions with respect to him. The violations involved occurred between 1980 and 1984. They are set forth in the indictment which is part of this record.

Background

On April 9, 1987 an *Ex Parte* Order was issued by the office of Export Licensing denying Respondent and Gregg International export licenses until February 16, 1996. 52 Fed. Reg. 13279 (1987). The administrative denial was based on the conviction of three counts of violating Section 38 of the Arms Export Control Act, 22 U.S.C. 2778 (1982), and as provided in Section 11(h) of the Export Administration Act of 1979 and the implementing regulations. *U.S.* v. *Gregg*, 829 F.2d 1430 (8th Cir. 1987).[1]

On May 22, 1987, while an appeal from his criminal conviction was pending, an administrative petition was filed in this office contesting the scope and duration of the above denial order. The petition was supplemented by letter of June 22, 1987. An order issued from this Tribunal on June 29, 1987 scheduling a conference. That order expressly excepted consideration of Respondent Werner Gregg's status and reserved consideration of same until after his release from incarceration. Thereafter an informal conference was held in this office on July 1, 1987. A modification of the denial orders, removing Gregg International from its provision, dated July 18, 1987, (52 FR 26368 (1987)) was issued from the Office of Export Licensing, as a result of a letter of interpretation issued by the Office of Export Enforcement dated July 1, 1987 and further negotiation among the parties. The proceedings before this Tribunal were then stayed, reserving the right to reopen.

Notice of the intention to reopen and to modify the denial order wass submitted on January 19, 1990 which was supplemented with a Motion to Reopen and to Remove or Modify the Denial Order on May 24, 1990. Filings in opposition to the request and in support of the same have also been made. Since no facts are at issue, an evidentiary hearing was not held. The written submissions are considered to be sufficient for a disposition of the matter.

Jurisdiction

As the above Background and the decisions cited reflect, this case has a rather long history. At the time it was first appealed in May 1987 the regulations (Section 389.2(b) Appeal Procedures) provided for their submission to Room 6717 which was and had for some years been the Office of the Administrative Law Judge. Officials in that office had, in the past, acted in the capacity of presiding official, Hearing Commissioner, appeals adviser and/or Chairman, Appeals Board in Export License and Compliance Matters. License denial appeals had recently been returned to the Office of the Under Secretary because it had been determined that they did not constitute adjudications. The effect of the regulations reference cited above was reviewed with then Assistant Under Secretary in the Bureau of Export Administration. The instruction from that officer was that license appeals would continue to be processed directly under this office and that appeals dealing with "compliance" type cases would be referred to the Office of the Administrative Law Judge. This direction was provided in June of 1987 and was the basis for the initial consideration, reservation of jurisdiction and continued participation in this matter.

As a further basis, it is also noted, that the provisions of section 13 of the Export Administration Act providing for Administrative Law Judge participation, particularly in compliance proceedings, was not excluded from application in the adoption of Section 11(h) of the Export Administration Act.

It is not apparent that the statutory revisions were meant to remove the independent assessment provided under Section 13 as reflected in proceedings such as *Spawr*, 54 FR 43975 (1989).

Nor is a pattern of agency consistency discernable when different administrative units and appeal processes separately decide identical issues where there is no apparent basis for a distinction. The difference between the present summary adjudication of principals and the notice and opportunity for submission on behalf of related persons is a further puzzlement.[2]

The initial appeal to the Administrative Law Judge was not questioned by the Agency or Counsel as not within the existing regulatory scheme. The reservation of jurisdiction, based upon Respondent's incarceration, was an appropriate discretionary ruling and this current action is proper within that context. It affords this Respondent the procedural safeguards which he and others are entitled to, when the various provisions of the Act are considered in context.

The Motion To Modify Sanctions

The thrust of the present petition is to modify the Denial Order, as it affects Respondent, so as to allow Mr. Gregg to obtain employment with firms that engage in international sales. Representations on his behalf state that companies engaged in international trade are unwilling to hire him because of the uncertainty which his status as an employee would have and because of the stigma associated with the denial order. That is the normal and anticipated effect of the denial order.

In the initial request made in January 1990 it appeared that some interpretation or modifications would accomplish the desired result, allowing Respondent to function within a company engaged in domestic and international trade. However as the subsequent communications in the docket file reflect, companies engaged in such activities would understandably not be expected to make an employment offer with the restrictions and particularly the uncertainties involved.

Discussion

The basis for Respondent's current request to reopen and modify the period of denial is that its broad sweeping provision not only prevents Respondent from applying for or using export licenses for his own account, but it also appears to prohibit Mr. Gregg from accepting employment with any firm that engages in international sales. In addition, the stigma associated with the Denial Order severely limits his employment opportunities. All of the above is certainly true and is the intended result of a denial order.

The representation that Respondent would be subject to statutory debarment for only 3 years at the present time does

[1] Details of the transactions, charges, parties and other particulars are set forth in substantial detail in the above cited decision by the Court of Appeals. The District Court decision is reported at 629 F. Supp. 958 (W.D. Mo 1986) Copies of both Court decisions are in the Docket file.

[2] The continued outstanding pre-1985 Amendment Temporary Denial Orders initially issued for 30 days and yet outstanding after more than 5 years further illustrates the irregularity and lack of consistency of the administrative process.

not appear to be accurate. The applicable portion of the statute reads:

A license to export an item on the United States Munitions List may not be issued to a person—

(A) If that person, or any party to the export, has been convicted of violating a statute cited in paragraph (1), or

(B) If that person, or any party to the export, is at the time of the license review ineligible to receive export licenses (or other forms of authorization to export) from any agency of the United States Government,

except as may be determined on a case-by-case basis by the President, after consultation with the Secretary of the Treasury, after a thorough review of the circumstances surrounding the conviction or ineligibility to export and a finding by the President that appropriate steps have been taken to mitigate any law enforcement concerns.

22 U.S.C. 2778(9)(4))

The implementing regulations provides:

Debarment

* * * * *

(c) * * * It is the policy of the Department of States not to consider applications for licenses or requests for approvals involving any person who has been convicted of violating the Arms Export Control Act or conspiracy to violate that Act for a three year period following conviction * * *

22 CFR 127.6(c).

Such regulatory statements of policy do not appear to remove the lifetime case by case presidential exception requirement.

The sanctions imposed against Mr. Gregg are severe, but the criminal violations reported in the above judicial decisions reflect that the offenses were serious.[3] That the criminal convictions resulted in a sentence of 3 years custody, 5 years probation and a $200,000 fine reflects that the District and Appellate Court, whose findings are not subject to review here, saw these acts as serious criminal misconduct. The forfeiture of some $300,000 worth of equipment is also a matter reflection that seriousness.

I perceive that this Respondent, through the extraordinarily effective representation of counsel, has been the beneficiary of mitigation which I have never seen before, extending back over the 40 or so years of these Department of Commerce proceedings. Contrary to their Counsel's assertion, the administrative record and the above cited judicial decisions reflects that this individual, his wife, and the corporation, Gregg International, through which they operated, were a trinity of activity. Mr. and Mrs. Gregg were more than partners in marriage, they were partners in business, and partners in the activity which resulted in the violation considered here. Her admissions, reflected in the cited federal court decisions, and their relationship to Gregg International Inc., are clear on the record. That she was permitted to "cop a plea" to income tax violations does not alter the conclusion expressed in the judicial and administrative records.

In the *Bakely* proceeding *#264* from 1959 it was observed that liquidation of a company was not a reason for not including it in the proceeding. That case also discussed related party status where husband and wife owned shares in a corporation.

Those observations are not made to try these other two principals but rather to consider all of the facts and circumstances relating to the sanctions imposed as they relate to the Respondent's request here.

Review of the record and the judicial observations compel the conclusion that Mrs. Gregg and Gregg International were principals.

By the terms of the private agreement incorporated into the 1987 Modification which allowed the sale of the business, Mrs. Gregg was to receive $50,000 a year for 10 years; a $200,000 note at 9% amortized over 20 years. In addition, a $1,500 per month triple net lease was executed for the business premium. The fact that she also received 499 of the 1000 shares in the successor Polyserve Corporation is also significant. I cannot be blind to the fact that this was, and continues to be, income to the partnership in all of its aspects.

After lengthy and thoughtful consideration I see no good reason for modifying the outstanding sanctions here. This representative, who engaged in terrible misconduct, which has probably advanced apartheid, as well as death and the civil strife in South Africa, does not deserve any further amelioration of sanctions.

The request to modify the period or quality of the sanctions is *denied.*

So ordered.

Hugh J. Dolan,

Administrative Law Judge.

Dated: March 28, 1991.

To be considered in the 30-day statutory review process which is mandated by Section 13(c) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, U.S. Department of Commerce, 14th & Constitution Ave. NW., Room 3898B, Washington, DC 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR 788.23(b), 50 FR 53134 (1985). Pursuant to section 13(c)(3) of the Act, the order of the final order of the Under Secretary may be appealed to the U.S. Court of Appeals for the District of Columbia within 15 days of its issuance.

[FR Doc. 91-10724 Filed 5-6-91; 8:45 am]

BILLING CODE 3510-DT-M

[3] The prohibited shipments to South Africa included:

spec (1) Night Vision Goggles

(2) Radios

(3) Parts of a Tube Launcher, Optical Tracker (Tow) Missile System

(4) Air to Air Tacan

(7) Laser inertial Navigation System

(8) False Statements re Value of HF Transievers

(9) False Statements re Value of HF Transievers

Automated Manufacturing Equipment Technical Advisory Committee; Closed Meeting

A meeting of the Automated Manufacturing Equipment Technical Advisory Committee will be held May 29, 1991, 9:30 a.m. in the Herbert C. Hoover Building, room 1617F, 14th Street & Pennsylvania Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to automated manufacturing equipment and related technology.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 5, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of

Commerce, Washington, DC 20230. For further information, contact Lee Ann Carpenter on (202) 377–2583.

Dated: May 2, 1991.

Betty A. Ferrell,

Director, Technical Advisory Committee Staff.

[FR Doc. 91–10722 Filed 5–6–91; 8:45 am]

BILLING CODE 3510–DT–M

International Trade Administration

President's Export Council: Meeting of the President's Export Council

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The Trade Performance and Competitiveness Subcommittee of the President's Export Council is holding its first meeting to discuss organizational issues and ways the Council could encourage excellence in manufacturing and improved trade performance; recommend removal of regulatory and other constraints to productivity; identify domestic barriers to trade; suggest ways to encourage capital investment; discuss technology development issues; and explore ways the Council can encourage standards policies to compete in world markets. The President's Export Council was established on December 20, 1973, and reconstituted May 4, 1979, to advise the President on matters relating to U.S. export trade.

DATES: May 10, 1991, from 1:30 p.m.–4:30 p.m.

ADDRESS: Main Commerce Building, room 4830, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Seating is limited and will be on a first come, first serve basis.

FOR FURTHER INFORMATION CONTACT: Ms. Annette Richard, President's Export Council, room 3215, Washington, DC 20230.

Dated: April 29, 1991.

Wendy H. Smith,

Staff Director and Executive Secretary, President's Export Council.

[FR Doc. 91–10721 Filed 5–6–91; 8:45 am]

BILLING CODE 3510–DR–M

Foreign-Trade Zones Board

[Docket 23–91]

Proposed Foreign-Trade Zone—Austin, TX, Area Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Foreign Trade Zone of Central Texas, Inc. (a Texas not-for-profit corporation associated with the Cities and Chambers of Commerce of Austin, Georgetown, Round Rock and San Marcos, Texas), requesting authority to establish a general-purpose foreign-trade zone at sites in the Austin, Texas, area, in and adjacent to the Austin Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on April 26, 1991. The applicant is authorized to make the proposal under Senate Bill No. 691, Texas Revised Civil Statutes Article 1446.01.

The proposed foreign-trade zone would consist of 7 sites (1,391 acres) in Austin and four nearby communities. Site 1 (Austin Enterprise site, 317,43 acres) consists of seven parcels within the Austin Enterprise Zone Area, with 164.45 acres located along Highway 290 and 152.98 acres located in east Austin in the Ben White Boulevard-Montopolis Drive area. Site 2 (Balcones Research site, 50 acres) is located in north central Austin at the intersection of Burnett Road and Longhorn Boulevard. Site 3 (High Tech Corridor site, 393.52 acres) consists of five parcels located along I-35, approximately 14 miles north of downtown Austin (site straddles Austin-Round Rock city line). Site 4 (Cedar Park site, 122.30 acres) involves two parcels located in Cedar Park, eight miles northwest of Austin city limits, in Williamson County. Site 5 (Round Rock "SSC" site, 329.28 acres) consists of three parcels located along I-35 between Chandler Road and Westinghouse Road on the northern edge of the City of Round Rock. Site 6 (Georgetown site, 138.37 acres) is located along I-35 and U.S. 81, south of downtown Georgetown. Site 7 (San Marcos site, 40 acres) is located on the grounds of the San Marcos Municipal Airport in eastern San Marcos, adjacent to State Highway 21, on the Hays County/Caldwell County line.

The Foreign Trade Zone of Central Texas, Inc., has agreements with the owners of each parcel involved in the zone plan. The zone will be operated by Foreign Trade Zone of Central Texas Operators, a joint venture between Centre International, Inc., and Sekin Transport International, which is presently involved in the operation of Foreign-Trade Zones 39 and 168 in the Dallas/Fort Worth area.

The application contains evidence of the need for zone services in the Central Texas region. Several firms have indicated an interest in using zone procedures for warehousing/distribution of such items as telecommunications equipment, oil field equipment, computer products and maquila related goods. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of John J. Da Ponte, Jr. (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Paul Rimmer, Regional Director, Office of Inspection and Control, U.S. Customs Service, Southwest Region, 5850 San Felipe Street, Houston, Texas 77057–3012; and Colonel William D. Bown, District Engineer, U.S. Army Engineer District, Fort Worth, P.O. Box 17300, Ft. Worth, Texas 76102–0300.

As part of its investigation the examiners committee will hold a public hearing on May 30, 1991, at 9 a.m., 15th Floor Conference Room, First City Texas Bank Building, 823 Congress Avenue, Austin, Texas 78701.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377–2862) by May 23, 1991. Instead of an oral presentation written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary at any time from the date of this notice through July 1, 1991.

A copy of the application and accompanying exhibits will be available during this time for public inspection at the following locations.

Port Director's Office, U.S. Customs Service, 4005 Airport Boulevard, suite 2–150, Austin, Texas 78722.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716; 14th and Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: May 1, 1991.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91–10812 Filed 5–6–91; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[A-401-601]

Brass Sheet and Strip From Sweden; Amendment to Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of amendment to final results of antidumping duty administrative review.

SUMMARY: On November 27, 1990, the Department of Commerce published the final results of its administrative review of the antidumping duty order on brass sheet and strip from Sweden. The review covered one manufacturer/exporter of this merchandise, Outokumpu Rolled Products (Outokumpu), and the period August 22, 1986, through February 29, 1988. Based on the correction of certain clerical errors, we have changed the margin for Outokumpu from 5.64 percent to 3.39 percent.

EFFECTIVE DATE: May 7, 1991.

FOR FURTHER INFORMATION CONTACT: Barbara Victor or Laurie A. Lusksinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377–5253.

SUPPLEMENTARY INFORMATION:

Background

On November 27, 1990, the Department of Commerce published in the **Federal Register** (55 FR 49317) the final results of its administrative review of the antidumping duty order on brass sheet and strip from Sweden (52 FR 6998, March 6, 1987). After publication of our final results, petitioners and respondent alleged that clerical errors has been made regarding adjustment for fabrication costs, credit expenses for exporter's sales price (ESP) sales, and calculation of the ESP offset. We agree and have corrected these errors.

Amended Final Results of Review

As a result of our correction of clerical errors, we have determined that a weighted-average margin of 3.39 percent exists for Outokumpu.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margin shall be required for all shipments of Swedish brass sheet and strip. For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipment occurred after February 29, 1988, and who is unrelated to Outokumpu, a cash deposit of 3.39 percent shall be required. These deposit requirements are effective for all shipments of Swedish brass sheet and strip entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until the publication of the final results of the next administrative review.

This notice is published pursuant to 19 CFR 353.28.

Dated: May 1, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91–10814 Filed 5–6–91; 8:45 am]

BILLING CODE 3510–DS–M

[A-588-028]

Roller Chain, Other Than Bicycle From Japan; Partial Termination of Antidumping Duty Administrative Reviews

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

ACTION: Notice of partial termination of antidumping duty administrative reviews.

SUMMARY: On October 3, 1986 (51 FR 35385) and May 20, 1987 (52 FR 18937), the Department of Commerce initiated various administrative reviews of the antidumping finding on roller chain, other than bicycle, from Japan. The Department has now decided to terminate these reviews with regard to Nissan Motor Corp., Ltd., for the period April 1, 1985 through March 31, 1987.

EFFECTIVE DATE: May 7, 1991.

FOR FURTHER INFORMATION CONTACT: Lisa Boykin or Robert J. Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–5255.

SUPPLEMENTARY INFORMATION:

Background

On October 3, 1986 (51 FR 35385) and May 20, 1987 (52 FR 18937), the Department of Commerce (the Department) published notices of initiation of various administrative reviews of the antidumping finding on roller chain, other than bicycle, from Japan for the periods April 1, 1985 through March 31, 1986 and April 1, 1986 through March 31, 1987, respectively. In these initiations only Nissan Motor Corp., Ltd. requested administrative reviews of their entries. On May 17, 1988, Nissan withdrew their requests for review of both periods.

Although generally a request for review must be withdrawn not later than 90 days after the date of publication of the notice of initiation of the requested review, the time limit may be extended if the Secretary decides that it is reasonable to do so (19 CFR 353.22(a)(5)). The American Chain Association, the petitioner, has indicated by letter dated November 14, 1990, that it is not interested in the administrative reviews of Nissan for the 1985–1987 period. Nissan, which requested the 1985–86 and 1986–87 reviews on June 27, 1986, and April 30, 1987, respectively, to effect a revocation based on no sales at less than fair value, withdrew both requests on May 17, 1988. Nissan said that they have decided to terminate their efforts to obtain revocation. Given the acquiescence of both petitioner and respondent to the termination, the burden of completing these reviews on the respondent and the Department, and the fact that substantial work must be undertaken by all parties to complete the reviews, we deem it reasonable to extend the time limit in this case and allow withdrawal.

Accordingly, the Department has determined to terminate the reviews of Nissan Motor Corp., Ltd., for the period April 1, 1985 through March 31, 1987. This notice is in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and § 353.22(a)(5) of the Department's regulations (19 CFR 353.22 (a)(5)).

Dated: May 2, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91–10813 Filed 5–6–91; 8:45 am]

BILLING CODE 3510–DS–M

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Amended Export Trade Certificate of Review, Application No. 90–A0006.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to the Forging Industry

Association (FIA) on April 30, 1991. The original Certificate was issued on July 9, 1990. Notice of issuance of the Certificate was published in the Federal Register on July 13, 1990 (55 FR 28801).

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202–377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing title III are found at 15 CFR part 325 (1990) (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the Federal Register. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

FIA's Export Trade Certificate of Review has been amended to:

1. Add the following ten companies as "Members" within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): Airfoil Forging Textron Inc., Cleveland, OH (controlling entity: Textron Inc., Providence, RI); Anchor-Harvey Components, Inc.; Freeport IL; Cleveland Hardware & Forging Co., Cleveland, OH (including Fox Valley Forge Div., Aurora, IL and Green Bay Drop Forge Div., Green Bay, WI); Cornell Forge Company, Chicago, IL; Coulter Steel & Forge Co., Emeryville, CA; Eaton Corporation, Cleveland, OH (Eaton Corporation Forge Division, Marion, OH); Endicott Forging & Manufacturing Co., Endicott, NY; Erie Forge & Steel, Inc., Erie, PA; Park Ohio Industries, Inc., Cleveland, OH (controlling entity: Park-Ohio Industries, Inc., Cleveland, OH); and Viking Metallurgical Corporation, Verdi, NV (controlling entity: Quanex Corp., Houston, TX); and

2. Replace Ajax Rolled Ring Company, Wayne, MI, with Ovako Ajax, Inc., because Ovako Ajax, Inc. has acquired Ajax Rolled Ring Company since the original certificate was issued; and

3. Replace two members (The American Welding & Manufacturing Company and Standard Steel) with Freedom Forge Corporation, Burnham, PA, of which the two members are divisions (American Welding & Manufacturing Division and Standard Steel Division, respectively).

A copy of the amended Certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: April 30, 1991.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 91–10717 Filed 5–6–91; 8:45 am]

BILLING CODE 3510–DR–M

President's Export Council: Meeting of the President's Export Council

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of a closed meeting.

SUMMARY: The Executive Committee Subcommittee of the President's Export Council is holding a meeting to discuss organizational issues, plans for the upcoming full Council meeting to be held in Boston, May 24, issues relating to export promotion, competitiveness, export controls and foreign market development, and other sensitive matters properly classified under Executive Order 12356. The President's Export Council was established on December 20, 1973, and reconstituted May 4, 1979, to advise the President on matters relating to U.S. export trade.

A Notice of Determination to close meetings or portions of meetings of the Council to the public on the basis of 5 U.S.C. 552b(c)(1) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, 202–377–4217.

DATES: May 7, 1991, from 2:30 p.m.–4:30 p.m.

ADDRESSES: Main Commerce Building, room 6029, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Ms. Annette Richard, President's Export Council, room 3215, Washington, DC 20230.

Dated: April 30, 1991.

Wendy H. Smith,

Staff Director and Executive Secretary, President's Export Council.

[FR Doc. 91–10716 Filed 5–6–91; 8:45 am]

BILLING CODE 3510–DR–M

National Institute of Standards and Technology

[Docket No. 910481–1081]

Continuation of Fire Research Grants Program

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice; announcing continuation of fire research grants program.

SUMMARY: The purpose of this notice is to inform potential applicants that the Fire Research Program, National Institute of Standards and Technology, is continuing its Fire Research Grants Program. Previous notices of this research grant program were published in the Federal Register on February 20, 1981 (46 FR 13250), November 19, 1984 (49 FR 45636), May 6, 1986 (51 FR 16730), June 5, 1987 (52 FR 21342), June 6, 1988 (53 FR 20675), and May 31, 1989 (54 FR 23243). (Catalog of Federal Domestic Assistance No. 11.609 "Measurement and Engineering Research and Standards.")

CLOSING DATE FOR APPLICATIONS: Proposals must be received no later than close of business May 31, 1991.

ADDRESSES: Applicants must submit one signed original plus two (2) copies of the proposal along with the Grant Application, Standard Form 424 (Rev. 4–88) as referenced under the provisions of OMB Circular A–110 to: Building and Fire Research Laboratory, Attn: Sonya Cherry, National Institute of Standards and Technology, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Sonya Cherry, (301) 975–6854.

ELIGIBILITY: Academic institutions, Non-Federal agencies, and independent and industrial laboratories.

SUPPLEMENTARY INFORMATION: As authorized by section 16 of the Act of March 3, 1901, as amended (15 U.S.C. 278f), the NIST Building and Fire Research Laboratory conducts directly and through grants and cooperative agreements, a basic and applied fire research program. This program has been in existence for several years at approximately $1.5 million per fiscal year. No increase in funds has taken place. The Fire Research Program is

limited to innovative ideas which are generated by the proposal writer on what research to carry out and how to carry it out. Proposals will be considered for research projects from one to three years. When a proposal for a multi-year grant is approved, funding will be provided for only the first year of the program. Funding for the remaining years of the program is contingent on satisfactory performance and subject to the availability of funds, but no liability shall be assumed by the government because of non-renewal or non-extension of a grant. All grant proposals submitted must be in accordance with the programs and objectives listed below.

Program Objectives

(a) *Combustion and Flammability:* Develop the methods to measure and predict the gas and condensed phase combustion processes, and their relationships to determining the flammability properties of materials.

(b) *Fire Dynamics:* Develop the methods to measure and predict the fire processes of materials and products in realistic environments.

(c) *Building Fire Physics:* Develop techniques of smoke transport phenomena due to building fires, and to extend the capabilities of fire protection analysis.

(d) *Smoke Dynamics Research:* Produce scientifically sound principles, metrology, data, and predictive methods for the formation/evolution of smoke components in flames for use in understanding and predicting general fire phenomena.

(e) *Fire Hazard Analysis:* Develop analytical systems for the quantitatives prediction of the threats to people and property from fires and the means to assess the accuracy of those methods.

(f) *Fire Suppression Research:* Develop understanding of fire extinguishment processes and derive techniques to measure and predict the performance of fire protection and fire fighting systems.

Proposal Review Process

All proposals are assigned to the appropriate group leader of the six programs listed above for review, including external peer review, and recommendations on funding. Both technical value of the proposal and the relationship of the work proposed to the needs of the specific program are taken into consideration in the group leader's recommendation to the Deputy Director. Applicants should allow up to 60 days processing time. Proposals are evaluated for technical merit by at least three professionals from NIST, the Building and Fires Research Laboratory, or technical expert from other interested government agencies and in the case of new proposals, experts from the fire research community at large.

Evaluation Criteria

Rationality	0–20
Qualification of Technical Personnel	0–20
Resources Availability	0–20
Technical Merit of Contribution	0–40

The results of these evaluations are transmitted to the Deputy Director of the appropriate research unit in the Building and Fire Research Laboratory who prepares an analysis of comments and makes a recommendation. The Building and Fire Research Laboratory head will also consider compatibility with programmatic goals and financial feasibility.

Paperwork Reduction Act

The SF–424 mentioned in this notice is subject to the requirements of the Paperwork Reduction Act and it has been approved by OMB under Control No. 0348–0006.

Additional Requirements

All applicants must submit a certification ensuring that employees of the applicant are prohibited from engaging in the unlawful manufacturing, distribution, dispensing, possession or use of a controlled substance at the work site, as required by the regulations implementing the Drug-Free Workplace of 1988, 15 CFR part 26, subpart F.

Applicants are subject to the Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26.

Section 319 of the Public Law 101–121 generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. A "Certification for Contracts, Grants, Loans, and Cooperative Agreements" and the SF–LLL, "Disclosure of Lobbying Activities" (if applicable), is required to be submitted with any application.

NIST has determined that Executive Order 12372 is not applicable to the Fire Research Grants Program.

Applicants are reminded that a false statement may be grounds for denial or termination of funds and grounds for possible punishment by fine or imprisonment. Any recipient/applicant who has an outstanding indebtedness to the Department of Commerce will not receive a new award until the debt is paid or arrangements satisfactory to the Department are made to pay the debt.

Awards under the Fire Research Program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to financial assistance awards.

Dated: May 1, 1991.

John Lyons,

Director.

FR Doc. 91–10676 Filed 5–6–91; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

Marine Mammals: Issuance of Permit; The Department of Veterinary Pathology, Armed Forces Institute of Pathology (P473)

On March 6, 1991, notice was published in the **Federal Register** (56 FR 9347) that an application had been filed by the Department of Veterinary Pathology, Armed Forces Institute of Pathology, Department of Defense, Washington, DC 20306–6000, for a permit to obtain, import, export, and re-import specimen materials from all species of the Orders Pinnipedia (except walrus) and Cetacea for scientific purposes.

Notice is hereby given that on April 30, 1991, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this Permit as required by the Endangered Species Act of 1973 was based on a finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of this Permit; (3) and is consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with and is subject to parts 220–222 of title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The Permit is available for review in the following offices:

By appointment: Office of Protected Resources, Permit Division, National Marine Fisheries Service, 1335 East-West Hwy., Silver Spring, Maryland 200910 (301/427–2289);

Director, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, Massachusetts 01930 (508) 281–9300;

Director, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, Juneau, Alaska 90731 (907/586–7221);
Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE., BIN C17500, Seattle, Washington 78115 (209/526–6150);
Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415 (213/514–6169).
Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, Florida 33702 (813/893–3141).

Dated: April 30, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91–10736 Filed 5–6–91; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Issuance of Permit; NMFS, Southwest Fisheries Science Center (P77#48)

On March 7, 1991, notice was published in the **Federal Register** (56 FR 9688) that an application had been filed by the Southwest Fisheries Science Center, National Marine Fisheries Service, La Jolla, CA 92038, to take 35 Hawaiian monk seals (*Monachus schauinslandi*) for scientific research.

Notice is hereby given that on April 30, 1991 as authorized by the provisions of the Marine Mammal Protection Act (16 U.S.C. 1361–1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this Permit as required by the Endangered Species Act of 1973 was based on a finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of this Permit; (3) and is consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with and is subject to parts 220–222 of title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The application, Permit and supporting documentation are available for review by interested persons in the following offices:

By appointment: Permit Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, Suite 7324, Silver Spring, Maryland 20910 (301/427–2289); and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415 (213/514–6196).

Dated: April 30, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR. Doc. 91–10735 Filed 5–6–91; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of a Negotiated Settlement for Certain Cotton Textile Products Produced or Manufactured in Bangladesh

May 1, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: May 8, 1991.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–5810. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

During recent consultations between the Governments of the United States and the People's Republic of Bangladesh, agreement was reached, effected by a Memorandum of Understanding (MOU) dated April 5, 1991, to establish specific limits for cotton shop towels in Category 369–S for three consecutive one-year periods, beginning February 1, 1991 and extending through January 31, 1994. In the letter published below, the Chairman, Committee for the Implementation of Textile Agreements, directs the Commissioner of Customs to establish a limit for Category 369–S for the first agreement period.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 55 FR 47904, published on November 16, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 1, 1991.

Commissioner of Customs,

Department of the Treasury,

Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 18, 1991 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the People's Republic of Bangladesh and exported during the twelve-month period which began on February 1, 1991 and extends through January 31, 1992.

Effective on May 8, 1991, you are directed, pursuant to a Memorandum of Understanding dated April 5, 1991, to establish a limit of 1,010,640 kilograms [1] for cotton textile products in Category 369–S [2] for the period February 1, 1991 through January 31, 1992.

Textile products in Category 369–S, which have been exported to the United States prior to February 1, 1991 shall not be subject to this directive.

Textile products in Category 369–S which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

Import charges will be provided as data become available.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of 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 91–10746; Filed 5–6–91; 8:45 am]

BILLING CODE 3510–DR–F–

[1] The limit has not been adjusted to account for any imports exported after January 31, 1991.

[2] Category 369–S: only HTS number 6307.10.2005.

Announcement of Import Restraint Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Czech and Slovak Federal Republic

May 2, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: June 1, 1991.

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; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Textile Agreement, effected by exchange of notes dated June 25 and July 22, 1986, as amended and extended, between the Governments of the United States and the Czech and Slovak Federal Republic establishes limits for the period June 1, 1991 through May 31, 1992.

The limit for Category 443 has been adjusted for carryforward used during the previous agreement period.

A copy of the current bilateral agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State (202) 647–3889.

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 55 FR 50756, published on December 10, 1990).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 2, 1991.

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 Textile Agreement, effected by exchange of notes dated June 25 and July 22, 1986, as amended and extended, between the Governments of the United States and the Czech and Slovak Federal Republic; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 1, 1991, entry into the United States for consumption and withdrawal from warehouse for consumption of wool and man-made fiber textile products in the following categories, produced or manufactured in Czechoslovakia and exported during the twelve-month period beginning on June 1, 1991 and extending through May 31, 1992, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
410/624	969,095 square meters.
433	8,161 dozen.
434	12,037 dozen.
435	7,447 dozen.
443	54,707 numbers.

Imports charged to these category limits for the period June 1, 1990 through May 31, 1991 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the current bilateral agreement between the Governments of the United States and the Czech and Slovak Federal Republic.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of 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 91–10748; Filed 5–6–91; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in India

May 2, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: May 9, 1991.

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) 343–6494. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for Categories 335, 336/636, 342 and 347/348 are being increased for special allowance provided for handmade products under the current agreement.

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 55 FR 50756, published on December 10, 1990). Also see 55 FR 51144, published on December 12, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 2, 1991.

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 December 7, 1990 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile

products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1991 and extends through December 31, 1991.

Effective on May 9, 1991, you are directed to increase the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and India:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
335	219,613 dozen.
336/636	553,824 dozen.
342	503,728 dozen.
347/348	360,820 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1990.

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 91-10747; Filed 5-6-91; 8:45 am]

BILLING CODE 3510-DR-F-

Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in the Philippines

April 29, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: May 6, 1991.

FOR FURTHER INFORMATION CONTACT: Kim-Bang Nguyen, 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) 535-6735. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for Categories 338/339 and 347/348 in Group I are being increased by application of swing.

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 55 FR 50756, published on December 10, 1990). Also see 55 FR 51946, published on December 18, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 29, 1991.

Commissioner of Customs,

Department of the Treasury,

Washington, DC 20229.

Dear Commissioner:

This directive amends, but does not cancel, the directive of December 12, 1990 issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 1991 and extends through December 31, 1991.

Effective on May 6, 1991, you are directed to amend the December 12, 1990 directive to increase the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the Philippines:

Category	Adjusted twelve-month limit [1]
Sublevels in Group I	
338/339	1,485,936 dozen.
347/348	979,389 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1990.

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 91-10449; Filed 5-6-91; 8:45 am]

BILLING CODE 3510-DR-F

Amendment to Visa and Exempt Certification Requirements for Certain Textiles and Textile Products Produced or Manufactured in Peru

May 1, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending visa and exempt certification requirements.

EFFECTIVE DATE: May 8, 1991.

FOR FURTHER INFORMATION CONTACT: J. Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the United States and Peru reached agreement, effected by exchange of letters dated February 19 and 28, 1991, to amend the existing export visa and certification requirements.

Shipments of textiles and textile products for the personal use of the importer and not for resale, regardless of value, and properly marked commercial sample shipments, valued at US$250 or less, are no longer subject to visa and quota requirements and shall not be charged to existing agreement levels.

See **Federal Register** notice 51 FR 4409, published on February 4, 1986.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 1, 1991.

Commissioner of Customs,

Department of the Treasury,

Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive of January 30, 1986 from the Chairman, Committee for the Implementation of Textile Agreements, which directs you to prohibit entry into the United States for consumption or withdrawal from warehouse for consumption of certain cotton, wool and man-made fiber textile products, produced or manufactured in Peru for which the Government of Peru has not issued an appropriate export visa or exempt certification.

Effective on May 8, 1991, the directive of January 30, 1986 is amended to reflect that shipments of textiles and textile products from Peru which are imported for the personal use of the importer and not for resale, regardless of value, and properly marked commercial sample shipments valued at US$250 or less, do not require a visa or exempt certification for entry and shall not be charged to the existing agreement levels.

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 91-10743; Filed 5-6-91; 8:45 am]

BILLING CODE 3510-DR-F-

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Defense Technology Strategies

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Defense Technology Strategies will meet in closed session on May 28–29, June 27–28, and July 22–23, 1991 at the Crystal Gateway 4, suite 1100, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will build upon results of the 1990 Summer Study. In particular, given the events of the past year, especially the experience gained from operations Desert Shield and Desert Storm, the Board will satisfy itself of the continuing validity of its 1990 framework or make changes as appropriate. The Board will select some of its key 1990 recommendations and propose ways to implement them with emphasis on prototyping and technology insertion.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92-463, as amended (5 U.S.C. app. II, (1988)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly these meetings will be closed to the public.

Dated: May 1, 1991.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-10684 Filed 5-6-91; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Privacy Act of 1974; Amend Record Systems

AGENCY: Department of the Army, DOD.

ACTION: Amend Privacy Act record systems.

SUMMARY: The Department of the Army proposes to amend eight record systems in its inventory of record system notices subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

DATES: The proposed action will be effective without further notice on June 6, 1991, unless comments are received that would result in a contrary determination.

ADDRESSES: Contact Ms. Alma Lopez, Office of Systems Management Branch (ASOP-MP), Ft. Huachuca, AZ 85613-5000.

SUPPLEMENTARY INFORMATION: The Department of the Army record system notices subject to the Privacy Act of 1974, as amended, have been published in the Federal Register as follows:

50 FR 22090, May 29, 1985 (DoD Compilation, changes follow)
51 FR 23576, Jun. 30, 1986
51 FR 30900, Aug. 29, 1986
51 FR 40479, Nov. 7, 1986
51 FR 44361, Dec. 9, 1986
52 FR 11847, Apr. 13, 1987
52 FR 18798, May 19, 1987
52 FR 25905, Jul. 9, 1987
52 FR 32329, Aug. 27, 1987
52 FR 43932, Nov. 17, 1987
53 FR 12971, Apr. 20, 1988
53 FR 16575, May 10, 1988
53 FR 21509, Jun. 8, 1988
53 FR 28247, Jul. 27, 1988
53 FR 28249, Jul. 27, 1988
53 FR 28430, Jul. 28, 1988
53 FR 34576, Sep. 7, 1988
53 FR 49586, Dec. 8, 1988
53 FR 51580, Dec. 22, 1988
54 FR 10034, Mar. 9, 1989
54 FR 11790, Mar. 22, 1989
54 FR 14835, Apr. 13, 1989
54 FR 46965, Nov. 8, 1989
54 FR 50268, Dec. 5, 1989
55 FR 13935, Apr. 13, 1990
55 FR 21897, May 30, 1990 (Army Address Directory)
55 FR 41743, Oct. 15, 1990
55 FR 46707, Nov. 6, 1990
55 FR 46708, Nov. 6, 1990
55 FR 48671, Nov. 21, 1990 (Army System ID Changes)
55 FR 48678, Nov. 21, 1990

The amendments are not within the purview of subsection (r) of the Privacy Act, as amended, (5 U.S.C. 552a) which requires the submission of an altered system report. The specific changes to the record systems are set forth below followed by the record system notices published in their entirety, as amended.

Dated: May 1, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0305.11DAPE

System name:

Cadet Account System (52 FR 18809, May 19, 1987).

Changes:

Delete System Identification Number and replace with "A0037-104-3USMA".

* * * * *

Purpose(s):

Delete entry and replace with "To compute debits and credits posted against cadet account balances. Debits include charges to the cadet account for uniforms, textbooks, computers and related supplies, academic supplies, various fees, etc.; credits include advance pay, monthly deposits from payroll, scholarships, initial deposits, interest accumulated on cadet account balances, and individual deposits. All funds are held in trust by the Treasurer, USMA."

* * * * *

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the U.S. Military Academy, Treasurer, West Point, NY 10996-1783.

Individual should provide full name, cadet account number, Social Security Number, graduating class year, current address and telephone number, and signature."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the U.S. Military Academy, Treasurer, West Point, NY 10996-1783.

Individual should provide full name, cadet account number, Social Security Number, graduating class year, current address and telephone number, and signature.

Personal visits may be made to the Academy; individual must provide acceptable identification such as valid driver's license and information that can be verified with his/her payroll."

* * * * *

A0037-104-3USMA

SYSTEM NAME:

USMA Cadet Account System.

SYSTEM LOCATION:

U.S. Military Academy, West Point, NY 10996–1783.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the U.S. Corps of Cadets, U.S. Military Academy.

CATEGORIES OF RECORDS IN THE SYSTEM:

Monthly deposit listings of Corps of Cadets members showing entitlements and activity pertaining to funds held in trust by the USMA Treasurer.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 205, 4340, and 4350; Title 6, General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies; and Executive Order 9397.

PURPOSE(S):

To compute debits and credits posted against cadet account balances. Debits include charges to the cadet account for uniforms, textbooks, computers and related supplies, academic supplies, various fees, etc.; credits include advance pay, monthly deposits from payroll, scholarships, initial deposits, interest accumulated on cadet account balances, and individual deposits. All funds are held in trust by the Treasurer, USMA.

Treasurer, USMA to record and provide taxable interest data to individual cadet and Internal Revenue Service; to control and monitor charges/credits to the cadet account; and to record deposits to the cadet account and to maintain records of financial institutions for direct deposit purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices apply to this record system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to consumer agencies as defined in the Fair Credits Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape and compuer printouts; paper records in file folders.

RETRIEVABILITY:

By Cadet account number.

SAFEGUARDS:

Records are maintained in buildings which are secured and patrolled and are accessible only to personnel who have need therefor in the performance of official duties. Automated master data and back-up files are further protected by assignment of passwords.

RETENTION AND DISPOSAL:

Duplicate account statements are retained locally for 1 year after cadets graduation and then destroyed by shredding. Information in automated media is retained for 1 to 3 months, except that annual interest tapes are retained for 1 year before being erased.

SYSTEM MANAGER(S) AND ADDRESS:

Superintendent, U.S. Military Academy, West Point, NY 10996–1783.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the U.S. Military Academy, Treasurer, West Point, NY 10996–1783.

Individual should provide full name, cadet account number, Social Security Number, graduating class year, current address and telephone number, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the U.S. Military Academy, Treasurer, West Point, NY 10996–1783.

Individual should provide full name, cadet account number, Social Security Number, graduating class year, current address and telephone number, and signature.

Personal visits may be made to the Treasurer, U.S. Military Academy; individual must provide acceptable identification such as valid driver's licsense and information that can be verified with his/her payroll.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations by the individual concerned are published in Department of the Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORTIES:

From the individual, Department of Army, Department of the Treasurer, financial institutions and insurance companies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0351–17aUSMA

System name:

U.S. Military Academy Candidate Files (55 FR 48617, Nov. 21, 1991).

Changes:

* * * * *

Retention and dispoal:

Delete "A0709.03DAPE" in line four and replace with "A0351–17bUSMA".

* * * * *

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquires to the Superintendent, U.S. Military Academy, West Point, NY 10996–1797.

Individual should provide the full name, current address, year of application, source of nomination, and signature."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Superintendant, U.S. Military Academy, West Point, NY 10996–1797.

Individual should provide the full name, current address, year of application, source of nomination, and signature."

* * * * *

Exemptions claimed for the system:

Delete entry and replace with "parts of this system may be exempt under 5 U.S.C. 552a(k)(5), (6), or (7) as applicable.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager."

A0351–17aUSMA

SYSTEM NAME

U.S. Military Academy Candidate Files.

SYSTEM LOCATION:

U.S. Military Academy, West Point, NY 10996–1797.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Potential and actual candidates for entrance to the U.S. Military Academy for the current and previous 2 years.

CATEGORIES OF RECORDS IN THE SYSTEM:

Entrance examination results, Personal Data Record (DD Form 1867), Candidate Activities Report (DD Form 1868), Prospective Candidate Questionnaire (DD Form 1908), Interview Sheets, School Official's Evaluation (DD Form 1869), Employer's Evaluation of Candidate, Scholastic Aptitude Examination scores, American College Testing Program Scores, High School and College/University transcripts, physical aptitude examination, Candidate Summary Sheets, Nominating Letter, naturalization or adoption papers, birth certificate, Oath 5–50, special orders, all correspondence to/form/and about candidate.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 4331, 4332, and 4334.

PURPOSE(S):

To evaluate a candidate's academic, leadership, and physical aptitude potential for the U.S. Military Academy, to conduct management studies of admissions criteria and procedures.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to Members of Congress to assist them in nominating candidates.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are maintained in file folder. Selected items of information reside on computer discs.

RETRIEVABILITY:

By candidate's surname; by source of nomination, current status, and special categories.

SAFEGUARDS:

All information is stored in locked rooms with restricted access to authorized personnel. Automated data are further protected by a user identification and password convention.

RETENTION AND DISPOSAL:

For accepted candidates, records become part of the Cadet's Personnel Record, described by System of Records A0351–17bUSMA—a permanent record. Records on candidates not accepted for admission are destroyed either on expiration of age eligibility or after 3 years, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Superintendent, U.S. Military Academy, West Point, NY 10996–1797.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Superintendent, U.S. Military Academy, West Point, NY 10996–1797.

Individual should provide the full name, current address, year of application, source of nomination, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Superintendent, U.S. Military Academy, West Point, NY 10996–1797.

Individual should provide the full name, current address, year of application, source of nomination, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations by the individual concerned are published in Department of the Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, Members of Congress, school transcripts, evaluations from former employer(s), medical reports/physical examination results, U.S. Military Academy faculty evaluations, American College Testing Service, Educational Testing Service, and similar relevant documents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt under 5 U.S.C. 552a(k)(5), (6), or (7) as applicable.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager.

A0351–17bUSMA

System name:

U.S. Military Academy Personnel Cadet Records (55 FR 48671, Nov 21, 1991).

Changes:

* * * * *

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Superintendent, U.S. Military Academy, West Point, NY 10996–5000.

Individual should provide the full name, and signature."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Superintendent, U.S. Military Academy, West Point, NY 10996–5000.

Individual should provide the full name, and signature."

* * * * *

Exemptions claimed for the system:

Delete entry and replace with "Parts of this system may be exempt under 5 U.S.C. 552a(k) (5), (6), or (7) as applicable.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b) (1), (2), and (3), (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager."

A0351–17bUSMA

SYSTEM NAME:

U.S. Military Academy Personnel Cadet Records.

SYSTEM LOCATION:

U.S. Military Academy, West Point, NY 10996–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former Cadets of the U.S. Military Academy.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application and evaluations of cadet for admission; letters of recommendation/endorsement; academic achievements, awards, honors, grades, and transcripts; performance counseling; health, physical aptitude and abilities and athletic accomplishments, peer appraisals; supervisory assessments; suitability data, including honor code infractions and disposition. Basic biographical and historical summary of cadet's tenure at the U.S. Military Academy is maintained

on cards in the Archives Office or on microfiche in the Cadet Records Section.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013 and 4334, and Executive Order 9397.

PURPOSE(S):

To record the cadet's appointment to the Academy, his/her scholastic and athletic achievements, performance, motivation, discipline, final standing, and potential as a military career officer.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Academic transcripts may be provided to educational institutions.

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual records in file folders; microfilm.

RETRIEVABILITY:

By surname or Social Security Number.

SAFEGUARDS:

Access to records is limited to persons having official need therefor; records are maintained in secure file cabinets and/or in locked rooms.

RETENTION AND DISPOSAL:

Records of Cadets who are commissioned become part of his/her Official Military Personnel File. Records of individuals not commissioned are destroyed after 5 years. Microfilmed records maintained by USMA are permanent; hard copy files are destroyed after being microfilmed.

SYSTEM MANAGER(S) AND ADDRESS:

Superintendent, U.S. Military Academy, West Point, NY 10996–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Superintendent, U.S. Military Academy, West Point, NY 10996–5000.

Individual should provide the full name, Social Security Number, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Superintendent, U.S. Military Academy, West Point, NY 10996–5000.

Individual should provide the full name, Social Security Number, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations by the individual concerned are published in Department of the Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, his/her sponsors, peer evaluations, grades and reports of U.S. Military Academy academic and physical education department heads, transcripts from other educational institutions, medical examination/assessments, supervisory counseling/performance reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt under 5 U.S.C. 552a(k) (5), (6), or (7) as applicable.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b) (1), (2), and (3), (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager.

A0614–100/200USMA

System name:

Evaluation/Assignment of Academic Instructors (50 FR 48671, Nov. 21, 1991).

Changes:

* * * * *

Categories of individuals covered by the system:

Delete "Officers" and replace with "Military personnel".

* * * * *

Purpose(s):

Delete "officers" and replace with "military personnel".

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entry and replace with "The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices apply to this record system."

* * * * *

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Superintendent, U.S. Military Academy, ATTN: Dean of the Academic Board, West Point, NY 10996–5000.

Individual should provide the full name, Social Security Number, sufficient details to locate records, current mailing address, and signature."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Superintendent, U.S. Military Academy, ATTN: Dean of the Academic Board, West Point, NY 10996–5000.

Individual should provide the full name, Social Security Number, sufficient details to locate records, current mailing address, and signature."

* * * * *

A0614–100/200USMA

SYSTEM NAME:

Evaluation/Assignment of Academic Instructors.

SYSTEM LOCATION:

U.S. Military Academy, West Point, NY 10996–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military personnel who apply or serve as instructors on the Staff and Faculty, U.S. Military Academy.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's application consisting of name, grade, Social Security Number, branch of service, educational and military qualifications, teaching experience, transcript of academic grades, results of Graduate Record Examination (GRE), and Admission Test for Graduate Study in Business (ATGSB); evaluation and assessment notes; correspondence between the U.S. Military Academy and U.S. Army Military Personnel Center; assignment order application/acceptance for advanced civil schooling, and related documents.

AUTHORITY FOR MAINTAIN OF THE SYSTEM:

10 U.S.C. 4334 and Executive Order 9397.

PURPOSE(S):

Used by the U.S. Military Academy Dean of the Academic Board and

department heads to assess qualifications and suitability of military personnel as academic instructors for assignment to the Staff and Faculty, U.S. Military Academy.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file cabinets and computer discs in vault.

RETRIEVABILITY:

By individual's name and Social Security Number.

SAFEGUARDS:

Information is available only to designated persons having official need therefor.

RETENTION AND DISPOSAL:

Records of individuals not selected for assignment or unavailable are destroyed when no longer required; records for those assigned to U.S. Military Academy are retained for 25 years; then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Superintendent, U.S. Military Academy, West Point, NY 10996–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Superintendent, U.S. Military Academy, ATTN: Dean of the Academic Board, West Point, NY 10996–5000.

Individual should provide the full name, Social Security Number, sufficient details to locate records, current mailing address, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Superintendent, U.S. Military Academy, ATTN: Dean of the Academic Board, West Point, NY 10996–5000.

Individual should provide the full name, Social Security Number, sufficient details to locate records, current mailing address, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations by the individual concerned are published in Department of the Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; official Army or other Service records; academic institutions; letters of endorsement from third parties; U.S. Army Military Personnel Center; similar relevant documents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0037–1DAPE

System name:

Resource Management and Cost Accounting Files (55 FR 48617, Nov 21, 1991).

Changes:

* * * * *

System location:

Delete last sentence and replace with "Official mailing addresses are published as an appendix to the Army's compilation of record sysems notices."

* * * * *

Authority for maintenance of the system:

Add at the end "and Executive Order 9397."

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entry and replace with "The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices apply to this record system."

* * * * *

System manager(s) and address:

Delete entry and replace with "The Deputy Chief of Staff for Personnel, Headquarters, Department of the Army, The Pentagon, Wasington, DC 20310–4000."

* * * * *

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themsleves is contained in this record system should address written inquiries to the agency head/installation commander of the Department of the Army organization to which they are (or were) assigned/employed. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

Individual should provide the full name, Social Security Number, office believed to have the record, time frame, and other information verifiable from the record itself."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the agency head/installation commander of the Department of the Army organization to which they are (or were) assigned/employed. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

Individual should provide the full name, Social Security Number, office believed to have the record, time frame, and other information verifiable from the record itself."

* * * * *

A0037–1DAPE

SYSTEM NAME:

Resource Management and Cost Accounting Files.

SYSTEM LOCATION:

Headquarters, Department of the Army, Staff and field operating agencies, major commands, installations and activities. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military and civilian personnel assigned/attached to the organization.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records by individual of man-hours applied to the accomplishment of assigned tasks or projects. Specific data elements include name, Social Security Number/employee identification number, organizational element, military rank/civilian grade, job title, clearance status, rating data, regular/overtime wage rates, regular/overtime hours worked, hours of leave taken, record of official travel, project code, accounting code and cost data, workload units accomplished, file references and related information and records control data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 3013; and Executive Order 9397.

PURPOSE(S):

To project manpower and monetary requirements; to allocate available resources to specific projects; to schedule workload and assess progress; to project future organizational milestones; to evaluate individual performance and equipment efficiency; to set standards and methods; to record and control personnel and equipment utilization; to document inventories; to interpolate training needed by unit or individual; to monitor use of overtime; to control and monitor obligations and expenditures of government funds; to provide audit trail; to generate statistical reports of workload and production levels and other trends within the organization; and to provide other accounting and monitoring reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Punch cards, magnetic tapes, cards, discs, microform, microfiche, computer printouts and paper records.

RETRIEVABILITY:

By individual's name, Social Security Number, or employee identification number. Information may also be accessed by a non-personal data element such as project code, cost accounting code, or organizational element.

SAFEGUARDS:

Automated systems employ computer hardware/software safeguard features. All records are maintained in controlled areas, within buildings/rooms which are secured during non-duty hours. Personal information is accessed only by individuals who have need therefor in their official duties.

RETENTION AND DISPOSAL:

Magnetic media are erased after 1 year; manual records are destroyed after 1 year by pulping, tearing, or shredding.

SYSTEM MANAGER(S) AND ADDRESS:

The Deputy Chief of Staff for Personnel, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310–4000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this records system should address written inquiries to the agency head/installation commander of the Department of the Army organization to which they are (or were) assigned/employed. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

Individual should provide the full name, Social Security Number, office believed to have the record, time frame, and other information verifiable from the record itself.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the agency head/installation commander of the Department of the Army organization to which they are (or were) assigned/employed. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

Individual should provide the full name, Social Security Number, office believed to have the record, time frame, and other information verifiable from the record itself.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations by the individual concerned are published in Department of the Army Regulaton 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Employee time cards; organization manpower rosters; individual personnel and training records; production records; travel orders; unit inventory records; and other relevant Army documents and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0351DAPE

System name:

Army Training Requirements and Resources System (ATRRS) (55 FR 48671, Nov. 21, 1991).

Changes:

* * * * *

System location:

Delete entry and replace with "Deputy Chief of Staff for Personnel, Headquarters, Department of the Army, The Pentagon, Washington, DC; U.S. Total Army Personnel Command; major commands; Army Reserve Personnel Center; National Guard Bureau; Schools and Army Training Centers worldwide. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices."

* * * * *

Authority for maintenance of the system:

Delete the comma after "3013" and replace with "and Executive Order 9397."

Purpose(s):

Delete entry and replace with "The Army Training Requirements and Resources System (ATRRS) supports institutional training missions. The system integrates training requirements for individuals by using resources and class schedules developed by the training establishment. Reservations are made by name for training in Army formal schools and other service schools. The system maintains other service schools' input and course completion statistics".

In paragraph three replace "The Personnel Training Management System (PTMS)" with "The Student Trainee Management System—Enlisted (STRAMS–E) * * *"

In paragraph four replace "The U.S. Army Military Personnel Center" with "U.S. Total Army Personnel Command".

* * * * *

Safeguards:

Place quotations before and after "Official Use Only".

* * * * *

System manager and address:

Delete entry and replace with "Deputy Chief of Staff for Personnel, Headquarters, Department of the Army, DAPE–MPT, Washington, DC 20310–0300."

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the local commander. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

Individual should provide the full name, Social Security Number, and military status or other information verifiable from the record itself."

Record access procedure:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this

records system should address written inquiries to the local commander. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

Individual should provide the full name, Social Security Number, and military status or other information verifiable from the record itself.

* * * * *

A0351DAPE

SYSTEM NAME:

Army Training Requirements and Resources System (ATRRS).

SYSTEM LOCATION:

Deputy Chief of Staff for Personnel, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310–0300; U.S. Total Army Personnel Command; major commands; Army Reserve Personnel Center; National Guard Bureau; Schools and Army Training Centers worldwide. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the Army, Navy, Air Force, Marine Corps, Reserve Officers' Training Corps students, Department of Defense (DoD) civilian employees and approved foreign military personnel attending a course of instruction conducted under the auspices of a DOD School.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records pertaining to course administrative data, course scope and prerequisites, course training requirements, course equipment, personnel and facilities constraints, requirements for instructors, class schedules, class quotas, prioritized order of merit list for input into Noncommissioned Officers Education System (NCOES) training, by name reservations, limited individual personnel data, and course input and completion data by name/Social Security Number. Data related to an individual is as follows:

Training course completion data and reason codes for attrition are maintained for an individual, as well as training seat reservations.

Limited personnel data is maintained on an individual as long as the individual has a valid reservation for training or is currently in the training base.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 3013 and 4301; and Executive Order 9397.

PURPOSE(S):

The Army Training Requirements and Resources System (ATRRS) supports institutional training missions. The system integrates training requirements for individuals by using resources and class schedules developed by the training establishment. Reservations are made by name for training in Army formal schools and other service schools. The system maintains other service schools' input and course completion statistics.

The Mobilization Training Planning System (MTPS) provides resource information to training personnel managers in a mobilization environment.

The Student Trainee Management System—Enlisted (STRAMS–E) monitors the flow of trainees through the accession, training, and distribution process.

The Quota Management System provides the U.S. Total Army Personnel Command, Reserve Component counterparts, and other agencies that have an input to training missions, the vehicle to manage individuals and training course seats/quotas through the training base of officers and skill level 2 and above.

The ATRRS system provides the Army's Schools and Training Centers with the data necessary to manage resources associated with the instructors, equipment, and facilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The "Blanket Routine Uses' set forth at the beginning of the Army's compilation of record system notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Magnetic tapes, computer discs, and limited paper printouts.

RETRIEVABILITY:

Retrieved by Social Security Number.

SAFEGUARDS:

An employee badge and visitor registration system is in effect. Hard copy records which contain data by Social Security Number are maintained with an "Official Use Only" cover. Access to the ATRRS system is limited to those who have a need to access the data as determined by the System Manager.

RETENTION AND DISPOSAL:

Records are kept on the individual only as long as the individual is actively seeking training.

SYSTEM MANAGER AND ADDRESS:

Deputy Chief of Staff for Personnel, Headquarters, Department of the Army, ATTN: DAPE–MPT, Washington, DC 20310–0300.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the local commander. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

Individual should provide the full name, Social Security Number, and military status or other information verifiable from the record itself.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves is contained in this record system should address written inquiries to the local commander. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

Individual should provide the full name, Social Security Number, and military status or other information verifiable from the record itself.

CONTESTING RECORD PROCEDURES:

The Army rules for accessing records, contesting contents, and appealing initial agency determinations by the individual concerned are published in Department of the Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is received from DoD staff, field installations, and automated systems.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0600–85DAPE

System name:

Alcohol and Drug Abuse Rehabilitation Files (55 FR 48671, Nov 21, 1991.

Changes:

* * * * *

System location:

In the second paragraph delete entry and replace with "U.S. Total Army Personnel Command, Personnel Information Systems Command (ASQNI–ASM), 200 Stovall Street, Alexandria, VA 22332–0310."

* * * * *

Categories of records in the system:

In the first paragraph replace "client" and "client's" with "patient" and "patient's", respectively.

In the second paragraph replace "client" with "patient". After "intake records" add "(DA Form 4465)"; after "progress reports" add "(DA Form 4466)".

Authority for maintenance of the system:

Add to the end of the entry "and Executive Order 9397."

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete the first paragraph and replace with "The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices do not apply."

Add a new second subparagraph "The Patient Administration Division at the Medical Treatment Facility with jurisdiction is responsible for the release of medical information to malpractice insurers in the event of malpractice litigation or prospect thereof".

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

In the first paragraph replace "Paper records" to "ADAPCP Outpatient Medical Records" and add "or Outpatient Treatment Records" to the last sentence.

In the second paragraph replace the first sentence with "Patient intake and progress reports are stored in locked file cabinets". Delete "US Army Drug and Alcohol Technical Activity, Falls Church, VA 22041" and replace with "U.S. Army Drug and Alcohol Operations Agency (USADAOA), 4501 Ford Avenue, suite 320, Alexandria, VA 22302–1435". Delete "US Army Safety Center, Ft Rucker" and replace with "U.S. Army Personnel Information Systems Command, Alexandria, VA.

Retrievability:

In the second paragraph replace "client's" and with "patient's".

Safeguards:

In the second paragraph delete "Primary records on magnetic disk are stored with the computer in a secure vault separated from the primary computer." Replace "U.S. Army Safety Center" with U.S. Army Personnel Information Systems Command".

System manager(s) and address:

Replace "(DAPE–HRA)" with "(DAPE–PMH–H)".

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to either the commander of the medical center/medical department activity where treatment was obtained or the U.S. Army Drug and Alcohol Operations Agency (USADAOA), 4501 Ford Avenue, suite 320, Alexandria, VA 22302–1435. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

Individual should provide the full name, Social Security Number, date of birth, current address and telephone number, and signature".

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to either the commander of the medical center/medical department activity where treatment was obtained or the U.S. Army Drug and Alcohol Operations Agency (USADAOA), 4501 Fort Avenue, suite 320, Alexandria, VA 22302–1435. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

Individual should provide the full name, Social Security Number, date of birth, current address and telephone number, and signature".

A0600–85DAPE

SYSTEM NAME:

Alcohol and Drug Abuse Rehabilitation Files

SYSTEM LOCATION:

Primary location: Alcohol and Drug Abuse Prevention and Control Program (ADAPCP) rehabilitation/counseling facilities (e.g., Community Counseling Center/ADAPCP Counseling Facilities) at Army installations and activities. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

Secondary location: U.S. Total Army Personnel Command, Personnel Information Systems Command (ASQNI–ASM), 200 Stovall Street, Alexandria, VA 22332–0310.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual (military, civilian, family member) who is eligible for care, is referred to and enrolled in the ADAPCP for rehabilitation, pursuant to Army Regulation 600–85.

CATEGORIES OF RECORDS IN THE SYSTEM:

Primary location: Copies of patient intake records, progress reports, psychosocial histories, counselor observations and impressions of petient's behavior and rehabilitation progress, copies of medical consultation and laboratory procedures performed, results of biochemical urinalysis for alcohol/drug abuse, and similar or related documents.

Secondary location: Copies of patient intake records (DA Form 4465), progress reports (DA Form 4466), and demographic composites thereof.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3012; 42 U.S.C. 290dd–3 and 290ee–3; and Executive Order 9397.

PURPOSE(S):

To identify alcohol and drug abusers and either restore such persons to effective duty or identify rehabilitation failures for separation from government service. At the primary location, information is used to treat, counsel, and rehabilitate individuals who participate in the Alcohol and Drug Abuse Prevention and Control Program. At the secondary location, client intake and progress reports are used to provide essential management and statistical information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices do not apply to this record system.

The Patient Administration Division at the medical treatment facility with jurisdiction is responsible for the release of medical information to malpractice insurers in the event of malpractice litigation or prospect thereof.

Information is disclosed only to the following persons/agencies:

To health care components of the Veterans Administration furnishing health care to veterans.

To medical personnel to the extent necessary to meet a bona fide medical emergency.

To qualified personnel conducting scientific research, audits, or program evaluations, provided that a patient may not be identified in such reports, or his or her identity further disclosed by such personnel.

In response to a court order based on the showing of good cause in which the need for disclosure and the public's interest is shown to exceed the potential harm that would be incurred by the patient, the physician-patient relationship, and the Army's treatment program. Except as authorized by a court order, no record may be used to initiate or substantiate any criminal charges against a patient or to conduct any investigation of a patient.

Note: Records of identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, requested, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under circumstances expressly authorized in 42 U.S.C. 290dd–3 and 290ee–3. These statutes take precedence over the Privacy Act of 1974 to the extent that disclosure is more limited. However, access to the record by the individual to whom the record pertains is governed by the Privacy Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Primary location: ADAPCP Outpatient Medical Records in file folders at Alcohol and Drug Abuse Prevention and Control Program facilities are maintained for 1 year following termination of treatment or referral (if not enrolled). Selected forms are transferred to individual's health record or Outpatient Treatment Record.

Secondary location: Patient intake and progress reports are stored in locked file cabinets. Computer data are entered on line at U.S. Army Drug and Alcohol Operations Agency (USADAOA), 4501 Ford Avenue, suite 320, Alexandria, VA 22302–1435 and transferred to magnetic disk or tape at U.S. Army Personnel Information Systems Command, Alexandria, VA.

RETRIEVABILITY:

Primary location: Alphabetically by individual's surname. Secondary location: By patient's Social Security Number or identification code, date and installation where individual was in the Alcohol and Drug Abuse Prevention and Control Program.

SAFEGUARDS:

Primary location: Records are maintained in central storage areas in locked file cabinets where access is restricted to authorized persons having an official need-to-know.

Secondary location: Manual records are stored in locked file cabinets. Automated records are maintained in random access mode in controlled access areas. Data are processed in batch mode and are subjected to standard executive and system control programs plus the audit/edit and data base management system designed by the U.S. Army Personnel Information Systems Command.

RETENTION AND DISPOSAL:

Primary location: Records are destroyed 1 year after termination of the patient's treatment, unless the Army Medical Department Activity/Facility commander authorizes retention for an additional 6 months.

Secondary location: Manual records are retained up to 18 months or until information taken therefrom and entered into computer records is transferred to the "history" file, whichever is sooner. Disposal of manual records is by burning or shredding. Computer records are retained permanently for historical and/or research purposes.

SYSTEM MANAGER(S) AND ADDRESS:

The Deputy Chief of Staff for Personnel, Headquarters, Department of the Army (DAPE–PMH–H), The Pentagon, Washington, DC 20310–4000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to either the commander of the medical center/medical department activity where treatment was obtained or the U.S. Army Drug and Alcohol Operations Agency (USADAOA), 4501 Ford Avenue, suite 320, Alexandria, VA 22302–1435. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

Individual should provide the full name, Social Security Number, date of birth, current address and telephone number, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to either the commander of the medical center/medical department activity where treatment was obtained or the U.S. Army Drug and Alcohol Operations Agency (USADAOA), 4501 Ford Avenue, suite 320, Alexandria, VA 22302–1435. Official mailing addresses are published as an appendix to the Army's copilation of record system notices.

Individual should provide the full name, Social Security Number, date of birth, current address and telephone number, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations by the individual concerned are published in Department of the Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

Denial to amend records in this system can be made only by the Deputy Chief of Staff for Personnel in coordination with The Surgeon General.

RECORD SOURCE CATEGORIES:

From the individual by interviews and history statement; abstracts or copies of pertinent medical records; abstracts from personnel records; results of tests; physicians' notes, observations of client's behavior; related notes, papers, and forms from counselor, clinical director, and/or commander.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0602DAPE-ARI

System name:

Behavioral and Social Sciences Research Project Files (95 FR 48617, Nov. 21, 1991).

Changes:

* * * * *

System location:

Delete "Fort Lewis, WA;" and "Camp Zama, Japan * * * " and replace with "Fort Benning, GA;" and "Fort Gordon, GA * * * " respectively.

* * * * *

Categories of records in the system:

Delete the first two lines and replace with "Individual's name and Social Security Number, Army personnel records and questionnaire-type data relating to * * * "

* * * * *

System manager(s) and address:

Delete entry and replace with "Commander, U.S. Army Research Institute for Behavioral and Social Sciences, ATTN: PERI–AS (Privacy Act Officer), 5001 Eisenhower Avenue, Alexandria, VA 22333–5600."

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Army Research Institute for Behavioral and Social Sciences, ATTN: PERI–AS (Privacy Act Officer), 5001 Eisenhower Avenue, Alexandria, VA 22333–5600.

Individual should provide the full name, Social Security Number, current address, subject area, and the year of testing if known".

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Army Research Institute for Behavioral and Social Sciences, ATTN: PERI–AS (Privacy Act Officer), 5001 Eisenhower Avenue, Alexandria, VA 22333–5600.

Individual should provide full name, Social Security Number, current address, subject area, and the year of testing if known".

* * * * *

A0602DAPE–ARI

SYSTEM NAME:

Behavioral and Social Sciences Research Project Files.

SYSTEM LOCATION:

Army Research Institute for the Behavioral and Social Sciences, 5001 Eisenhower Avenue, Alexandria, VA 22333–5600 and field offices located at Fort Benning, GA; Boise, ID; Fort Gordon, GA; Fort Huachuca, AZ; London, England; Mannheim, Germany; Naval Training Center, Orlando, FL; Falls Church, VA; Fort Hood, TX; Fort Knox, KY; Fort Leavenworth, KS; Presidio of Monterey, CA; Fort Rucker, AL; and St. Louis, MO. Official mailing addresses are published as an appendix to the Army's compilation or record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former officer, warrant officer, and enlisted military personnel, including Army Reservists and National Guard.

Family members of the above service members.

Civilian employees of Department of Defense.

Samples of civilians from the general U.S. population who are surveyed to determine why people do or do not consider military service as a career or a short-term employment option.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name and Social Security Number, Army personnel records and questionnaire-type data relating to service member's pre-service education, work experience and social environment and culture, learning ability, physical performance, combat readiness, discipline, motivation, attitude about Army life, and measures of individual and organizational adjustments; test results from Armed Services Vocational Aptitude Battery and Skill Qualification Tests. Also, individual's name and Social Security Number, and questionnaire type data relating to non-service member's education, work experience, motivation, knowledge of and attitude about the Army. When records show military service or marriage to a service member, the appropriate non-service records will be linked to the service record.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 2358 and 4503, and Executive Order 9397.

PURPOSE(S):

To research human factors inherent in the recruitment, selection, classification, assignment, evaluation, and training of military personnel; to enhance readiness effectiveness of the Army by developing personnel management methods, training devices, and testing of weapons methods and systems aimed at improved group performance. (No decisions affecting an individual's rights or benefits are made using these research records).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; punch cards; magnetic tape.

RETRIEVABILITY:

By individual's name and/or Social Security Number. For research purposes, the data are usually retrieved and analyzed with respect to relative times of entry into service, training performance, and demographic values. Scheduled data for follow-up data collections however, are retrieved by month of scheduled follow-up and by name.

SAFEGUARDS:

Access to records is restricted to authorized personnel having official need therefor. Automated data are further protected by controlled system procedures and code numbers governing access.

RETENTION AND DISPOSAL:

Information is retained until completion of appropriate study or report, after which it is destroyed by shredding or erasing.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Research Institute for Behavioral and Social Sciences, ATTN: PERI–AS (Privacy Act Officer), 5001 Eisenhower Avenue, Alexandria, VA 22333–5600.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Army Research Institute for Behavioral and Social Sciences, ATTN: PERI–AS (Privacy Act Officer), 5001 Eisenhower Avenue, Alexandria, VA 22333–5600.

Individual should provide the full name, Social Security Number, current address, subject area, and the year of testing if known.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Army Research Institute for Behavioral and Social Sciences, ATTN: PERI–AS (Privacy Act Officer), 5001 Eisenhower Avenue, Alexandria, VA 22333–5600.

Individual should provide the full name, Social Security Number, current address, subject area, and the year of testing if known.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations by the individual concerned are published in Department of the Army Regulation 340–21; 32 CFR part 505; or

may be obtained form the system manager.

RECORD SOURCE CATEGORIES:

From the individual, his or her peers, or, in the case of ratings and evaluations, from supervisors.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 91–10680 Filed 5–6–91; 8:45 am]

BILLING CODE 3810–01–M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app. 2), notice is hereby given that the Naval Research Advisory Committee Panel on Anti-Tactical Ballistic Missile Requirements in the 2010 Timeframe will meet on May 20–21, 1991. The meeting will be held at the Center for Naval Analyses, 4401 Ford Avenue, Alexandria, Virginia. The meeting will commence at 8 a.m. and terminate at 5 p.m. on May 20; and commence at 8 a.m. and terminate at 4:15 p.m. on May 21, 1991. All sessions of the meeting will be closd to the public.

The purpose of the meeting is to provide technical briefings for the panel members pertaining to their assessment of the vulnerability of U.S. naval forces to ballistic missile attack, employing conventional, chemical, and nuclear munitions, and identifying the key issues related to the Navy ATBM program and the corresponding critical technology requirements. The agenda will include briefings and discussions related to current U.S. Navy anti-tactical ballistic missile capabilities, current intelligence, technology options in connection with the tactical ballistic missile threat, current strategy, and ATBM treaty and policy implications. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive Order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. 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: Captain Gerald Mittendorff, USN, Office of the Chief of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5000, Telephone Number: (703) 696–4870.

G.B. Roberts,

Federal Register Liaison Officer.

[FR Doc. 91–10686 Filed 5–6–91; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before June 6, 1990.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue, SW., 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett (202) 708–5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) title; (3) frequency of collection; (4) the affected public; (5) reporting burden; and/or (6) recordkeeping burden; and (7) abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Mary P. Liggett at the address specified above.

Dated: May 1, 1991.

Mary P. Liggett,

Acting Director, Office of Information Resources Management.

Office of Educational Research and Improvement

Type of Review: Extension.
Title: Teacher Status Information for the Teacher Follow-up Survey.
Frequency: On Occasion.
Affected Public: State or local government; businesses or other for-profit; non-profit institutions; small businesses or organizations.
Reporting Burden:
Responses: 13,179.
Burden Hours: 3,295.
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This survey will be used to collect more useful and comprehensive data on teachers, school administrators, and school policies and practices.
Type of Review: Revision.
Title: Final Performance Report for the Library Services for Indian Tribes and Hawaiian Native Program.
Frequency: Annually.
Affected Public: State or local governments.
Reporting Burden:
Responses: 250.
Burden Hours: 625.
Recordkeeping Burden:
Recordkeepers: 250.
Burden Hours: 5.
Abstract: This report is used by State Educational agencies to provide caseload data. The Department uses the information collected to assess the accomplishments of program goals and objectives.

Office of Postsecondary Education

Type of Review: Revision.
Title: Guarantee Agency Monthly Claims and Collections Report.
Frequency: Monthly.
Affected Public: State or local governments; non-profit institutions.
Reporting Burden:
Responses: 660.
Burden Hours: 4,620.

Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form is used by state agencies to request payments of reinsurance claims paid on rehabilitated loans.
Type of Review: Revision.
Title: Application for Federal Student Aid.
Frequency: Annually.
Affected Public: Individuals or households.
Reporting Burden:
Responses: 7,006,383.
Burden Hours: 7,466,403.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form will collect information from students who are applying for Federal Student Aid. The Department will determine eligibility for student aid under the Department's student financial assistance programs.

[FR Doc. 91-10778 Filed 5-6-91; 8:45 am]
BILLING CODE 4000-01-M

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by May 14, 1991.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett (202) 708-5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., new, revision, extension, existing, or reinstatement; (2) title; (3) frequency of collection; (4) the affected public; (5) reporting and/or recordkeeping burden and (6) abstract. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: May 1, 1991.

Mary P. Liggett,

Acting Director, Office of Information Resources Management.

Office of Postsecondary Education

Type of Review: Expedited.
Title: Notice of Final Selection Criteria for Implementing the National Science Scholars Program in Fiscal Year 1991.
Frequency: Annually.
Affected Public: Individuals or households; State or local governments.
Reporting Burden:
Responses: 15,547.
Burden Hours: 265,272.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form will be used by state Educational agencies to apply for funding under the National Science Scholars Program. The Department uses the information to make grant awards.
Additional Information: An Expedited review is requested in order for the Department to award funds to institutions of higher education before September 30, 1991. The Department must require each participating State to provide its' nominations to the President by June 28, 1991. The President, in consultation with the Secretary and the Director of the National Science Foundation, selects two National Scholars per congressional district as required by section 603(b)(3) of the program statute.

BILLING CODE 4000-01-M

UNITED STATES DEPARTMENT OF EDUCATION

WASHINGTON, D.C. 20202-5447

SUMMARY: This letter transmits the notice of final selection criteria and procedures for the National Science Scholars Program that participating States use to evaluate student applications and submit nominees to the President.

Dear Chief State School Officer:

This letter is our second communication to you concerning the Department's plans to implement the recently enacted National Science Scholars Program (NSSP). In our first letter, SG-91-5, we announced the Department's initial plans to implement the NSSP and provided you with the procedures by which you could propose the membership of a State nominating committee for the review and approval of the Secretary of Education. In this letter we are providing you with the selection criteria that each State with an approved nominating committee must use to evaluate student applications, select nominees, and submit the names of nominees to the President. The selection criteria were jointly published in the Federal Register on [exact date to be inserted] (__FR_____) by the Director of the National Science Foundation (NSF) and the Secretary in a notice of final selection criteria. We have enclosed a copy of the notice.

By September 30, 1991, the President will announce fiscal year 1991 NSSP scholarship recipients, and the Secretary will disburse funds to institutions of higher education on behalf of the Scholars. The President's selections will be made from the nominations provided by State nominating committees. As we previously informed you, the nominations submitted by your nominating committee will be based upon student eligibility criteria contained in section 604(a) of the program's statute and selection criteria.

Please carefully read the notice for a complete understanding of the Scholar nomination process. In this letter we do not repeat all of the information contained in the notice that you need to know to administer properly the Scholar nomination process.

The notice of final selection criteria requires several information collections by and on behalf of the U.S. Department of Education (Department). Please note the following statement concerning those information collections. Public reporting burden for the information collections associated with this letter and the enclosed Notice of Final Selection Criteria are estimated to vary from 12 to 40 hours per response, with an average of 17 hours 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. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1840-0629, Washington, D.C. 20503.

Each State with an approved nominating committee may now begin to solicit scholarship applications and to review and score the applications. States must then submit Scholar nominations to the President. Each State nominating committee must establish its own operating procedures governing the scholarship nomination

process that include: (1) procedures for the dissemination of program information and application materials to the State's public and private secondary schools and General Education Development (GED) Test Centers; and (2) the establishment of internal State administrative procedures for the timely submission, processing, and review of applications submitted by eligible students.

Who is Eligible to Apply?

To be eligible to apply for and receive a fiscal year 1991 National Science Scholarship for attendance at an institution of higher education during the 1991-92 academic year, a student must meet the following eligibility criteria:

- Be scheduled to graduate from a public or private secondary school, or to obtain the equivalent of a certificate of graduation (as recognized by the State in which the student resides), during the 1990-91 secondary school year.

- Be a citizen or national of the United States or of the Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Marianas, or an alien lawfully admitted to the United States for permanent residence.

- Have demonstrated outstanding academic achievement in secondary school in the physical, life, or computer sciences, mathematics, or engineering. A State nominating committee may adopt a minimum eligibility standard for the purpose of demonstrating a student's outstanding academic achievement in the scholarship disciplines which may include an overall minimum grade point average combined with a minimum grade point average in the sciences, mathematics, and engineering and a minimum score on the ACT Assessment or Scholastic Aptitude Test.

- Demonstrate to the State nominating committee that he or she intends to apply for enrollment at a public or private nonprofit institution of higher education as a full-time undergraduate student (as determined by the institution) for the purpose of receiving a baccalaureate degree in one of the scholarship fields.

- To apply for a NSSP scholarship, a student only needs to provide a written statement to the nominating committee indicating his or her intention to major in one of the scholarship disciplines. To receive a scholarship, a Scholar must declare a major in either the physical, life, or computer sciences, mathematics, or engineering, or provide a written statement to the institution of higher education at which he or she enrolls of his or her intent to major in one of the scholarship fields, if it is the policy of the institution at which the Scholar has been accepted for enrollment that a student not declare a major until a later point in his or her course of study.

Student Application

Each State must use the eligibility criteria, selection criteria, and instructions

Page 3 - Dear Chief State School Officer

published in the Federal Register in order to solicit student applications. Each participating State must develop its own application or other document to gather student responses to the selection criteria that can best be processed by that particular State's nominating committee. No approval by the Department is necessary for your student response documents or applications.

However, Federal statutes pertaining to the privacy of information are applicable to this program and require that certain information must be included on any application for Federal financial assistance. The Department will be publishing a notice of new system of records in the Federal Register in the near future in order to provide for the maintenance of information under the NSSP in accordance with the Privacy Act.

Privacy Act Information and Use of Student's Social Security Number. The Privacy Act of 1974 requires that each Federal agency or its agent that asks for a student's social security number or other information must tell the student the following:

(1) The agency's legal right to request the information and whether the law says it must be given.

(2) What purpose the agency has in asking for it and how it will be used.

(3) What could happen if the information is not provided.

Therefore, a State's application or other documents used to collect student responses for the National Science Scholars Program must include the following statements:

- Giving us any information to apply for a National Science Scholarship is voluntary, including the provision of your social security number (SSN). However, providing your SSN will ease the administration of this program. If you do not provide your SSN with your application, an alternative identification will be generated for you. If you do not provide the other information requested, we may not be able to process your application. Your SSN or alternative identification will be used, if you are selected by the President to be a National Science Scholar, to record information about your college attendance and progress, to ensure that you have received your scholarship award in the correct amount, and to assist in providing you with summer employment in federally-funded research and development centers and Federal agencies.

- The information which you supply may be disclosed to third parties that the Department has authorized to assist in administering Federal student aid programs such as the financial aid administrator at a Scholar's institution of higher education or to other individuals or organizations to provide additional financial assistance and summer employment to students selected as National Science Scholars.

- The information which you supply may be used by the Department to determine your eligibility for receipt of continuation NSSP awards during

subsequent years you are in attendance at an institution of higher education and are pursuing a degree in one of the scholarship disciplines.

- We will send certain information you provide such as your name, address, social security number (if provided), gender, and the name of the institution of higher education you plan to attend to the Department which, in turn, may disclose this information to responsible officials of the National Science Foundation and to the President or his representatives during consultation preceding the President's selection of National Science Scholars. Also, we will use this information to notify your congressional representative of your award. If the Department or an employee of the Department is involved in litigation, they may send your information to the Department of Justice or a court or adjudicative body if the disclosure is related to financial aid and if certain other conditions are met. The information may also be made available to Federal agencies which have the authority to subpoena other Federal agencies' records when appropriate.

- When appropriate, officials of the Department may decide to disclose information to individuals or organizations qualified to carry out research solely for research purposes.

- The Department may disclose to a consumer reporting agency information for the purpose of reporting a claim which is determined valid and overdue.

Selection Criteria

For fiscal year 1991, your State nominating committee must use the selection criteria and scoring methodology published in the enclosed Federal Register notice to select and prioritize nominees from among those eligible students who submit applications for National Science scholarships. The eligibility criterion in section 604(a)(3) of the statute requires a demonstration by each applicant of outstanding achievement in the scholarship disciplines at the secondary level. Moreover, under these selection criteria a successful applicant must have clearly demonstrated in his or her application that he or she has the potential and motivation to complete a postsecondary education at a high level of academic achievement in one of the scholarship disciplines. However, through the publication in the Federal Register of the selection criteria, the Secretary and the Director seek to encourage and attract to a career in the sciences, mathematics, or engineering not only those individuals who have excelled specifically in the scholarship disciplines during their secondary education and are already committed to a career in the scholarship disciplines but also those academically superior individuals who have not yet decided on the direction of their postsecondary education and professional career.

Selection criterion five, "Meeting the purposes of the authorizing statute," provides the nominating committee with the ability to rate overall each student's application in order to determine how well the student meets the purposes of the National Science Scholars Program. Each reviewer should first evaluate and rate the student's response to the first four selection criteria. Then, under criterion five, each reviewer should evaluate and rate how all of the information

contained in each application establishes the student's ability to meet and fulfill the purposes of the NSSP as discussed in section 601(a) of the program statute.

Continuation Awards

Student's selected by the President to be Scholars may receive continuation NSSP awards in subsequent years in order to complete their undergraduate course of study. An eligible Scholar may receive additional scholarships for not more than 3 academic years of undergraduate study, except that an eligible Scholar who is enrolled in an undergraduate course of study that requires attendance for 5 academic years may receive additional scholarships for not more than 4 academic years. To be eligible to receive a continuation award a Scholar must meet certain eligibility criteria that the Department will propose in a notice of proposed rulemaking for the NSSP to be published in the Federal Register in the near future.

Submission of Nominations to the President

In order for the Department to assist the President in selecting the Scholars and provide funds to institutions of higher education on behalf of the Scholars by September 30, 1991, each State nominating committee must provide the following information for each nominee:

Congressional District #____
Congressional representative's or delegate's name _____

Nominee's name _____
Social security number _ _ _-_ _-_ _ _ _ (if provided) Male___ Female___
Priority ranking within congressional district _____
Permanent Address:
Street _____
City _____ State _____ ZIP _____
Telephone # where the nominee may be reached during the summer:
( ) _____ - _____
Institution of Higher Education: ___Accepted ___ Plans to attend
Name _____
Address _____
City _____ State _____ ZIP _____

The Department of Education will accept nominations on behalf of the President at the following address:

National Science Scholars Program
United States Department of Education
Office of Student Financial Assistance
Campus-Based Programs Branch
ROB-3, Room 4651
400 Maryland Avenue, S.W.
Washington, D.C. 20202-5453

Page 6 - Dear Chief State School Officer

Due to the time required for the President to select the Scholars and for the Department to confirm the Scholar's acceptance of the scholarship and to make the awards to the institutions of higher education at which the Scholars will enroll, nominations must be postmarked no later than June 28, 1991, in order to be accepted by the Department on behalf of the President. This deadline will be published in the Federal Register shortly.

Obviously, the time is short for your submission of nominations to the President and for the awarding of fiscal year 1991 National Science Scholars Program scholarships by the Secretary. However, we continue to be confident that, with your assistance, we will be able to award scholarships before the end of the fiscal year.

Should you have any questions concerning this program, you may call the staff responsible for the implementation and administration of the National Science Scholars Program on (202) 708-4607.

Sincerely,

Michael J. Farrell
Deputy Assistant Secretary for
Student Financial Assistance

Enclosure

cc: State contact person for the NSSP

[FR Doc. 91-10779 Filed 5-6-91; 8:45 am]
BILLING CODE 4000-01-C

DEPARTMENT OF ENERGY

Statement of Findings on Floodplain and Wetland Assessment for Proposed Removal Action at White Oak Creek Embayment, Department of Energy, Oak Ridge Reservation, Oak Ridge, TN

AGENCY: Department of Energy.

ACTION: Statement of findings on floodplain and wetland assessment.

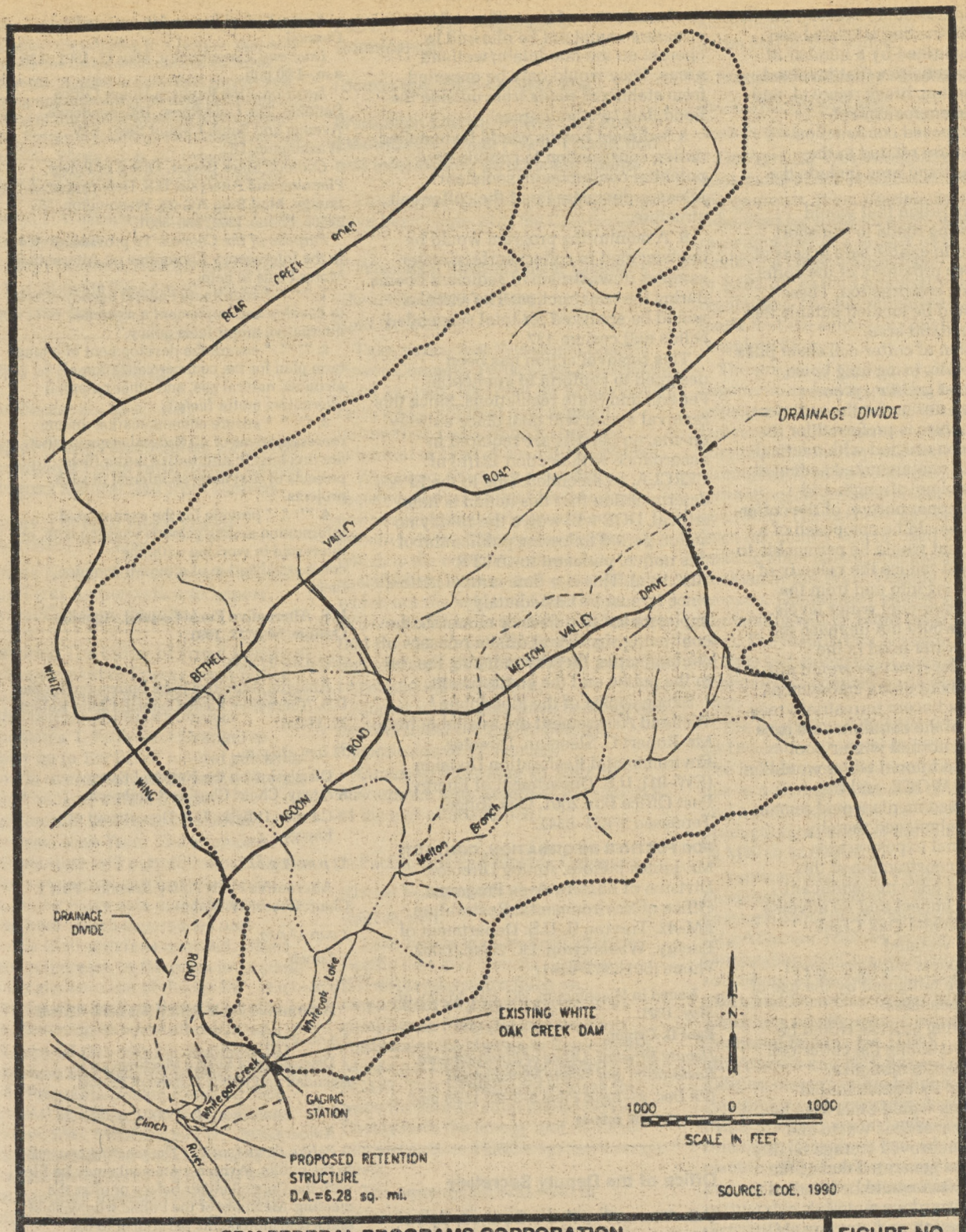
SUMMARY: The U.S. Department of Energy (DOE) presents this Statement of Findings on Floodplain and Wetland Assessment, prepared pursuant to Executive Orders 11988 and 11990, and 10 CFR part 1022, Compliance with Floodplain/Wetlands Environmental Review Requirements. By the authority granted under Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and Executive order 12580, and based on consideration of the factors listed in 40 CFR 300.415(b)(2), DOE proposes to stabilize and control cesium-137 contaminated sediments within the White Oak Creek Embayment (WOCE) and the DOE Oak Ridge Reservation, and to prevent the off-site migration of contaminants to the Clinch River. The proposed action involves the placement of a coffer-cell sediment control structure within the 100-year floodplain of White Oak Creek.

On the basis of the Floodplain/Wetland Assessment (available from the Oak Ridge address below), the DOE has determined that there is no practicable alternative to the proposed action and that it has been designed to minimize potential harm to or within the floodplain and the wetland of the WOCE and the Clinch River. Several other alternatives, such as "no action," rockfill structure, concrete structure, silt curtain, mat overlays, gabion overlays, and dredging/removal within critical reach, were considered and evaluated in making this determination. The no-action alternative, which entails leaving the site in its present condition, is not consistent with the intent of Congress in CERCLA and would not result in compliance with the Environmental Protection Agency (EPA) standards.

The proposed action is to construct a coffer-cell sediment retention structure across the mouth of the WOCE as an interim corrective action. This action would (1) minimize the cyclic flow of water in and out of the lower embayment, (2) retain existing sediments within the embayment, (3) prevent contaminated sediments from being transported from the WOCE to off-site surface waters, (4) retain water in the embayment during winter months to keep contaminated sediments submerged, and (5) reduce fish movement into and out of the contaminated area. These benefits would outweight the potential minimal impacts to the historically disturbed WOCE Embayment system. The location of the proposed action and retention structure is shown in Figure 1.

The Floodplain/Wetland Assessment also shows that there would be minimal impacts with respect to hydrologic effects, backwater effects, floodplain inundation of land, property or individuals, and disturbance of wetland. The embayment is a significantly disturbed riverine wetland system and does not constitute a unique area with regard to size, species diversity, economic/social value, or occurrence of endangered/threatened species.

BILLING CODE 6450-01-M



CDM FEDERAL PROGRAMS CORPORATION

DRAINAGE BASIN OF WHITE OAK CREEK

WHITE OAK CREEK EMBAYMENT

OAK RIDGE, TENNESSEE

FIGURE NO. 1

BILLING CODE 6450-01-C

The area immediately adjacent to the proposed construction site has been previously disturbed by a number of past program activities that involved road construction, brush removal, and motor vehicle encroachment.

Specific proposed construction activities that are related to the floodplain/wetland area include the following:

1. Site preparation that would stabilize existing roads to transport materials and to enable safe access of cranes to close proximity of the coffer-cell site during construction. These activities would be located outside the floodplain/wetland area.

2. Installation of coffer-cell sheet piles on the floodplain, using long boom cranes and a jet grouting process.

A coffer-cell design for the sediment retention structure is preferred for its ability to be constructed with minimal disturbance of contaminated sediment and for its maximal strength and stability. The upper portion of the coffer-cell structure would be composed of a gabion layer that would be permeable to water and wuld reduce the velocity of the water flowing into and from the WOCE at summer-pool water levels. The structure would not increase the summer-pool water level in the embayment. The structure would not cause enlargement of the embayment, inundation of adjacent terrestrial areas, or expansion of the contaminated area on-site. During normal winter-pool water levels, additional water would be retained in the WOCE, and the contaminated sediments would remain continuously submerged thereby reducing external exposure risk. Therefore, the construction of this structure would have no significant environmental impact and no adverse impact on the White Oak Creek floodplain and wetland.

Potential impacts during removal action would be mitigated by the use of the following measures:

1. A jet grouting process would be employed for installing the coffer-cell structure in order to minimize, immobilize, and fix contaminated sediments which would otherwise be removed as a hazardous waste and retained in an approved storage facility.

2. Any wastes generated during the construction phase would be handled as a potentially hazardous material pending verification and appropriate disposal.

3. All necessary site preparation activities would be conducted outside the floodplain/wetland area.

4. The long-boom cranes utitlized for the installation of the coffer-cell structure would not be allowed to operate on the floodplain/wetland areas. They would only be operated from stabilized roads from outside the floodplain/wetland areas.

5 Sediment booms would be installed during construction to contain any potential contaminant/sediment releases downstream of the coffer-cell structure.

6. A monitoring program would be implemented to collect surface water samples downstream of sediment booms during the construction. The samples would be analyzed for total suspended solids and cesium-137.

This removal action has been designed to conform to applicable Federal and State regulations. Since this removal action will take place entirely on-site, no permits are required in accordance with Section 121(e) of CERCLA, as amended. Due to the EPA's determination that this action is time critical, DOE will waive the 15-day no-action period following publication of this notice, pursuant to 10 CFR 1022.18(c). This is a time critical action, since it must be immediately implemented to reduce or eliminate the continuing significant offsite releases of contaminants, thereby reducing the risk to the public and the environment.

Single copies of the Floodplain/Wetland Assessment are available from: Mr. Robert C. Sleeman, Director, Environmental Restoration Division (EW–91), U.S. Department of Energy, Post Office Box 2001, Oak Ridge, Tennesse 37831–8541.

FOR FURTHER INFORMATION, CONTACT: Mr. James J. Fiore, Acting Director, Division of Eastern Area Programs, Office of Environmental Restoration, EM–42, Trevion II, U.S. Department of Energy, Washington, DC 20585–0002, Phone (301) 353–8141.

Issued in Washington, DC, this 3d day of May, 1991.

Paul D. Grimm,

Deputy Director, Office of Environmental Restoration and Waste Management.

[FR Doc. 91–10906 Filed 5–3–91; 12:58 pm]

BILLING CODE 6450–01

Office of the Deputy Secretary

U.S. Alternative Fuels Council; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: United States Alternative Fuels Council.

Date and Time: Friday, May 17, 1991, 9:30 a.m.–4:00 p.m.

Location: 2168 Rayburn House Office Building, The Gold Room, Independence Avenue and South Capitol Steet, SW., Washington, DC.

Contact: Mark Bower, Office of Policy, Planning and Analysis, U.S. Department of Energy, Mail Stop AC–26, Washington, DC 20585, Phone: (202) 586–3891.

Purpose of the Council: To provide advice to the Interagency Committee on Alternative Motor Fuels to help:

1. "* * * coordinate Federal agency efforts to develop and implement a national alternative motor fuels policy."

2. "* * * ensure the development of a long-term plan for the commercialization of alcohols, natural gas, and other potential alternative motor fuels."

3. "* * * ensure communication among representatives of all Federal agencies that are involved in alternative motor fuels projects or that have an interest in such projects."

4. "* * * provide for the exchange of information among persons working with, or interested in working with, the commercialization of alternative motor fuels."

U.S. Alternative Fuels Council, Agenda Outline, May 17, 1991

9:30 a.m.–11 a.m.

Analytic Activities to be Sponsored by the U.S. Alternative Fuels Council, Chair: Robert W. Hahn.

11 a.m.–12 p.m.

Discussion on the National Energy Strategy, Chair: Charles R. Imbrecht.

—Carmen Difiglio, U.S. Department of Energy.

12 p.m.–1 p.m.

Alternative Fuels Policy Session—Part 1, Chair: Robert W. Hahn.

1 p.m.–2 p.m.

Lunch.

2 p.m.–3 p.m.

Alternative Fuels Policy Session—Part II.

3 p.m.–4 p.m.

Discussion of Future Meetings and Agendas and Public Comment Period.

4 p.m.

Adjourn.

Public Participation: The meeting is open to the public. Written statements may be filed with the Council either before or after the meeting. Members of the Public who wish to make oral statements pertaining to the agenda items should contact Mark Bower at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The

Chairpersons of the Council are empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: Available for public review and copying approximately 30 days following the meeting at the Public Reading Room, room 1E190, Forrestal Building, 1000 Independence Ave., SW., Washington, DC between 9 a.m. and 4 p.m. Monday through Friday, except Federal Holidays

Issued at Washington, DC, on May 2, 1991.

Howrd H. Raiken,

Advisory Committee, Management Officer.

[FR Doc. 91-10819 Filed 5-6-91; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[ERA Docket No. 88-01-NG]

Project Orange Associates, L.P.; Order Amending a Long-Term Authorization to Import Natural Gas from Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order amending a Long-Term Authorization to Import Natural Gas from Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order amending the authorization of Project Orange Associates, L.P. (Project Orange) to import up to 120 Bcf of natural gas from Canada over a term of 20 years. The gas would be used to fuel a new cogeneration facility to be built in Syracuse, New York. The amended authorization will permit Project Orange to import natural gas from Noranda, Inc., under a gas sale and purchase agreement which supersedes and cancels their previous contract. Other than an increase in the price to be paid for the gas because of delays in finalizing the project, there is no change in the existing import authorization.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, April 30, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-10820 Filed 5-6-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER90-547-000, et al.]

Wisconsin Electric Power Co., et al.; Electric rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Wisconsin Electric Power Company

[Docket No. ER90-547-000]

April 26, 1991.

Take notice that Wisconsin Electric Power Company (Wisconsin Electric) on April 18, 1991, tendered for filing revised rates and additional cost support information concerning its original submittal in Docket No. ER90-547-000.

Wisconsin Electric respectfully requests waiver of the Commission's notice requirements to permit an effective date of November 1, 1991, which is the commencement date specified in the executed agreements which are the subject of the filing. Wisconsin Electric is authorized to state that the Wisconsin Public Power Incorporated SYSTEM (WPPI) joints the requested effective date.

Copies of the filing have been served on WPPI, and the Public Service Commission of Wisconsin.

Comment date: May 13, 1991, in accordance with Standard Paragraph E at the end of this notice.

2. Pacific Gas and Electric Company

[Docket No. ER90-567-001]

April 26, 1991.

Take notice that on April 22, 1991, Pacific Gas and Electric Company (PG&E) tendered for filing an amendment to the January 15, 1991 compliance filing (Interconnection Agreement (IA) between Sacramento Municipal Utility District (SMUD) and PG&E). This amendment revises the price for coordination power services, basing both the energy and demand components on PG&E's system average costs.

The amendment was filed in compliance with a directive in the Commission's March 26, 1991 letter order.

Copies of the filing were served upon the California Public Utilities Commission and all parties in this docket.

Comment date: May 10, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. Morgantown Energy Associates

[Docket No. QF89-25-001]

April 26, 1991.

On April 22, 1991, Morgantown Energy Associates of 555 Beechhurst Avenue, Morgantown, West Virginia 26505 submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed topping-cycle cogeneration facility will be located adjacent to the campus of West Virginia University in Morgantown, West Virginia. The facility will consist of two circulating fluidized bed boilers and an extraction/condensing steam turbine generator. Thermal energy recovered from the facility will be used for space heating and cooling, sterilization, and cooking at the West Virginia University campus. The primary energy source of the facility will be bituminous waste coal. The installation began in October of 1989 and commercial operation is scheduled to commence on March 1, 1992.

The original certification was issued on December 27, 1988, 45 FERC 62,263. The instant recertification is requested due to a change in the size of the boilers and a reduction in the net electric power production capacity of the facility from 58 MW to 52.8 MW.

Applicant is a West Virginia general partnership consisting of three general partners: MidAtlantic Energy Co. (MidAtlantic), Hickory Power Corporation (HPC), a wholly-owned subsidiary of Bechtel Enterprises, Inc. (BEI), and Dominion Cogen WV, Inc. which is a wholly-owned subsidiary of Dominion Energy, Inc. (DEI). MidAtlantic and HPC are not electric utilities, electric utility holding companies or any combination thereof. DEI is a wholly-owned subsidiary of Dominion Resources, Inc. which is an electric utility holding company. Each partner's equity investment, share in partnership profits, losses, cash distribution and tax benefits will be in the following proportion: DEI (50%), MidAtlantic (35%) and BEI (15%).

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

4. Central Vermont Public Service Corporation

[Docket No. ER91-399-000]

April 29, 1991.

Take notice that on April 22, 1991, Central Vermont Public Service Corporation (CVPS) tendered for filing a Notice of Termination of FERC Rate Schedules 140 and 142.

CVPS states that the effective date of termination is April 30, 1991.

Comment date: May 13, 1991, in accordance with Standard Paragraph E at the end of this notice.

5. Central Vermont Public Service Corporation

[Docket No. ER91-398-000]

April 29, 1991.

Take notice that on April 22, 1991, Central Vermont Public Service Corporation (CVPS) tendered for filing a Notice of Termination of FERC Rate Schedules 141, 143 and 144.

CVPS states that the effective date of termination is April 30, 1991.

Comment date: May 13, 1991, in accordance with Standard Paragraph E at the end of this notice.

6. Missouri Public Service, a Division of UtiliCorp United, Inc.

[Docket No. ER91-208-000]

April 26, 1991.

Take notice that on April 18, 1991, Missouri Public Service, a division of UtiliCorp United Inc. (MPS) tendered for filing an amendment to its January 8, 1991 change in its FERC Electric Service Tariff for wholesale firm power service to the City of Odessa located in the state of Missouri. In response to a request from FERC staff, MPS' amendment supplements its January 8, 1991 filing by providing replacement Service Schedules B, C, and D containing caps for the purchased energy for resale adders in those schedules, together with supporting documentation. Relying on the fact that this amendment merely provides caps to the adders contained therein, MPS is also requesting a waiver of the Commission's Regulations in order to permit the contract to become effective as of the date of the original filing.

Copies of this filing were served upon the City of Odessa whose contract would be affected thereby and upon the Public Service Commission of Missouri.

Comment date: May 13, 1991, in accordance with Standard Paragraph E at the end of this notice.

7. Southern California Edison Company

[Docket No. ER91-201-001]

April 26, 1991.

Take notice that on April 18, 1991, Southern California Edison Company tendered for filing its refund report pursuant to the Commission's order issued February 14, 1991 in the above referenced docket.

Comment date: May 13, 1991, in accordance with Standard Paragraph E at the end of this notice.

8. PacifiCorp Electric Operations

Docket No. ER91-272-000

April 26, 1991.

Take notice that PacifiCorp Electric Operations (PacifiCorp), on April 17, 1991, tendered for filing an amended filing to Docket No. ER-91-272-000 in accordance with 18 CFR part 35 of the Commission's Rules and Regulations. The amended filing includes Amemdment No. 1 dated April 16, 1991 to the Non-firm Transmission Service Agreement (Agreement) between PacifiCorp Electric Operations (PacifiCorp) and Idaho Power Company (Idaho Power) dated January 18, 1991, a Non-firm Transmission Service Agreement between PacifiCorp and Idaho Power dated April 16, 1991, under PacifiCorp's FERC Electric Tariff, Original Volume No. 5 (Tariff), Service Schedule TS-5 and Fourth Revised Sheet No. 3.0 superseding Third Revised Sheet No. 3.0, Index of Utilities Executed Service Agreements under the Tariff.

PacifiCorp requests, pursuant to 18 CFR 35.11 of the Commission's Rules and Regulations, that a waiver of prior notice be granted and that an effective date of January 18, 1991 be assigned to the Agreement, this date being consistent with the effective date shown to the Agreement.

Copies of this filing were supplied to Idaho Power Company, the Public Utility Commission of Oregon, the Utah Public Service Commission and the Idaho Public Utilities Commission.

Comment date: May 13, 1991, in accordance with Standard Paragraph E at the end of this notice.

9. West Texas Utilities Company

[Docket No. EC91-11-000]

April 26, 1991,

Take notice that on April 18, 1991, West Texas Utilities Company (WTU) tendered for filing an application pursuant to section 203 of the Federal Power Act and Part 33 of the Commission's regulations, seeking an order authorizing the sale by WTU to Western Farmers Electric Cooperative (WFEC) of WTU's North Vernon Switching Station and related facilities. WTU states that, with the intergration of Vernon into WTU's South System, WTU no longer has a need for the North Vernon Switching Station. WFEC has an immediate need for the Switching Station to provide more reliable service to its customers.

Comment date: May 17, 1991 in accordance with Standard Paragraph E at the end of this notice.

10. Washington Water Power Company

[Docket No. ER91-389-000]

April 26, 1991.

Take notice that on April 18, 1991 the Washington Water Power Company (WWP), tendered for filing a Firm Capacity and Energy Agreement between WWP and Sierra Pacific Power Company. WWP requests that the Commission (a) accept the agreement for filing, effective as of December 1, 1990, and (b) grant a waiver of notice pursuant to 18 CFR 35.11, to allow the filing of the Agreement less than 60 days prior to the date on which service under the Agreement is to commence.

A copy of the filing was served upon Sierra Pacific Power Company.

Comment date: May 13, 1991, in accordance with Standard Paragraph E at the end of this notice.

11. Public Service Company of New Hampshire

[Docket No. FA90-43-000]

April 29, 1991.

Take notice that on April 22, 1991, Public Service Company of New Hampshire tendered for filing its refund report pursuant to the Commission's Letter Order dated March 5, 1991 in the above referenced docket.

Comment date: May 13, 1991, in accordance with Standard Paragraph E at the end of this notice.

12. Washington Water Power Company

[Docket No. ER91-388-000]

April 29, 1991.

Take notice that on April 18, 1991, the Washington Water Power Company (WWP) tendered for filing a Firm and Non-Firm Energy Sale Agreement between WWP and Los Angeles Department of Water Power Company. WWP requests that the Commission (a) accept the Agreement for filing, effective as of February 1, 1991, and (b) grant a waiver of notice pursuant to 18 CFR 35.11, to allow the fining of the Agreement less than 60 days prior to the date on which service under the Agreement is to commence.

A copy of the filing was served upon Los Angeles Department of Water & Power.

Comment date: May 15, 1991, in accordance with Standard Paragraph E at the end of this notice.

13. TECO Power Services Corporation

[Docket No. ER91–372–000]

April 29, 1991.

Take notice that on April 5, 1991, Teco Power Services Corporation (TECO) tendered for filing a report stating that the transfer from TECO to Hardee Power Partners Limited of three power sale agreements had been consummated. TECO states that this report is being submitted pursuant to a Commisson order issued on March 13, 1991 in Docket No. EC91–3–000. This docket has been redesignated as Docket No. ER91–372–000.

Comment date: May 13, 1991, in accordance with Standard Paragraph E at the end of this notice.

14. Public Service Company of Colorado

[Docket No. ER91–383–000]

April 29, 1991.

Take notice that on April 17, 1991, Public Service Company of Colorado tendered for filing an electric tariff for capacity to serve Tri-State Generation and Transmission Association, Inc.

Comment date: May 13, 1991, in accordance with Standard Paragraph E at the end of this notice.

15. Central Vermont Public Service Corporation

[Docket No. ER91–112–000]

April 29, 1991.

Take notice that Central Vermont Public Service Corporation (CVPS) on April 23, 1991, tendered for filing supplemental financial information and two amendments to the contract that was filed in the above docket. This first amendment increases the amount of capacity sold in April 1991. The second amendment extends contract through April 30, 1992 and provides for Vermont Marble to purchase between 1000 kw and 8000 kw of Vermont Yankee capacity each month on thirty days notice at prices ranging from 75% to 100% of the fully allocated cost of capacity, plus 100% of all energy costs.

CVPS requests the Commission to waive its notice of filing requirements to permit the original contract to become effective as of May 1, 1990 and the two amendments to become effective as of April 1, 1991 and May 1, 1991, respectively.

Comment date: May 13, 1991, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

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. 91–10692 Filed 5–6–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PL91–1–000]

Public Conference and Request for Comments on Electricity Issues; Granting in Part and Denying in Part Extension of Time

April 30, 1991.

On April 24, 1991 and April 25, 1991, the Indiana Municipal Power Agency (IMPA) and the Organizations [1] (collectively Participants) filed respective motions for an extension of time for the filing of written comments and to extend the date of the Public Conference to be held in response to the Notice of Inquiry issued April 12, 1991, in the above-docketed proceeding (56 FR 15875, April 18, 1991). In their motions, Participants state that due to the complex nature and scope of the Notice of Inquiry, additional time is requested to analyze and prepare comments. The motions also state that additional time will allow for increased coordination of comments within the various groups of representatives of the electric utility industry, industrial consumers, and cogenerators and independent power producers.

Upon consideration, notice is hereby given that an extension of time for the filing or written comments is granted to and including June 10, 1991. Requests to participate, which must be filed separately from comments, shall be filed on or before June 10, 1991. The request to extend the date of the conference is denied. The conference shall be held on June 18, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 91–10694 Filed 5–6–91; 8:45 am]

BILLING CODE 6717–01–M

[1] Edison Electric Institute, American Public Power Association, National Rural Electric Cooperative Institute, Cogeneration and Independent Power Coalition of America, Electricity Consumers Resource Council, and the IPP Working Group.

[Docket No. CP91–1925–000]

Southwestern Glass Company, Inc. v. Arkla Energy Resources, a division of Arkla, Inc.; Complaint

April 29, 1991.

Take notice that on January 28, 1991, Southwestern Glass Company, Inc. (Southwestern), P.O. Box 10205, Fort Smith, Arkansas 72901, filed a timely Protest and Motion for Leave to Intervene in Arkla Energy Resources, a division of Arkla, Inc.'s (Arkla) application in Docket No. CP91–610–000, to construct and/or operate nine sales taps under its part 157 blanket certificate and pursuant to §§ 157.205, 157.211, and 157.212 of the Commission's Regulations. By order issued on April 29, 1991, in Docket No. CP91–610–000, the Commission authorized Arkla to proceed under its blanket certificate to construct and operate its proposed facilities and established a separate complaint proceeding to consider Southwestern's allegations. This notice establishes that separate complaint proceeding and contains relevant information, all as more fully set forth in Southwestern's January 28, 1991, intervention which is on file with the Commission and open to public inspection.

Southwestern contends that for over four years it has actively, but unsuccessfully, attempted to obtain interstate transportation of natural gas on Arkla's system. Southwestern alleges that Arkla has repeatedly rebuffed Southwestern's requests for a hookup to permit open access transportation of natural gas even though Southwestern has lined up the necessary supplies and has repeatedly offered to bear all the costs of constructing the line and interconnection facilities. Southwestern asserts that Arkla refuses to provide such a hookup, notwithstanding (a) conditions placed on its open access certificate, (b) its general obligations

under the Natural Gas Act, and (c) Arkla's willingness to provide hookups for its sister division, Arkansas Louisiana Gas Company, a division of Arkla (ALG).

Southwestern contends that it has requested interstate transportation service and a tap from Arkla's interstate pipeline division rather than either direct sales from Arkla or local distribution service from ALG. It is alleged, that for whatever reason, Arkla refuses to serve Southwestern through the requested tap even though (a) Arkla has numerous existing direct industrial customers and (b) Arkla is willing to provide taps to serve new users at the request of its affiliate ALG. Southwestern provides several instances of Arkla's refusal to transport gas to a delivery point for Southwestern.

Southwestern requests that the Commission eliminate discrimination under Arkla's blanket transportation and construction certificates by ordering Arkla to provide the necessary tap and firm transportation services requested by Southwestern. Southwestern contends that unless the Commission orders Arkla to cure discrimination by constructing a tap to serve Southwestern, Arkla would continue to discriminate against Southwestern, while improperly favoring its affiliate, ALG, and users behind ALG in the construction of taps.

Any person desiring to be heard or to make any protest with reference to said complaint should on or before May 17, 1991, file with the Federal Energy Regulatory Commission, 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 385.214 or 385.211). All protest 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. Answers to the complaint shall also be due on or before May 17, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 91-10693 Filed 5-6-91; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3954-9]

Revision of Indiana's National Pollutant Discharge Elimination System (NPDES) Program to Issue General Permits

AGENCY: Environmental Protection Agency.

ACTION: Notice of approval of the National Pollutant Discharge Elimination System General Permits Program of the State of Indiana.

SUMMARY: On April 2, 1991, the Regional Administrator for the Environmental Protection Agency (EPA), Region V approved the State of Indiana's National Pollutant Discharge Elimination System (NPDES) General Permits Program. This action authorizes the State of Indiana to issue general permits in lieu of individual NPDES permits in appropriate cases.

FOR FURTHER INFORMATION CONTACT: Joan M. Karnauskas, Chief, Permits Section, U.S. EPA, Region V, 230 South Dearborn Street, Chicago Illinois 60604, (312) 353-2105.

SUPPLEMENTARY INFORMATION:

I. Background

EPA regulations at 40 CFR 122.28 provide for the issuance of general permits to regulate discharges of wastewater which result from substantially similar operations, are of the same type wastes, require the same effluent limitations or operating conditions, require similar monitoring, and are more appropriately controlled under a general permit rather than by individual permits.

Indiana was authorized to administer the NPDES program in January 1975. Their program, as previously approved, did not include provisions for the issuance of general permits. There are several categories which could appropriately be regulated by general permits. For these reasons, the IDEM requested a revision of their NPDES program to provide for issuance of general permits. The discharges intended to be covered by general permits. The discharges intended to be covered by general permits include: Non-contact cooling water discharges of 1 million gallons per day or less, storm water discharges, coal mine and terminal discharges, stone/sand/gravel quarry discharges, pipeline hydrostatic test water discharges, discharges from potable water treatment plants, petroleum terminal/tank farm discharges, groundwater remediation project discharges, returned supernatant from dredging operations, and semi-public and other similar sanitary treatment plants.

Each general permit will be subject to EPA review and approval as provided by 40 CFR 123.44. Public notice and opportunity to request a hearing is also provided for each general permit.

II. Discussion

The State of Indiana submitted in support of its request, copies of the relevant statutes and regulations. The State has also submitted a statement by the Attorney General certifying, with appropriate citations to the statutes and regulations, that the State has adequate legal authority to administer the general permits program as required by 40 CFR 123.23(c). In addition, the State submitted a program description supplementing the original application for NPDES program authority to administer the general permits program, including the authority to perform each of the activities set forth in 40 CFR 122.28.

Based on its review of Indiana's legal authority, U.S. EPA determined that no statutory or regulatory changes were necessary for the State to administer a general permits program. This change was thus determined to be a non-substantial program modification. Further, based upon Indiana's program description and upon its experience in administering an approved NPDES program, EPA has concluded that the State will have the necessary procedures and resources to administer the general permits program. As a result, U.S. EPA has approved Indiana's request for General Permits Program delegation.

III. Federal Register Notice of Approval of State NPDES Programs or Modifications

EPA will provide **Federal Register** notice of any action by the Agency approving or modifying a State NPDES program. The following table will provide the public with an up-to-date list of the status of NPDES permitting authority throughout the country. Today's **Federal Register** notice is to announce the approval of Indiana's authority to issue general permits.

STATE NPDES PROGRAM STATUS

[2/27/91]

	Approved state NPDES permit program	Approved to regulate federal facilities	State approved state pretreatment program	Approved general permit program
Alabama	10/19/79	10/19/79	10/19/79	
Arkansas	11/01/86	11/01/86	11/01/86	11/01/86
California	05/14/73	05/05/78	09/22/89	09/22/89
Colorado	03/27/75			03/04/83
Connecticut	09/26/73	01/09/89	06/03/81	
Delaware	04/01/74			
Georgia	06/28/74	12/08/80	03/12/81	01/28/91
Hawaii	11/28/74	06/01/79	08/12/83	
Illinois	10/23/77	09/20/79		01/04/84
Indiana	01/01/75	12/09/78		/—/91
Iowa	08/10/78	08/10/78	06/03/81	
Kansas	06/28/74	08/28/85		
Kentucky	09/30/83	09/30/83	09/30/83	09/30/83
Maryland	09/05/74	11/10/87	09/30/85	
Michigan	10/17/73	12/09/78	06/07/83	
Minnesota	06/30/74	12/09/78	07/16/79	12/15/87
Mississippi	05/01/74	01/28/83	05/13/82	
Missouri	10/30/74	06/26/79	06/03/81	12/12/85
Montana	06/10/74	06/23/81		04/29/83
Nebraska	06/12/74	11/02/79	09/07/84	07/20/89
Nevada	09/19/75	08/31/78		
New Jersey	04/13/82	04/13/82	04/13/82	04/13/82
New York	10/28/75	6/13/80		
North Carolina	10/19/75	09/28/84	06/14/82	
North Dakota	06/13/75	01/22/90		01/22/90
Ohio	03/11/74	01/28/83	07/27/83	
Oregon	09/26/73	03/02/79	03/12/81	02/23/82
Pennsylvania	06/30/78	06/30/78		
Rhode Island	09/17/84	09/17/84	09/17/84	09/17/84
South Carolina	06/10/75	09/26/80	04/09/82	
Tennessee	12/28/77	09/30/86	08/10/83	
Utah	07/07/87	07/07/87	07/07/87	07/07/87
Vermont	03/11/74		03/16/82	
Virgin Islands	06/30/76			
Virginia	03/31/75	02/09/82	04/14/89	
Washington	011/4/73		09/3//86	09/26/89
West Virginia	05/10/82	05/10/82	05/10/82	05/10/82
Wisconsin	02/04/74	11/26/79	12/24/80	12/19/86
Wyoming	01/30/75	05/18/81		
Totals	39	34	27	19

Number of Complete NPDES programs (Federal Facilities, Pretreatment, General Permits)=13

IV. Review Under Executive Order 12291 and the Regulatory Flexibility Act

The Office of Management and Budget has exempted this rule from the review requirements of Executive Order 12291 pursuant to section 8(b) of that Order.

Under the Regulatory Flexibility Act, EPA is required to prepare a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. Pursuant to section 605(d) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), I certify that this State General Permits program will not have a significant impact on a substantial number of small entities. Approval of the Indiana NPDES State General Permits Program establishes no new substantive requirements, nor does it alter the regulatory control over any industrial category. Approval of the Indiana NPDES State General Permits Program merely provides a simplified administrative process.

Dated: April 2, 1991.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 91-10787 Filed 5-6-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

April 30, 1991.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452-1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0420.

Title: Amendment of part 22 of the Commission's Rules to Revise Certain Filing Procedures for Mobile Services Division Applications.

Action: Extension.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 16,110 responses; 2 hours average burden per response; 32,220 hours total annual burden.

Needs and Uses: Emergency OMB clearance is sought for the requirement that all non-cellular applications, amendments, correspondence, pleadings, and forms, including attachments, and exhibits of five pages or more to be submitted in paper and microfiche formats. The application forms subject to the microfiche rule are: FCC 489 (3060–0318), FCC 490 (3060–0319), FCC 401 (3060–0046), and FCC 405 (3060–0093). All non-cellular and non-initial cellular applications and all amendments must have certain information printed on the mailing envelope, the microfiche envelope, and on the title area at the top of the microfiche. The information is used by FCC staff in carrying out its duties as set forth in sections 308 and 309 of the Communications Act. The microfiche requirement will facilitate access to information filed with the Commission, enhance service to the public and allow the FCC to make more efficient use of its resources.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91–10827 Filed 5–6–91; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Nordana/d'Amico Space Charter Agreement; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, N.W., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 232–011329.

Title: Nordana/d'Amico Space Charter Agreement.

Parties:

Nordana Line AS

d'Amico Societa di Navigazione, S.p.A.

Synopsis: The proposed Agreement would permit Nordana to charter space to d'Amico in the trade between Livorno and Genoa, Italy, Barcelona and Valencia, Spain and San Juan, Puerto Rico. It would also permit the parties to consult and agree on sailing schedules, service frequencies, ports to be served and port rotations.

Dated: May 1, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91–10695 Filed 5–6–91; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

May 1, 1991.

BACKGROUND: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collections of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATES: Comments must be submitted on or before May 22, 1991.

ADDRESSES: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or delivered to room B–2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B–1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.8(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Federal Reserve Board Clearance Office—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

Proposal to approve under OMB delegated authority the extension, with revision, of the following rerports:

1. *Report title:* Notice of Change in Bank Control.

Agency form number: FR 2081.

OMB Docket number: 7100–0134.

Frequency: On occasion.

Reporters: Persons proposing to acquire control of a bank holding company or state member bank.

Annual reporting hours: 7,725.

Estimated average hours per response: 51.5.

Number of respondents: 150.

Small businesses are not affected.

General description of report: This information collection is required by law (12 U.S.C. 1817(j)). Parts may be given confidential treatment at the applicant's request (5 U.S.C. 552(b)(4)).

This notification is mandatory under the Change in Bank Control Act, which seeks to maintain public confidence in the banking system by preventing anti-competitive or otherwise adverse combinations of banks. The form requests information regarding the factors that must be considered by the Board under the statute, including a description of the proposal, and financial and employment data concerning the acquiring party. The proposed revisions eliminate filing requirements for acquisitions of incremental shareholdings between 10 and 25 percent of a bank holding company or state member bank. Other changes are proposed to clarify information requests and to provide for uniform responses.

2. *Report title:* Annual Report of Foreign Banking Organizations; Foreign

Banking Organization Confidential Report of Operations.

Agency form number: FR Y–7; FR 2068.

OMB Docket number: 7100–0125.

Frequency: Annual.

Reporters: Foreign banking organizations.

Annual reporting hours: 11,453.

Estimated average hours per response: 19.9.

Number of respondents: 575.

Small businesses are not affected.

General description of report: These information collection is mandatory [12 U.S.C. 1844(c), 3106, and 3108(a)] and is given confidential treatment [5 U.S.C. § 552(b)(8)].

These reports request financial and structural information on foreign banking organizations and their U.S. activities in order to assess their ability to serve as a source of strength to their U.S. operations and to determine compliance with the Bank Holding Company Act and International Banking Act. The reports are being proposed for extension with minor technical changes and instructional clarifications.

3. *Report title:* Criminal Referral Form.

Agency form number: FR 2230.

OMB Docket number: 7100–0212.

Frequency: On occasion.

Reporters: State member banks, bank holding companies and their nonbank subsidiaries, Edge Act and Agreement corporations, and U.S. branches and agencies of foreign banks.

Annual reporting hours: 2040.

Estimated average hours per response: 0.6 hours.

Number of respondents: 3400.

Small businesses are affected.

General description of report: This information collection is voluntary [12 U.S.C. 248(a)(1), 625, and 1844(c)] and is given confidential treatment [5 U.S.C. 552(b)(7) and 552a(k)(2)].

This report has been jointly designed and used by the federal financial institutions supervisory agencies, the Department of Justice, and the F.B.I. It is also used by the U.S. Secret Service and the U.S. Department of Treasury. The purpose of the reporting form is to detect and track suspected criminal misconduct involving financial institutions and persons associated with them. The proposed revisions would create a uniform reporting form and instructions, this allowing the creation of a common database for use by all agencies.

Proposal to approve under OMB delegated authority the extension, without revision, of the following reports:

1. *Report title:* Application to Issue Capital Notes.

Agency form number: FR 4015.

OMB Docket number: 7100–0140.

Frequency: On occasion.

Reporters: State member banks.

Annual reporting hours: 10.

Estimated average hours per response: 1.

Number of respondents: 10.

Small businesses are affected.

General description of report: This information collection is mandatory [12 U.S.C. 461(a) and 12 CFR 204.2(a)(1)(vii)(c) and is not given confidential treatment.

This letter form application must be filed by state member banks seeking approval from the Federal Reserve to issue a capital note and to include it in its capital structure.

2. *Report title:* Statement of Purpose for an Extension of Credit Secured by Margin Stock.

Agency form number: FR U–1.

OMB Docket number: 7100–0115.

Frequency: Recordkeeping requirement, on occasion.

Reporters: Domestic commercial banks.

Annual reporting hours: 88,065.

Estimated average hours per response: .0031 hours.

Number of respondents: 13,400.

Small businesses are affected.

General description of report: This information collection is mandatory [15 U.S.C. 78g, 78w] and is not given confidential treatment.

A purpose statement is required to be completed by a bank and its borrower whenever credit is secured directly or indirectly by any margin stock in an amount exceeding $100,000. The statement is not filed with the Federal Reserve, but is a recordkeeping form retained for a specified period by the lending bank. It is used to determine the purpose of the loan proceeds, to serve as an evidentiary tool to ascertain the intention of the parties involved, and to document the securities serving as collateral.

Board of Governors of the Federal Reserve System, May 1, 1991.

William W. Wiles,

Secretary of the Board.

[FR. Doc. 91–10725 Filed 5–6–91; 8:45 am]

BILLING CODE 6210–01–M

Bluestem Financial Services, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y [12 CFR 225.23(a)(1)] for the Board's approval under section 4(c)(8) of the Bank Holding Company Act [12 U.S.C. 1843(c)(8)] and § 225.21(a) of Regulation Y [12 CFR 225.21(a)] to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

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 on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 28, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Bluestem Financial Services, Inc., Fairbury, Illinois; to engage *de novo* through its subsidiary, Bluestem Financial Corp., Fairbury, Illinois, in insurance agency activities pursuant to § 225.25(b)(8)(iii); tax planning activities pursuant to § 225.25(b)(21); and providing securities brokerage services pursuant to § 225.25(b)(15) of the Board's Regulation Y. These activities will be conducted in Fairbury, Illinois.

Board of Governors of the Federal Reserve System, May 1, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-10726 Filed 5-6-91; 8:45 am]

BILLING CODE 6210-01-F

Commercial Bancorporation, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have 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 225.14) 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)).

Each 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 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.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 28, 1991.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Commercial Bancorporation, Inc., Orlando, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Commercial State Bank of Orlando, Orlando, Florida.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Mansfield Bancorp, Inc., Mansfield, Illinois; to become a bank holding company by acquiring at least 90 percent of the voting shares of Peoples State Bank of Mansfield, Mansfield, Illinois.

2. Readlyn Bancshares, Inc., St. Paul, Minnesota; to become a bank holding company by acquiring an additional 3.8 percent of the voting shares of Britt Bancshares, Inc., St. Paul, Minnesota, for a total of 18.12 percent, and thereby indirectly acquire First State Bank, Britt, Iowa.

3. Wisconsin Financial Bancorporation, Inc., Minneapolis, Minnesota; to become a bank holding company by acquiring 98.3 percent of the voting shares of The First National Bank and Trust Company of Baraboo, Baraboo, Wisconsin, and 90.79 percent of the voting shares of The Bank of Edgar, Edgar, Wisconsin.

Board of Governors of the Federal Reserve System, May 1, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-10727 Filed 5-6-91; 8:45 am]

BILLING CODE 6210-01-F

First Virginia Banks, Inc.; Acquisition of Company Engaged in Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a) or (f) of the Board's Regulation Y (12 CFR 225.23 (a) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

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 on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 21, 1991.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. First Virginia Banks, Inc., Falls Church, Virginia; to acquire through its wholly-owned subsidiary, First Virginia Insurance Services, Inc., Farmville, Virginia, 100 percent of the stock of Harwood-Andrews, Inc., Farmville, Virginia, a company engaged in providing general insurance agency services pursuant to § 4(c)(8)(G) of the Bank Holding Company Act.

Board of Governors of the Federal Reserve System, May 1, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-10728 Filed 5-6-91; 8:45 am]

BILLING CODE 6210-01-F

Charles A. and Carolyn C. Hurth, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 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 the 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 May 28, 1991.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Charles A. and Carolyn C. Hurth, St. Cloud, Florida; to acquire an additional 9.66 percent of the voting shares of Financial Holdings, Inc., Louisville, Colorado, for a total of 17.33 percent, and thereby indirectly acquire Boulder Valley National Bank, Boulder, Colorado, and Bank of Louisville, Louisville, Colorado.

2. Mary Elizabeth Thompson O'Connor; Kathleen Anne Thompson Brown; Byron Gregory Thompson, Jr.; Mark Collins Thompson; Paul Joseph Thompson; Timothy John Thompson; Patricia Marie Thompson; Brian Christopher Thompson; and Ann Therese Thompson, to each acquire 4 percent; Michael Scott Thompson to acquire 3.5 percent, and Michael Scott Thompson to acquire 0.5 percent; and George R. Haydon, Jr., Kansas City, Missouri, as co-trustee of the above

mentioned trusts, to acquire 40 percent of the voting shares of Buchanan County Bancshares, Inc., St. Joseph, Missouri, and thereby indirectly acquire The Heritage Bank of St. Joseph, St. Joseph, Missouri.

Board of Governors of the Federal Reserve System, May 1, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-10729 Filed 5-6-91; 8:45 am]

BILLING CODE 6210-01-F

Norwest Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

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 on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 28, 1991.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; Norwest Financial Services, Inc., Des Moines, Iowa; and Norwest Financial Inc., Des Moines, Iowa; to acquire substantially all of the assets of Prime Rate Premium Finance Corporation, Inc., IFCO, Inc., and Agency Technologies, Inc. that are devoted to the insurance premium finance business, and thereby engage in making, acquiring, and servicing loans related to personal and commercial automobile premiums and other personal and commercial insurance lines pursuant to § 225.25(b)(1); and providing data software services to insurance agents and brokers relating to such loans pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 1, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-10730 Filed 5-6-91; 8:45 am]

BILLING CODE 6210-01-F

Craig Reeves; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 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 the 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 May 28, 1991.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Craig Reeves, Clayton, New Mexico; to acquire an additional 16.99 percent for a total of 26.19 percent, and Viola C. Reeves, Clayton, New Mexico, to acquire an additional 3.22 percent for a total of 35.51 percent of the voting shares of Los Hacendados, Inc., Clayton, New Mexico, and thereby indirectly acquire First National Bank in Clayton, Clayton, New Mexico.

Board of Governors of the Federal Reserve System, May 1, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-10731 Filed 5-6-91; 8:45 am]

BILLING CODE 6210-01-F

Saban S.A.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

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 on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank

indicated or the offices of the Board of Governors not later than May 28, 1991.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Saban S.A., Panama City, Panama; to acquire RNYC Holdings Ltd., George Town, The Cayman Islands.

In connection with this application, RNYC Holdings Limited has applied to become a bank holding company by acquiring Saban S.A.'s existing subsidiaries, Republic National Bank of New York, New York, New York, and The Manhattan Savings Bank, Brooklyn, New York. RNYC has also applied to acquire Republic Clearing Corp., New York, New York, and thereby engage in acting as a futures commission merchant for account of members of the RNYC Group and, with respect to foreign exchange, government securities, certificates of deposits, other money market instruments, and bullion contracts, for account of non-members of the RNYC Group pursuant to § 225.25(b)(18); Republic Factors Corp., New York, New York, and thereby engage in factoring, including old line maturity factoring of accounts receivable (purchase of accounts receivable) and lending against accounts receivable collateral pursuant to § 225.25(b)(1); Republic Information and Communications Services, Inc., New York, New York, and thereby engage in providing data processing, system, programming, communications, technical support and related services to RNYC Group members, and also providing equipment and technical support regarding such equipment to non-RNYC Group members for disaster recovery actions by them pursuant to § 225.25(b)(7); Republic New York Trust Company of Florida, National Association, North Miami, Florida, National Bank, and thereby engage in trust and other fiduciary services pursuant to § 225.25(b)(3); and Republic New York Mortgage Corp., Pompano Beach, Florida, and thereby engage in mortgage banking activities pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 1, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-10732 Filed 5-6-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

[MH-91-16 (Catalog of Federal Domestic Assistance 93.125)]

Child and Adolescent Service System Program (CASSP) Competing Continuation Grants

INSTITUTE: National Institute of Mental Health.

ACTION: Notice of request for applications.

INTRODUCTION: The National Institute of Mental Health (NIMH) reannounces the availability of support for competing continuation grants for those states with currently-funded CASSP grants. These grants will be made under the authority of section 520 of the Public Health Service (PHS) Act which authorizes funds for service system development for children and adolescents with serious mental and emotional disorders.

Purpose

These grants are for the purpose of allowing State- and community-level system development grantees who are currently receiving CASSP funding to renew their activities for up to 2 additional years (subject to exhaustion of statutory eligibility).

Each competing continuation application must include a clear specification of project goals and identification of anticipated outcomes. A methodology for evaluation which measures whether these goals have been met must be developed and described in detail. It could focus on outcomes that reflect changes, such as: (1) Degree of interagency coordination, collaboration, and integration, (2) formal agreements between agencies to collaborate, as well as measures of the effectiveness of collaboration among agencies that serve individual children and their families, (3) access to services, (4) degree of family and minority group involvement in the system development, and (5) family satisfaction with the availability, accessibility, and/or appropriateness of services. It is anticipated that $1.2 million will be available for 8–9 grants.

Under the National Institute of Mental Health Public-Academic Liaison (PAL) Initiative, grantees are encouraged to use academic institutions to aid in the execution of these evaluation activities.

Eligibility

Eligibility under this RFA is limited to grantees with currently funded projects in order to provide them up to two years of additional support (subject to exhaustion of statutory eligibility) in order to secure service system improvements so that maximum benefits may be realized. The National Institute of Mental Health is allocating funds for Type 2, competing continuation grants under this announcement because previous evaluation studies have shown that five years of support are more likely to result in significant service system improvements than projects limited to three years.

New activities may be supported through a Program Announcement (PA–91–40) which will support research demonstration projects designed to test innovative ways of organizing, financing and delivering services to children and adolescents with or at risk for serious emotional or mental disorders. The announcement is available from the staff contact person: Diane L. Sondheimer, Chief, Research Demonstration Program, CFSB, DASR, NIMH, 5600 Fishers Lane, room 11C–05, Rockville, Maryland 20857.

Project Requirements[1]

All competing continuation projects must document the following:

- A relationship to State planning efforts for children and adolescents with severe emotional disturbance, under the State Planning Act, Public Law 99–660.
- Interaction and resource sharing between mental health and other child service systems, such as education, child welfare, juvenile justice, health, substance abuse, etc.
- Broad-based participation in decision-making at the system level (including such task as examining data, achieving consensus on problems and objectives, and developing a strategy) by such groups as health and human

[1] The intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR part 100, are applicable to this program. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than federally-recognized Indian tribal governments) should contact the State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application kit. The SPOC should send any State process recommendations to: Judith Katz-Leavy, CFSB, NIMH, 5600 Fishers Lane, rm. 11C–05, Rockville, MD 20857.

The due date for State process recommendations is 60 days after the deadline date for receipt of applications. The National Institute of Mental Health does not guarantee to accomodate or explain for State process recommendations that are received after the 60-day cut-off date.

service agencies; paraprofessionals; professionals; and citizen, family, children, and racial/ethnic minority groups concerned with human services.

• Specific goals focusing on increasing the role of parents and the use of the family as a resource in both service planning and delivery.

• Assessment of the special needs of racial/ethnic minority children and youth and specific strategies for meeting these needs.

• Adequate budgeting and provision for obtaining State approval for travel related to the grant, including at least three out-of-Statre trips for the project director to attend national program meetings.

• Specification of the anticipated outcomes and a strategy to evaluate the outcomes of systems building efforts and to assess the degree to which these approaches have been successful in achieving their goals and as such are worthy of replication in other areas of a State or at the State and national levels. (Under the NIMH Public-Academic Liaison (PAL) Initiative, grantees are encouraged to use academic institutions to aid in the execution of these evaluation activities)

• Progress made since CASSP grant first awarded.

Application Process

For Competing Continuation Grants, State agencies should use form PHS–5161 which is available from: Judith Katz-Leavy, Chief, Technical Assistance Program, Child and Family Support Branch, National Institute of Mental Health, 5600 Fishers Lane, room 11C–05, Rockville, Maryland 20857, (301) 443–1333.

The type of application should be typed in Item 8 on the face page of the PHS 5161 form on the blank line provided as: Competing Continuation. The name of the Federal Agency (Item 9) is: "National Institute of Mental Health—RFA MH–91–16; and the title of the program, "Child and Adolescent Service System Program (CASSP)" should be typed in Item 10. The specific title of your project should be provided in Item II (limit to 56 characters, including spaces).

The original and two (2) copies of the application must be received (not postmarked) by the close of business June 24, 1991 at the latest; applications received after June 24, 1991 will be returned without review. Applications should be sent to the Division of Research Grants, National Institutes of Health, room 240, 5333 Westbard Avenue, Bethesda, Maryland 20892.[2] Important—The mailing envelope (including that provided by an express carrier) must be clearly marked, "RFA MH–91–16."

To facilitate the timely review of your application, it is also suggested that one additional copy be sent directly to: Division of Extramural Affairs, National Institute of Mental Health, room 9C–15, 5600 Fishers Lane, Rockville, Maryland 20857.

The mailing envelope for this application should also be clearly marked "RFA MH–91–16."

Application Characteristics

Applications must be complete and contain all information needed for initial and Advisory Council reviews. No addenda will be accepted unless specifically requested by the executive secretary of the review committee. No site visits will be made.

The applicant must include a project abstract which should not exceed ½ single-spaced, typewritten page.

The narrative section must clearly describe the context for the proposed project, prior accomplishments of the State and/or local entity related to the goals of this request for applications, problems in current services delivery to the target population, rationale for the selection of the proposed project, methods by which the project will be implemented and evaluated, and expected results.

The narrative should be written clearly, yet briefly (limited to 20 pages) so that objective, outside reviewers unfamiliar with prior activities of the applicant will have the information necessary to adequately understand the project. Appendices may be attached but should not be used to merely extend the narrative. Applications exceeding page limits will be returned without review. It is important that the relationship between the proposed project and ongoing State and/or local activities be clearly explained. It is also important that the activities that are specific to the proposed project be clearly identified.

To assure that sufficient information is included for technical merit review of the application, the narrative section should include:

• A section describing the organizational background and need for assistance addressing the following areas:

—Discussion of the locus of responsibility for the target population within the State government and/or local government.

—Organizational structure of the applying entity.

—Summary of pertinent mental health or other legislation, regulations, and policies pertinent to the target population and proposed project.

—Clarification of organizational relationships between the State/local mental health agency and other State/local level health and human service agencies as these relate to the proposed project.

—Preliminary analysis of the target population, including the operational definition to be used for the proposed project, a summary of available data on the population (size, location, socioeconomic characteristics, racial/ethnic minority composition, etc.), a discussion of available services for the population, and a discussion of gaps and problems in current services.

• A section describing the proposed philosophy of systems change on which the activities of the grant are to be based.

• A detailed description of the statewide strategy, achievements of the project to date, and a summary of recent and ongoing CASSP funded activities.

• Approach for implementing project:

—A description of and rationale for the proposed focus for the project activities.

—Identification of the goals and specific objectives for the proposed project, and discussion of how these relate to the goals stated in this request for applications.

—A plan of action for all the years of the entire project bring requested, which discusses how each activity related to the project will be approached, and provides a rationale for the proposed implementation plan, justifying it in relation to the past accomplishments, needs, and problems as outlined in the narrative.

—A management plan that includes action steps, timetable, key personnel, and specific major milestones.

—A detailed budget narrative that relates budget line items to specific projects within the proposal (All budget items should not include indirect costs, which are negotiated separately).

—The budget for all years covered by the application, reflected in Item 15 of the face page of the application.

—Projected budgets for each year supplied in Item E of the "Budget Information" section of the application form.

[2] If overnight mail or courier servcie is used, the zip code is 20816.

—A discussion of project staffing for all key personnel and consultants, whether paid by the project or committed to it, including their titles, major functions, and to whom they report; organization charts for the project; documentation that staff loaned to the project from other units or agencies will be available for the amount of time required; resumes and position descriptions for all key professional staff to be paid by the grant or to have major leadership roles in the project. (Where a specific individual has not yet been identified, selection criteria for the position should be indicated.)

—A discussion of the extent to which proposed staff reflects racial/ethnic, majority/minority representation proportional to the State/community population, and what steps will be taken toward achieving proportional representation.

—A section discussing the methodological approach to evaluation of the system change at State-and/or community-levels proposed in the grant. (The applicant should present quantifiable goals and a methodology to measure achievement of those goals, or the process to date of developing potential methodology and the plan to finalize the evaluation during the grant period.)

—A section discussing the anticipated impact of the project on addressing the problems and gaps in providing appropriate services for the target population. Applicants should identify specific anticipated outcomes for each year. Local services demonstration projects should state the number and characteristics of individuals to be assisted through the project.

Client Safeguards in Competing Renewal Projects

The applicant must satisfactorily address issues regarding (1) protection of confidentiality for clients (and their families); (2) provisions for informing potential clients (and their families) of the nature of the demonstration project and (3) obtaining informed voluntary consent for their participation.

Terms and Conditions of Support

Period of Support

Applicants may request a maximum project period extension of 2 years of support for competing continuations of State-and community-level CASSP grants, with the total support of the project not to exceed 5 years (subject to exhaustion of statutory eligibility).

Allowable Costs

Grant funds may be used for expenses clearly related and necessary to carry out the described project, including direct costs and allowable indirect costs. However, in accordance with the specific provisions of section 520 of the PHS Act, no more than 10 percent of the grant may expend for administrative expenses.

Grant funds may be usd for the costs of planning, developing, and implementing activities to support attainment of the project objectives. Applicants are expected to submit a budget for each proposed project year requested. Grant funds are to be additive, not substitutive; that is, they are not to be used to replace existing resources. Costs of delivery of direct client services are not allowed under the provision of these grants, with the exception of community-level system development grants in which direct service may be supported, if that funding is demonstrated to be crucial to the development of the local system.

Allowable items of expenditure for which grant support may be requested include:

• Salaries, wages, and fringe benefits of professional and other supporting staff engaged in the project activities (Grant support for salaries and wages of staff who are engaged less than full time in the grant-supported activities must be commensurate with the effort under the grant.)

• Travel directly related to carrying out activities under the project.

• Supplies, communications, and rental of space directly related to project activities.

• Contracts to local government, not-for-profit agencies and organizations, public institutions, and consultants necessary for performance of activities under the approved project.

• Other such items necessary to support project activities, as approved by NIMH.

• Applicants must include the following assurance in their application, "not more than 10 percent of the grant will be expended for administrative expenses."

Grants must be administered in accordance with the PHS Grants Policy Statement (Rev. 10/90).

Federal regulations at Title 45 CFR part 92, "Uniform administrative Requirements for Grants and Cooperative Agreements to State and local Governments," are applicable to these awards.

Review Process

Applications will be reviewed by an initial review group (IRG) consisting primarily of non-Federal programmatic and technical experts. Notification of the IRG review recommendations will be sent to the applicant after the initial review. Applications will receive a second-level review by the National Advisory Mental Health Council whose review may be based on policy as well as technical merit considerations. Only applications recommended for approval by Council may be considered for funding.

Review Criteria

Each grant application is evaluated on its own merits against the review criteria listed below:

• Fulfillment of the project requirements for the particular type of application, as stated in the text of this announcement.

• Merit and clarity of the statement of need for project and quality of problem definition in the narrative.

• Clarity of the statement of a system change strategy with accompanying goals to be measured as evidence of outcome, and the feasibility of the plan to evaluate attainment of those goals.

• Evidence of the State's and/or local entity's readiness and commitment to improve community-based services for the target population, as documented by such factors as:

—Documentation of relevant State and/or local program development initiatives.

—Relevance of the stated statewide, system-building philosophy to national CASSP goals and the degree of the commitment of the State to that philosophy.

—Consistency of proposed activities with ongoing State comprehensive mental health planning and human resource development activities.

—Commitment of State mental health and/or other health and human service resources to activities that support the goals of the proposed project, as demonstrated by the level of interagency collaboration in the development of the application and commitment to the goals and objectives of the project.

• Feasibility of the proposed project and likelihood that it will significantly address program gaps and improve services and opportunities for the target population.

• Potential of the State-level plan and strategy for improving services for children and adolescents with, or at risk of, severe emotional distrubance.

• Quality of the projected role of families of children and adolescents with, or at risk of, severe emotional

disturbance in the demonstration projects.

- Emphasis on the special needs of racial/ethnic minoriy families represented in the project.
- Capability and experience of project director, consultants, and other key staff proposed for the project and adequacy of staffing plan and evidence of efforts to recruit minority staff.
- Evidence of activities directed at developing continuing funding support for the project after the grant is terminated.
- Appropriateness of budget.
- Progress made since first CASSP award.

Receipt and Review Schedule

Receipt of applications	Initial review	Council review	Earliest start date
June 24, 1991	July	September	September 30, 1991.

Applications received after the receipt date above will be returned to the applicant without review.

Award Criteria

In the decision to fund approved applications, the following will be considered:

- Quality of proposed project as determined by the review process.
- Geographical distribution.
- Availability of funds.
- Rural distribution (15% of appropriated funds set aside for projects conducted in rural areas as specified in section 520A of the PHS Act).

FOR FURTHER INFORMATION: Judith Katz-Leavy, Chief, Technical Assistance Program, Child and Family Support Branch, Division of Applied and Service Research, National Institute of Mental Health, 5600 Fishers Lane, room 11C-05, Rockville, Maryland 20857, (301) 443-1333.

Richard Kopanda,

Deputy Associate Adminstrator for Management Alcohol, Drug Abuse, and Mental Health Adminstration.

[FR Doc. 91-10817 Filed 5-6-91; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

International Biotechnology Conference—"Biologics '91"

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) and the State of Maryland are cohosting and sponsoring an international biotechnology conference entilted "Biologics '91" This conference will address regulatory and scientific issues pertaining to manufacturing, preclinical and clinical assessment, and licensure of biological products, and it also will provide interaction between persons and organizations involved in the biotechnology field.

DATES: The conference will be held Monday, June 24, 1991, 8 a.m. to 5 p.m.; Tuesday, June 25, 1991, 8 a.m. to 5 p.m., and 7 p.m. to 9 p.m.; and Wednesday, June 26, 1991, 8 a.m. to 12 p.m. There will also be luncheon presentations on June 24 and 25, 1991, and a dinner presentation on June 24, 1991.

ADDRESSES: The conference will be held at the Hyatt Regency Hotel located at the Inner Harbor, 300 Light St., Baltimore, MD, 301-528-1234.

FOR FURTHER INFORMATION CONTACT: For registration and general information (including a complete agenda and hotel and travel information): Laura Kurie, International Biotechnology Conference—"Biologics '91," Social and Scientific Systems, 7101 Wisconsin Ave., suite 610, Bethesda, MD 20814-4805, 301-986-4870, 301-913-0351 (facsimile).For program information: Benjamin P. Lewis, Center for Biologics Evaluation and Research (HFB-3), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301-443-8884, 301-443-8306 (facsimile).

SUPPLEMENTARY INFORMATION: This conference will address regulatory land scientific issues relevant to aspects of manufacturing, preclinical and clinical assessment, and licensure of biological products. The program is structured to provide an opportunity for interaction at both formal plenary sessions and informal "How-To" sessions among scientists, regulators, executives, administrators, and policymakers from academia, government, and industry involved in the biotechnology field.

Formal plenary sessions, scheduled for June 24, 25, and 26, 1991, will include such topics as: (1) Approaches to protein engineering; (2) the pharmacology of receptors and antagonists in therapeutic development; (3) science-based approach to preclinical assessment of safety; (4) advances in cellular therapy; (5) multiagent clinical trials with biological products; and (6) strategies for a Maryland bioprocessing facility.

Informal evening "How-To" panel sessions scheduled for June 25, 1991, 7 p.m. to 9 p.m., will include experts from FDA, the State of Maryland, the National Institutes of Health, industry, and others. Four concurrent panel sessions will provide an opportunity for informal discussion on topics including: (1) Investigational new drug (IND) issues—clinical hold, IND filing for novel therapies, issues of controlled clinical trial designs, early access issues; (2) licensing issues—creative manufacturing, problems in filing a product license application/establishment license application, orphan product regulations; (3) manufacturing issues—scale-up process changes, multiuse facilities; and (4) technology transfer and commercialization—cooperative research and development agreements (CRADA's), joint licensing, patents, and funding.

Special topics will be presented by luncheon and dinner speakers: "AIDS in the United States—1991" and "European Community Perspectives in Biotechnology."

Dated: May 2, 1991.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-10815 Filed 5-6-91; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Medicare and Medicaid Programs; Meeting of the Advisory Council on Social Security

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

ACTION: Notice of public hearing.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a hearing of the Advisory Council on Social Security.

DATES: The hearing will be open to the public on May 22, 1991 from 10 a.m. to 7 p.m.

ADDRESSES: Palo Duro Senior Center, 5221 Palo Duro NE., Albuquerque, New Mexico 87110.

FOR FURTHER INFORMATION CONTACT: Arta Mahboubi, Advisory Council on Social Security, room 638 G, Hubert H. Humphrey Building; 200 Independence Avenue, SW., Washington, DC 20201, 202–245–0217.

SUPPLEMENTARY INFORMATION:

I. Purpose

Under section 706 of the Social Security Act (the Act), the Secretary of Health and Human Services (the Secretary) appoints the Council every four years. The Council examines issues affecting the Social Security retirement, disability, and survivors insurance programs, as well as the Medicare and Medicaid programs, which were created under the Act.

In addition, the Secretary has asked the Council specifically to address the following:

- The adequacy of the Medicare program to meet the health and long-term care needs of our aged and disabled populations, the impact on Medicaid of the current financing structure for long-term care, and the need for more stable health care financing for the aged, the disabled, the poor, and the uninsured;
- Major Old-Age, Survivors, and Disability Insurance (OASDI) financing issues, including the long-range financial status of the program, relationship of OASDI income and outgo to budget-deficit reduction efforts under the Balanced Budget and Emergency Deficit Control Act of 1985, and projected buildups in the OASDI trust funds; and
- Broad policy issues in Social Security, such as the role of Social Security in overall U.S. retirement income policy.

The Council is composed of 12 members: G. Lawrence Atkins, Robert M. Ball, Philip Briggs, Lonnie R. Bristow, Theodore Cooper, John T. Dunlop, Karen Ignagni, James R. Jones, Paul O'Neill, A. L. "Pete" Singleton, John J. Sweeney, and Don C. Wegmiller. The chairperson is Deborah Steelman.

The Council is to report to the Secretary and Congress in 1991.

II. Agenda

The Council will hear testimony on the interim report on Social Security and its relationship to the Federal budget; other aspects of the social security programs; and issues and options related to health care financing reforms; including long term care.

The agenda items are subject to change as priorities dictate.

[Catalog of Federal Domestic Assistance Programs Nos. 13.714 Medical Assistance Program; 13.733 Medicare-Hospital Insurance; 13.774 Medicare-Supplementary Medical Insurance; 13.802, Social Security-Disability Insurance; 13.803 Social Security-Retirement Insurance; 13.805 Social Security-Survivor's Insurance]

Ann D. LaBelle,

Executive Director, Advisory Council on Social Security.

[FR Doc. 91–10742 Filed 5–6–91; 8:45 am]

BILLING CODE 4120–01–M

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of May 1991:

Name: National Advisory Council on Health Professions Education.

Date and Time: May 23, 1991, 9 a.m.

Place: Conference Room G, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open on May 23 9 a.m. to 12:45 p.m.; closed on May 23 1:45 p.m. to adjournment.

Purpose: The Council advises the Secretary with respect to the administration of programs of financial assistance for the health professions and makes recommendations based on its review of applications requesting such assistance. This also involves advice in the preparation of regulations with respect to policy matters.

Agenda: The open portion of the meeting will cover welcome and opening remarks, report of the Director, Bureau of Health Professions; a presentation by the American Association of Colleges of Pharmacy on Pharmacy Education; a discussion of Funding Factors for Grants and Cooperative Agreements; approval of minutes from last meeting, and discussion of future agenda items. The meeting will be closed on May 23 at 1:45 p.m. for the review of applications for Health Education and Training Centers, Faculty Development in Family Medicine, and Graduate Training in Family Medicine. The closing is in accorance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C. Code, and the Determination by the Administrator, Health Resources and Services Administration, pursuant to Public Law 92–463.

Anyone requiring information regarding the subject Council should contact Ms. Wilma J. Johnson, Executive Secretary, National Advisory Council on Health Professions Education, room 8C–26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–6880.

Agenda Items are subject to change as priorities dictate.

Dated: May 2, 1991.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 91–10816 Filed 5–6–91; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

John E. Fogarty International Center for Advanced Study in the Health Sciences; Notice of Meeting of the Fogarty International Center Advisory Board

Pursuant to Public Law 92–463, notice is hereby given of the eighteenth meeting of the Fogarty International Center (FIC) Advisory Board, May 21, 1991, in the Lawton Chiles International House (Building 16, formerly Stone House), at the National Institutes of Health.

The meeting will be open to the public from 8:30 a.m. to 1:45 p.m. The morning agenda will include a report by the Director, FIC; reports on opportunities for research collaboration in Africa; a report on the new immigration law and its implications for NIH; and a presentation on "Perspectives From the White House Office of Science and Technology Policy."

The afternoon agenda will include a report on the Workshop on Drug Development, Biological Diversity, and Economic Growth.

In accordance with the provisions of sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public from 1:45 p.m. to adjournment for the review of International Research Fellowship and Senior International Fellowship applications, Scholars nominations, and proposals for Scholars' conferences and international studies.

Myra Halem, Committee Management Officer, Fogarty International Center, Building 31, room B2C32, National Institutes of Health, Bethesda, Maryland 20892 (301–496–1491), will provide a summary of the meeting and a roster of the committee members upon request.

Ms. Stephanie Bursenos, Acting Assistant Director for Planning and Evaluation, Fogarty International Center (Acting Executive Secretary), Building 31, Room B2C39, telephone 301–496–1415, will provide substantive program information.

Dated: April 24, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91–10667 Filed 5–6–91; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Aging; Notice of Meeting of the National Advisory Council on Aging

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the

National Advisory Council on Aging, National Institute on Aging (NIA), on May 23–24, 1991. On May 23 the Council will meet in Building 31, Conference Room 6, National Institutes of Health, Bethesda, Maryland. This meeting will be open to the public from 8:30 a.m. until 2 p.m. for a status report by the Director, National Institute on Aging; a report on the Epidemiology, Demography and Biometry Program; and for discussions of program policies and issues, recent legislation, and other items of interest.

It will again be open to the public on Friday, May 24, Conference Room 6, from 8:30 a.m. to adjournment for a report on the Neuroscience and Neuropsychology of Aging Program; and a report on the Task Force on Minority Aging. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C. and section 10(d) of Public Law 92–463, the meeting of the Council will be closed to the public on May 23 from 2:00 to recess for the review, discussion, and evaluation of individual grant applications.

These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June McCann, Council Secretary for the National Institute on Aging, National Institutes of Health, Building 31, room 5C02, Bethesda, Maryland 20891, (301/496–9322), will provide a summary of the meeting and a roster of committee members upon request.

(Catalog of Federal Domestic Assistance Program No. 13.866, Aging Research, National Institutes of Health)

Dated: April 24, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91–10668 Filed 5–6–91; 8:45 am]

BILLING CODE 4140–01–M

National Eye Institute; Meeting of the National Advisory Eye Council (NAEC)

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the NAEC on May 30 and 31, 1991, Building 31C, Conference Room 8, National Institutes of Health, Bethesda, Maryland.

The NAEC meeting will be open to the public from 8:30 a.m. until approximately 3 p.m. on Thursday, May 30, 1991. Following opening remarks by the Director, NEI, there will be presentations by the staff of the Institute and discussions concerning Institute programs and policies. Attendance by the public at the open sessions will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting of the NAEC will be closed to the public from approximately 3 p.m. on Thursday, May 30 until adjournment on Friday, May 31 for the review, discussion, and evalaution of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Lois DeNinno, Committee Management Officer, National Eye Institute, Building 31, room 6A08, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–9110, will provide a summary of the meeting, roster of committee members, and substantive program information upon request.

(Catalog of Federal Domestic Assistance Programs, Nos. 13.867, Retinal and Choroidal Diseases; 13.868, Anterior Segment Diseases Research; and 13.871, Strabismus, Amblyopia and Visual Processing; National Institutes of Health.)

Dated: April 24, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91–10669 Filed 5–6–91; 8:45 am]

BILLING CODE 4140–01–M

National Center for Research; Meeting of the National Advisory Research Resources Council

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Research Resources Council (NARRC), National Center for Research Resources (NCRR), at the National Institutes of Health.

This meeting will be open to the public, as indicated below, during which time there will be discussions on administrative matters such as previous meeting minutes; the report of the Director, NCRR; and review of budget and legislative updates. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S. Code and section 10(d) of Public Law 92–463, the meeting will be closed to the public as listed below for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning indviduals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Date of meeting: June 5–7, 1991.

Place of meeting: National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

Open: June 5, 4:45 p.m. until recess, Planning and Agenda Subcommittee, Building 12A, Room 4007. June 6, 9 a.m. until recess, Conference Room 10,. Building 31C. June 7, 8:30 a.m. until 10:30 a.m.

Closed: June 7, 10:30 a.m. until adjournment, Conference Room 10, Building 31C.

Mr. James J. Doherty, Information Office, NCRR, Westwood Building, Room 10A15, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–5545, will provide a summary of meeting and a roster of the Council members upon request. Dr. Judith L. Vaitukaitis, Acting Deputy Director for Extramural Research Resources, NCRR, Building 12A, Room 4011, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–6023, will furnish substantive program information upon request, and will receive any comments pertaining to this announcement.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, Laboratory Animal Sciences and Primate Research; 93.333, Clinical Research; 93.337, Biomedical Research Support; 93.371, Biomedical Research Technology; 93.389 Research Centers in Minority Institutions; 93.198, Biological Models and Material Resources, National Institutes of Health.)

Dated: April 24, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91–10670 Filed 5–6–91; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

National Toxicology Program; Chemicals (16) Nominated for Toxicological Studies; Request for Comments

SUMMARY: On March 13, 1991, the Chemical Evaluation Committee (CEC) of the National Toxicology Program (NTP) met to review eleven chemicals nominated for in-depth toxicological studies, and five chemicals for chemical disposition studies, and to recommend

the types of studies to be performed, if any. With this notice, the NTP solicits public comments on the nominated chemicals in order to encourage public participation in the chemical evaluation process and to assist the NTP in making decisions about whether to test these chemicals.

FOR FURTHER INFORMATION CONTACT: Dr. Victor A. Fung, Chemical Selection Coordinator, National Toxicology Program, Room 2B55, Building 31, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–3511.

SUPPLEMENTARY INFORMATION: The NTP Chemical Evaluation Committee (CEC) is composed of representatives from the agencies participating in the NTP. As part of the chemical selection process of the National Toxicology Program, nominated chemicals which have been reviewed by the CEC are published in the **Federal Register** with request for comment. This is done to encourage active participation in the NTP chemical evaluation process, thereby helping the NTP to make more informed decisions as to whether to select, defer or reject chemicals for toxicology study. Comments and data submitted in response will be reviewed by NTP technical staff for use in the further evaluation of the nominated chemicals. The NTP chemical nomination and selection process is summarized in the **Federal Register**, April 1981 (46 FR 21828), and also in the NTP FY 1990 Annual Plan, pages 13–15.

On March 13, 1991, the CEC met to evaluate eleven chemicals nominated to the NTP for in-depth toxicological studies. The following table lists the chemicals, their Chemical Abstract Service (CAS) registry numbers, and the types of toxicological studies recommended by the CEC.

Chemical	CAS Registry No.	Committee recommendations
1. ((o-Carboxyphenyl)thio)ethylmercury sodium salt	54–64–8	No testing.
2. Hexamethyldisilazane	999–97–3	Carcinogenicity. Reproductive effects.
3. Isoeugenol	97–54–1	Chemical disposition. Carcinogenicity. Reproductive and developmental effects.
4. Sesamol	533–31–3	No testing.
5. 3,3',4,4'-Tetrachloroazobenzene	14047–09–7	Carcinogenicity.
6. 3,3',4,4'-Terachloroazoxybenzene	21232–47–3	Carcinogenicity.
7. Trimethylolpropane	15625–89–5	Chemical disposition. Carcinogenicity. Reproductive and developmental effects.
8. C.I. Acid Red 52	3520–42–1	Defer.
9. C.I. Basic Blue 3	33203–82–6	Defer.
10. C.I. Disperse Red 60	17418–58–5	Defer.
11. C.I. Vat Yellow 2	129–09–9	Defer.

Two of the eleven chemicals nominated for in-depth toxicological evaluation, ((o-carboxyphenyl)thio)ethylmercury sodium salt and isoeugenol, were previously tested in Salmonella by the NTP and were found to be nonmutagenic in this assay.

The CEC recommended that the four dyes (C.I. Acid Red 52, C.I. Basic Blue 3, C.I. Disperse Red 60, and C.I. Vat Yellow 2) be evaluated in the context of a class study of dyes. Therefore it was recommended that these nominated dyes be deferred in order to retrieve the necessary information to perform this overall evaluation.

In addition to the eleven chemicals listed above, the CEC reviewed five chemicals which were nominated only for chemical disposition studies. The chemicals were: Calcium naphthenate (CAS No. 85763–67–3), cobalt naphthenate (CAS No. 1789–51–3), copper naphthenate (CAS No. 1338–02–9), sodium naphthenate (CAS No. 61790–13–4), and 1,2-propylene glycol dinitrate (CAS No. 6423–43–4). The NTP is currently conducting a chemical disposition study of cobalt naphthenate; however, the focus of this study is on the cobalt moiety. Since the primary interest of the nominating source was in the naphthenate moiety rather than the metallic moiety of the four metal naphthenates, the CEC recommended chemical disposition studies of a naphthenic acid and no testing for any of the metal naphthenates.

The fifth chemical nominated for chemical disposition studies, 1,2-propylene glycol dinitrate (PGDN), has been suggested by the nominating source to be responsible for neurotoxic effects observed among workers at an incinerator site. The EPA is planning to perform neurotoxicity studies of the chemical. The CEC recommended chemical disposition studies of PGDN only if the proposed EPA studies indicate that PGDN is a neurotoxic agent.

Interested parties are requested to submit pertinent information on all of the nominated chemicals. The following types of data are of particular relevance:

(1) Modes of production, present production levels, and occupational exposure potential;

(2) Uses and resulting exposure levels, where known;

(3) Completed, ongoing and/or planned toxicologic testing in the private sector including detailed experimental protocols and results, in the case of completed studies;

(4) Results of toxicological studies of structurally related compounds.

Please submit all information in writing (by 30 days after date of publication) to Dr. Fung. Any submissions received after the above date will be accepted and utilized if possible.

Dated: April 30, 1991.

David G. Hoel,

Acting Director, National Toxicology Program.

[FR Doc. 91–10666 Filed 5–6–91; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–620–00–4111–12–2410]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget and approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the

proposed collection of infomation and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Office at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Office and to the Office of Management and Budget, Paperwork Reduction Project (1004–0065), Washington, DC 20503, telephone 202–395–7340.

Title: Oil and Gas Nomination Form.

OMB Approval Number: 1004–0065.

Abstract: Respondents supply information on the form which is submitted to nominate oil and gas parcels to be offered for oral auction at a competitive lease sale.

Bureau Form Numbers: 3120–25, 3120–25a.

Frequency: On occasion.

Description of Respondents: General public, small businesses, and oil companies;

Estimated Completion Time: 15 minutes.

Annual Responses: 0.

Annual Burden Hours: 1.

Bureau Clearance Officer: (Alternate) Gerri Jenkins (202) 653–8853.

Dated: March 28, 1991.

A.A. Sokoloski,

AD, Energy and Mineral Resources.

[FR Doc. 91–10687 Filed 5–6–91; 8:45 am]

BILLING CODE 4310–84–M

[UT–020–01–4212–14; U–66589]

Salt Lake District; Plan Amendment for the Pony Express Resource Management Plan and Notice of Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of plan amendment for the Pony Express Resource Management Plan and notice of realty action, bureau motion, noncompetitive public land sale in Tooele County, Utah.

SUMMARY: The above Resource Management Plan was amended on April 24, 1991 by the Utah State Director. This amendment allows the following described land to be disposed of pursuant to the provisions of sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2743, 2757; 43 USC 1713 & 1719):

T. 1N., R. 19W., SLM, Section 34: SW¼NE¼ contains 40 acres.

The land will be offered for sale after a 60 day waiting period from the publication of this notice. There is also a concurrently running 30 day time period to protest this amendment.

The land described is hereby segregated from appropriation under all other public land laws, including the mining laws, pending disposition of this action or two years from the date of publication of this notice, whichever occurs first.

When patent is issued, it will contain a reservation for ditches and canals and leasable minerals. The tract is being offered to the city of Wendover, Utah.

This tract was not identified for disposal in the Pony Express Resource Management Plan. Therefore, this plan had to be amended to allow for the sale of the land. On August 14, 1990, a notice was published in the **Federal Register** giving notice of the BLM's intent to amend the above plan. On January 4, 1991, a notice was published in the **Federal Register** giving notice of availability of the proposed planning amendment for the Pony Express Resource Management area. Also both notices were published in the local newspaper. There have been no public comments on any of the above notices.

Detailed information concerning these reservations as well as specific conditions of the sale and supporting documents are available at: Bureau of Land Management, Salt Lake District Office, 2370 South 2300 West, Salt Lake City, Utah 84119.

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 Salt Lake District Manager at the above address. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Deane H. Zeller,

Salt Lake District Manager.

[FR Doc. 91–10737 Filed 5–6–91; 8:45 am]

BILLING CODE 4310–DQ–M

[WY–930–91–4332–09]

Wilderness Study Areas in Wyoming; Availability of Mineral Survey Reports

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of nine mineral survey reports produced by the U.S. Geological Survey and Bureau of Mines on nine Bureau of Land Management Wilderness Study Areas (WSA's) in Wyoming. Announcement of a sixty-day comment period to obtain previously unknown mineral information on the areas.

SUMMARY: The Federal Land Policy and Management Act (Pub. L. 94–579) requires the U.S. Geological Survey and the U.S. Bureau of Mines to conduct mineral surveys on certain BLM WSA's to determine the mineral values, if any, that may be present.

The reports are for the Cedar Mountain WSA in Washakie and Hot Springs Counties, the McCullough Peaks WSA in Park County, the Buffalo Hump and Sand Dunes Addition in Sweetwater County, the Adobetown WSA in Sweetwater County, the Raymond Mountain WSA in Lincoln County, the Oregon Buttes WSA in Sweetwater County and the Devils Playground/Twin Buttes WSA's in Sweetwater County, Wyoming. This notice gives the public an opportunity to obtain the reports and to review and offer previously unknown mineral information on these WSA's.

DATES: The public review of the nine mineral survey reports named in this Notice shall begin on May 6, 1991, and continue for sixty days (July 1991).

ADDRESSES: All data and written comments should be directed to the State Director (WY–910), Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82003. Copies of these reports must be purchased from Books and Open-File Reports Section, U.S. Geological Survey, Federal Center, Box 25425, Denver, Colorado, 80255.

FOR FURTHER INFORMATION CONTACT: Wayne Erickson, Wilderness Coordinator, (307) 775–6107, Wyoming State Office, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82003.

SUPPLEMENTARY INFORMATION: The nine mineral reports are available for review or purchase from the Geological Survey. When ordering, the bulletin number and name should be used. The price listed is that charged by the Books and Open-File Reports Section, U.S. Geological Survey (303) 776–7476 and includes third or fourth class mailing. First class or foreign mailings require an addition of ten percent.

Cedar Mountain WSA, Washakie and Hot Springs Counties, (U.S.G.S. 1756–B) $1.50.

McCullough Peaks WSA, Park County, (U.S.G.S. 1756–F) $4.75.

Buffalo Hump and Sand Dunes Addition, Sweetwater County, (U.S.G.S. 1757–G) $1.75.

Adobetown WSA, Sweetwater County, (U.S.G.S. 1757–H), $3.25.

Raymond Mountain WSA, Lincoln County, (U.S.G.S. 1757–I) $3.75.

Oregon Buttes WSA, Sweetwater County, (U.S.G.S. 1757–J) $3.75.

Devils Playground and Twin Buttes WSAs, Sweetwater County

(Administrative Report) No charge. This report may be obtained from: Richard E. VanLoenen, U.S. Geological Survey, Mail Stop 905, Lakewood, CO 80225.

The reports are also available for review in the offices of the BLM in Cheyenne, Rawlins, Rock Springs, and Worland, Wyoming. County libraries in Laramie County (Cheyenne), Park County (Cody), Washakie County (Worland), Hot Springs County (Thermopolis), Sweetwater County (Green River), and Lincoln County (Kemmerer). Any new public comment information/data will be screened by the BLM. The Wyoming State Director may ask the Geological Survey or the Bureau of Mines to determine if the information contains significant new data or an interpretation that was not available at the time the mineral survey report was prepared. The Geological Survey or the Bureau of Mines would determine if additional field investigations should be undertaken. Recommendations for the designation of an area as wilderness will be made to the Secretary of the Interior by the BLM. The Secretary shall, in turn, make recommendations to the President who will advise Congress. A recommendation of the President for designation as wilderness shall become effective only if so provided by an Act of Congress.

Dated: April 26, 1991.

F. William Eikenberry,

Associate State Director, Wyoming.

[FR Doc. 91-10793 Filed 5-6-91; 8:45 am]

BILLING CODE 4310-22-M

Minerals Management Service

Proposed Central and Western Gulf of Mexico Sales 139 and 141 Draft Environmental Impact Statement; Public Hearings

AGENCY: Minerals Management Service; Interior.

ACTION: Notice of locations and dates of public hearings regarding the Draft Environmental Impact Statement for Proposed Central and Western Gulf of Mexico Sales 139 and 141.

On April 24, 1991, a **Federal Register** Notice 56 FR 18832 announced the availability of the draft Environment Impact Statement (EIS) for the proposed 1992 Outer Continental Shelf (OCS) oil and gas lease sales in the Central and Western Gulf of Mexico indicating that the dates, times, and locations of public hearings on the draft EIS would be announced at a later date. The purpose of these public hearings is to provide the Department of the Interior and the Minerals Management Service with information from individuals, public and private groups, and Government Agencies to further evaluate the potential effects of the proposed lease sales.

Four public hearings have been scheduled to receive comment on the draft Environmental Impact Statement 139/141. The locations and dates and times of the hearings are listed below. Persons who wish to testify at these hearings can register the day of the hearing at the hearing sites beginning one hour prior to the beginning of the meeting. Oral testimony should be limited to 10 minutes. Testimony may be supplemented by a written statement which, if submitted at a hearing, will be considered as part of the hearing record. Pertinent testimony and comments will be addressed in the final EIS for Sales 139/141. Those unable to attend the hearing may submit written statements until the close of the comment period, June 18, 1991. Written statements will receive the same degree of consideration in the final EIS as oral testimony presented at the hearings. Written statements should be submitted to the Regional Supervisor, Office of Leasing and Environment (MS 5410), Gulf of Mexico OCS Region, 1201 Elmwod Park Boulevard, room 311, New Orleans, Louisiana 70123.

New Orleans, Louisiana, May 20, 1991, from 2 to 4 p.m., Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, Conference Room 111.

Galveston, Texas, May 21, 1991, from 7 to 10 p.m., Rosenberg Library, 2310 Sealy Avenue.

Corpus Christi, Texas, May 22, 1991, from 7 to 10 p.m., Conrad Blucher Institute for Surveying and Science, Corpus Christi State University, 6300 Ocean Drive.

Mobile, Alabama, May 29, 1991, from 7 to 10 p.m., Ramada Inn Resort, 600 South Beltline Highway.

After all the public hearing testimony and written comments on the draft EIS have been reviewed and analyzed, a final EIS will be prepared.

A scoping workshop is to be held May 30, 1991, at the Ramada Inn Resort, from 7 to 10 p.m. This meeting is designed to gather information from the public regarding the issues and resources to be addressed in the draft EIS for proposed 1993 Central and Western Gulf of Mexico Sales 142 and 143. All interested parties are invited to attend and participate in the planning process for this draft EIS.

Dated: April 29, 1991.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 91-10818 Filed 5-6-91; 8:45 am]

BILLING CODE 4310-MR-M

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT 756719

Applicant: Walter R. Schreiner, Mt. Home, TX.

The applicant requests a permit to import the sport-hunted trophy of a male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by Henmyr Investments, Great Kei Nature Reserve, Bloemfontein, South Africa for the purpose of enhancement of survival of the species.

PRT 756184

Applicant: Larry Johnson, Orange, CA.

The applicant requests a permit to purchase in interstate commerce one captive born female white-handed gibbon (*Hylobates lar*) from Wildlife Safari, Winston, Oregon and export to the Guadalajara Zoo, Mexico for the purpose of captive propagation and education.

PRT 757502

Applicant: Gary C. Smith, Los Gatos, CA.

The applicant requests a permit to import a short-hunted trophy of a male bontebok (*Damaliscus dorcas dorcas*) culled from the captive heard maintained by W.G. de Klerk, Glen Lynden, Bedford, Republic of South Africa for the purpose of enhancement of survival of the species.

PRT 757789

Applicant: Chicago Zoological Park, Brookfield, IL.

The applicant requests a permit to import one captive-born Amur leopard (*Panthera pardus orientalis*) from Diergaard, Blijdorp, Rotterdam, Netherlands for breeding and display purposes.

PRT 757503

Applicant: San Diego Zoological Society, San Diego, CA.

The applicant requests a permit to import one male and two female captive-born black-footed cats, (*Felis nigripes*) from John Visser, Durbanville,

South Africa, for breeding and display purposes.

PRT 756054

Applicant: Cleveland Metroparks Zoo, Cleveland, OH.

The applicant requests a permit to import one male and one female captive-born cheetahs (*Acinonyx jubatus*) from John Rens Zoo Animal Broker, Wassenaar, Netherlands, for breeding and display purposes.

PRT 756417

Applicant: The Hawthorn Corporation, Grayslake, IL.

The applicant requests a permit to import two pair of captive-born tigers (*Panthera tigris*) from Germany. These tigers are the progeny of applicant's own tigers that are currently performing in Germany. The tigers will be imported for purposes of exhibition and captive breeding. In the future, the applicant will export and re-import these animals for the same purposes.

PRT 757577

Applicant: Gene Branscome, Baytown, TX.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), culled from the captive herd maintained by Mr. M.C. Weinand, Longwood, Bedford 5780, Longwood, Republic of South Africa, for the purposes of enhancement of survival of the species.

PRT 756717

Applicant: Louis A. Schreiner, Mt. Home, TX.

The applicant requests a permit to import the sport-hunted trophy of a male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by Henmyr Investments, Great Kei Nature Reserve, Bloemfontein, South Africa for the purpose of enhacement of survival of the species.

PRT 757846

Applicant: William H. Smith, Cody, WY.

The applicant requests a permit to import the sport-hunted trophy of a male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by J.M. Mullins, Faberskraal, Grahmstown, Republic of South Africa for the purpose of enhancement of survival of the species.

PRT 757700

Applicant: St. Louis Zoological Park, St. Louis, MO.

The applicant requests a permit to import one captive-born male gorilla (*Gorilla gorilla*) from the Jersey Wildlife Preservation Trust, Jersey, Channel Islands for display purpose.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Servie, Office of Management Authority, 4401 North Fairfax Drive, Room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45–4:15) in, the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: May 1, 1991.

Karen W. Rosa,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 91–10675 Filed 5–6–91; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Alaska Outer Continental Shelf: Availability, Proposed Notice of Sale, Navarin Basin Planning Area, Oil and Gas Lease Sale 107

With regard to oil and gas leasing on the Outer Continental Shelf (OCS), the Secretary of the Interior, pursuant to section 19 of the OCS Lands Act, as amended, provides the affected States the opportunity to review the proposed Notice of Sale.

The proposed Notice of Sale for Sale 107, Navarin Basin Planning Area, may be obtained by written request to the Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, room 544, Anchorage, Alaska 99508–4302, telephone (907) 261–4691.

The final Notice of Sale will be published in the **Federal Register** at least 30 days prior to the date of the bid opening. The bid opening is scheduled for September 1991.

This Notice of Availability is herby published, pursuant to 30 CFR 256.29(c), as matter of information to the public.

Dated: May 1, 1991.

Barry Williamson,

Director, Minerals Management Service.

[FR Doc. 91–10795 Filed 5–6–91; 8:45 am]

BILLING CODE 4310–MR–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–518 (Preliminary)]

Hand-held Aspherical Indirect Opthalmoscopy Lenses from Japan

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a preliminary antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731–TA–518 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of hand-held aspherical indirect ophthalmoscopy lenses, provided for in subheading 9018.50.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by June 14, 1991.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201, as amended by 56 FR 11918, Mar. 21, 1991), and part 207, subparts A and B (19 CFR part 207, as amended by 56 FR 11918, Mar. 21, 1991).

EFFECTIVE DATE: April 30, 1991.

FOR FURTHER INFORMATION CONTACT: Larry Reavis (202–252–1185), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–252–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–251–1000.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted in response to a petition filed on April 30, 1991, by Volk Optical, Inc., Mentor, Ohio.

Participation in the investigation and public service list.—Persons (other than petitioners) wishing to participate in the investigation as parties must file an

entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this preliminary investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on May 21, 1991, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Larry Reavis (202–252–1185) not later than May 17, 1991, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions. —As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission or or before May 24, 1991, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.12 of the Commission's rules.

Issued: May 1, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–10853 Filed 5–6–91; 8:45 am]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on April 29, 1991, a proposed Consent Decree in *United States* versus *Armstrong World Industries, Inc., et al.*, No. 89–4346, was lodged with the United States District Court for the District of New Jersey. The complaint in this action was filed pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.*, to recover costs incurred by the Environmental Protection Agency ("EPA") in taking response actions at the Lone Pine Landfill Superfund Site ("Site") located in Freehold Township, Monmouth County, New Jersey.

The proposed Consent Decree embodies an agreement by 21 potentially responsible parties at the Site to pay the United States a total of $4,400,000. This payment covers the liability of these parties for past costs incurred by EPA in connection with the first operable unit at the Site, as well as for the first $500,000 of oversight costs to be incurred by EPA in connection with the first operable unit at the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* versus *Armstrong World Industries, Inc., et al.*, DOJ No. 90–11–2–294A.

The proposed Consent Decree may be examined at the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York, 10278, and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (202–347–2072).

A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Box 1097, Washington, DC 20004. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $10.25 (25 cents per page reproduction cost) for the Consent Decree.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91–10786 Filed 5–6–91; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree

In accordance with section 122 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622, and the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a complaint styled *United States* v. *Asarco, Inc., et al.* was filed in the United States District Court for the Northern District of Oklahoma on April 25, 1991, and, simultaneously, a consent decree was lodged with the Court in settlement of the allegations in the complaint. This consent decree settles the government's claims in the complaint pursuant to section 107 of CERCLA, 42 U.S.C. 9607, for reimbursement of costs incurred by the United States in response to the release or threatened release of hazardous substances at or from a facility located in northeast Oklahoma, known as the "Tar Creek Site." The complaint alleged, among other things, that the defendants are persons who operated the facility at the time of disposal of hazardous substances and/or who by contract, agreement or otherwise arranged for disposal of hazardous substances at the facility.

Under the terms of the proposed consent decree, the defendants agree to pay the sum of $1,273,000 in reimbursement of response costs incurred in connection with the government's investigation, study and remediation of the Tar Creek Site.

The Department of Justice will receive comments relating to the proposed

consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. All comments should refer to *United States* v. *Asarco, Inc., et al.*, D.J. Ref. 90–11–2–330.

The proposed consent decree may be examined at the following offices of the United States Attorney and the Environmental Protection Agency ("EPA"):

EPA Region VI

Contact: Pamela Phillips, Office of Regional Counsel, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 655–2120.

United States Attorney's Office

Contact: Peter Bernardt, Assistant United States Attorney, 3600 Federal Courthouse, 333 W. 4th, Tulsa, Oklahoma 74103, (918) 581–7463.

The proposed consent decree may be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004, (202–347–2072). A copy of the proposed Consent Decree can be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Box 1097, Washington, DC 20004. In requesting a copy of the decree, please enclose a check for copying costs in the amount of $4.25 payable to Treasurer of the United States.

Barry M. Hartman,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91–10689 Filed 5–6–91; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Under Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, notice is hereby given that on April 24, 1991, a proposed Consent Decree in *United States* v. *Ionia City, Michigan*, was lodged with the United States District Court for the Western District of Michigan.

This is a civil action for cost recovery and injunctive relief under sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.C. 9606 and 9607. This action involves a hazardous waste site near Ionia City, Michigan, known as the Ionia City Landfill facility ("Ionia site"). The United States seeks to recover costs incurred by the United States in conducting response actions at the Ionia site. The United States also seeks injunctive relief to remedy conditions at the site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Ionia City, Michigan*, D.J. reference #90–11–2–476.

The proposed Consent Decree may be examined at the office of the United States Attorney, Western District of Michigan, 110 Michigan Street, NW., Grand Rapids, Michigan 49503, or at the Region V office of the United States Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (202–347–2072). A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $47.00 payable to the Consent Decree Library.

Barry M. Hartman,

Acting Assistant Attorney General, Environment & Natural Resources Division.

[FR Doc. 91–10785 Filed 5–6–91; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended (CERCLA), 42 U.S.C. 9622(i) and Departmental policy at 28 CFR 50.7, notice is hereby given that on April 19, 1991, a proposed consent decree in *United States* v. *Wallace, et al.*, (Northwest Transformer Site) Civil Action No. C88–605C, was lodged with the United States District Court for the Western District of Washington. The complaint, as amended, alleged that a number of generator and owner/operator defendants, including defendants Wallace, Sidell, Northwest Transformer Company, and Whatcom Builders, are liable under sections 106 and 107 of CERCLA, 42 U.S.C. 9606, 9607, for injunctive relief and cost-recovery arising out of the release of PCBs at the Northwest Transformer repair site near Everson, Washington. Third-party claims against the Theotista Potts Trust and the Claude Potts Estate were also asserted in the case. Pursuant to the proposed consent decree, the United States will receive $460,000 ($230,000 from Wallace, Sidell and Northwest Transformer Company; $86,250 from Whatcom Builders; and $143,750 from the Potts Estate and Trust) to reimburse Superfund response costs. Completion of the remedy selected by the United States Environmental Protection Agency and the recovery of additional response costs are not addressed in this settlement but will be in negotiations with other potentially responsible parties. The Department of Justice, for a period of thirty (30) days from the date of this publication, will receive comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Wallace, et al.*, Department of Justice reference number 90–11–3–341.

The proposed consent decree may be examined at the office of the U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101 and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington DC 20004, (202) 347–2072. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $5.25 (25 cents per page reproduction costs) payable to "Consent Decree Library." When requesting a copy, please refer to *United States* v. *Wallace, et al.*, Department of Justice 90–11–3–341.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91–10690 Filed 5–6–91; 8:45 am]

BILLING CODE 4410–10–M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—Petrotechnical Open Software Corporation; Joint Research and Development Venture

Notice is hereby given that, on April 19, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et. seq.* ("the Act"), Petrotechnical Open Software Corporation ("POSC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of invoking the protections of the Act limiting the recovery of antitrust plaintiffs to actual damage under specified circumstances.

Specifically, the notification stated that the following additional parties have become new, non-voting members of POSC:

ARCO Oil and Gas Co., Division of Atlantic Richfield Co., 2300 West Plano Parkway, Plano, Texas 75075.
Landmark Graphics Corporation, 333 Cypress Run, Houston, Texas 77094.
Societe Francaise de Genie Logiciel, 14 Rue de La Ferme, 92100 Boulogne, France.
Oryx Energy Co., P.O. Box 2880, Dallas, Texas 75221–2880.
Western Atlas Software, 10205 Westheimer, Houston, Texas 77042.
Schlumberger Well Services, Division of Schlumberger Technology Corporation, 5000 Gulf Freeway, Houston, Texas 77023.
Petrosystems Geoscience Software Inc., 2500 Wilcrest, suite 250, Houston, Texas 77042.
Institut Francais Du Petrole, 1 & 4 avenue de Bois-Preau, B.P. 311, 92506 Rueil-Malmaison Cedex, France.
Cray Research Inc., 655 E. Lone Oak Drive, Eagan, Minnesota 55121.

No other changes have been made in either the membership or planned activity of POSC.

On January 14, 1991, POSC filed simultaneously with the Attorney General and the Federal Trade Commission its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 7, 1991 (56 FR 5021).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91–10688 Filed 5–6–91; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–25,519]

ABCO Industries, Inc., Abilene, TX; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 11, 1991 in response to a worker petition which was filed on March 11, 1991 on behalf of workers at ABCO Industries, Incorporated, Abilene, Texas.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 29th day of April 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91–10797 Filed 5–6–91; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–25, 413]

Birnbaum & Englard Knitting Mills, Inc. Brooklyn, NY; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on February 19, 1991 in response to a worker petition which was filed on behalf of workers at Birnbaum & Englard Knitting Mills, Inc., Brooklyn, New York.

A negative determination applicable to the petitioning group of workers was issued on July 31, 1990 (TA–W–24, 467). No new information is evident which would result in a reversal of the Department's previous determination. Consequently further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC this 30th day of April 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91–10796 Filed 5–6–91; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–25,350]

Shot Point Services, Inc., Houston, TX; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Shot Point Services, Incorporated, Houston, Texas. The review indicated that the applcation contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–25,350; Shot Point Services, Incorporated; Houston, Texas (April 26, 1991).

Signed at Washington, DC this 30th day of April, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91–10798 Filed 5–6–91; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–25,302]

Storage Technology Corp., Customer Services-Printer Operations, Melbourne, FL; Negative Determination Regarding Application for Reconsideration

By an application dated April 9, 1991, the company requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on March 15, 1991 and published in the **Federal Register** on April 2, 1991 (56 FR 13500).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifyng Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The workers at the subject facility provide customer services—installation and maintenance.

The company claims that the subject workers lost the design, installation and maintenance activities in more than 20 major metropolitan markets for the non-impact printers whose workers were certified for the trade adjustment assistance under petition TA–W–25–303.

Investigation findings show that StorageTek entered into a joint venture with Siemens on March 1, 1991 consolidating domestic end user sales and service of non-impact printers in more than 20 major metropolitan

markets. As a result of the consolidation, StorageTek's maintenance force will service non-impact printers outside the primary markets on a contract basis. StorageTek will continue to sell and service impact printers in all cities. The reason for the worker separations at Storage Technology's Customer Service-Printer Operations is a consolidation resulting from the joint venture.

The Department's denial was based on the fact that the contributed importantly test of the Group Eligibility Requirements of the Trade Act was not met. In order for a worker group to be certified eligible to apply for adjustment assistance, increased imports must have contributed importantly to declines in sales or production and employment. This was not the case with the customer service facility.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the facts or of the law which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC this April 30, 1991.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91-10799 Filed 5-6-91; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (91-37)]

NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee (SSTAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee, Ad Hoc Review Team on Advanced Life Support Technology.

DATES: May 30, 1991, 8 a.m. to 5 p.m.; and May 31, 1991, 8 a.m. to 5 p.m.

ADDRESSES: National Aeronautics and Space Administration, John F. Kennedy Space Center, room 110, Building 1732, Kennedy Space Center, FL 32899.

FOR FURTHER INFORMATION CONTACT: Ms. Peggy Evanich, Office of Aeronautics, Exploration and Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2843.

SUPPLEMENTARY INFORMATION: The NAC Space Systems and Technology Advisory Committee (SSTAC) was established to provide overall guidance to the Office of Aeronautics, Exploration and Technology (OAET) on space systems and technology programs. Special ad hoc review teams are formed to address specific topics. The AD Hoc Review Team on Advanced Life Support Technology, chaired by Mr. Adrain P. O'Neal, is composed of eight members.

The meeting will be open to the public up to the seating capacity of the room (approximately 30 persons including the team members and other participants). It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the participants.

Type of Meeting: Open.

Agenda

May 30, 1991

8 a.m.—Opening Remarks.
8:30 a.m.—Briefing on Controlled Ecological Life Support Systems Research Program.
11 a.m.—Tour of Life Support Facilities.
1 p.m.—Review Team Discussion.
5 p.m.—Adjourn.

May 31, 1991

8 a.m.—Review Team Discussion/ Deliberations
5 p.m.—Adjourn

Dated: May 1, 1991.

John W. Gaff,

Advisory Commitee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 91-10720 Filed 5-6-91; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL EDUCATION GOALS PANEL

National Education Goals Panel; Meeting

AGENCY: The National Education Goals Panel.

ACTION: Notice of meeting.

SUMMARY: The National Education Goals Panel was established by a Joint Statement between the President and the nation's governors dated July 31, 1990. The panel will determine how to measure and monitor progress toward achieving the national education goals and to report to the nation on progress toward the goals. Members of the National Education Goals Panel are six governors appointed by the Chairman of the National Governors Association, four senior Administration officials, and four Congressional leaders. Governor Roy Romer of Colorado is the initial Chairman.

TENTATIVE AGENDA ITEMS: Panel members will provide an update on the process of regional forums related to the assessment of the national education goals.

DATES: The meeting is scheduled for Monday, May 13, 1991, from 3:30 to 4:30 p.m.

ADDRESSES: The meeting will be held at the Hyatt Regency-Washington on Capitol Hill, 400 New Jersey Avenue, NW., Washington, DC.

ATTENDANCE: Please contact Pat Forgione, Executive Director of the National Education Goals Panel, to indicate attendance of for further information. The phone number is (202) 632-0952

Dated: May 1, 1991.

Roger B. Porter,

Assistant to the President for Economic and Domestic Policy.

[FR Doc. 91-10861 Filed 5-6-91; 8:45 am]

BILLING CODE 3127-01-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panels; Meetings

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting(s).

SUPPLEMENTARY INFORMATION: The purpose of the meetings is to provide advice and recommendations to the National Science Foundation concerning the support of research, engineering, and science education. The agenda is to review and evaluate proposals as part of the selection process for awards. The meetings are closed to the public because the panels are reviewing proposals that include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b (c), the Government in the Sunshine Act.

Dated: May 1, 1991.

M. Rebecca Winkler,

Committee Management Officer.

The National Science Foundation announces the following meeting:

Name: Special Emphasis Panel for the Division of Design and Manufacturing Systems.

Date and Time: May 22 & 23, 1991, 8:30 a.m. to 5 p.m.

Place: State Plaza Hotel, Envoy Room 2117 E St., NW., Washington, DC 20037.

Type of meeting: Closed.

Contact Persons: Dr. Thom J. Hodgson, Program Director, Operations Research and Computer-Intergrated Engineering Programs, Division of Design and Manufacturing Systems, National Science Foundation, 1800 G St., NW., room 1128, Washington, DC 20550. Telephone: (202) 357–5167.

Purpose of Meeting: Unsolicited Proposal Review.

Agenda: Review proposals submitted to the Operations Research and Computer-Integrated Engineering Programs.

The National Science Foundation announces the following meeting:

Name: Special Emphasis Panel for the Division of Design and Manufacturing Systems.

Date and Time: May 29, 1991, 8:30 a.m. to 5 p.m.

Place: National Science Foundation, 1800 G St., NW., room 1242, Washington, DC 20550.

Type of meeting: Closed.

Contact Persons: Dr. Bruce M. Kramer, Program Director, Materials Processing and Manufacturing Program.

or

Dr. Suren B. Rao, Program Director, Manufacturing Machines and Equipment Program, Division of Design and Manufacturing Systems, National Science Foundation, 1800 G St., NW., room 1128 Washington, DC 20550. Telephone: (202) 357–7676.

Purpose of Meeting: Unsolicited Proposal Review.

Agenda: Review proposals submitted to the Materials Processing and Manufacturing Program and Manufacturing Machines and Equipment Program.

The National Science Foundation announces the following meeting:

Name: Special Emphasis Panel for the Division of Design and Manufacturing Systems.

Date and Time: May 29 & 30, 1991, 8:30 a.m. to 5 p.m.

Place: State Plaza Hotel, Ambassador room, 2117 E St., NW., Washington, DC 20037.

Type of meeting: Closed.

Contact Persons: Dr. Thom J. Hodgson, Program Director, Operations Research Program.

or

Dr. Louis Martin-Vega, Program Director, Production Systems Program, Division of Design and Manufacturing Systems, National Science Foundation, 1800 G St., NW., room 1128, Washington, DC 20550. Telephone: (202) 357–5167.

Purpose of Meeting: Unsolicited Proposal Review.

Agenda: Review proposals submitted to the Operations Research and Production Systems Programs.

The National Science Foundation announces the following meeting:

Name: Special Emphasis Panel for the Division of Design and Manufacturing Systems.

Date and Time: June 5, 1991, 8:30 a.m. to 5 p.m.

Place: National Science Foundation, 1800 G St., NW., room 523, Washington, DC 20550.

Type of meeting: Closed.

Contact Persons: Dr. Bruce M. Kramer, Program Director, Materials Processing and Manufacturing Program.

or

Dr. Suren B. Rao, Program Director, Manufacturing Machines and Equipment Program, Division of Design and Manufacturing Systems, National Science Foundation, 1800 G St., NW., room 1128, Washington, DC 20550. Telephone: (202) 357–7676.

Purpose of Meeting: Unsolicited Proposal Review.

Agenda: Review proposals submitted to the Materials Processing and Manufacturing Program and Manufacturing Machines and Equipment Program.

[FR Doc. 91–10711 Filed 5–6–91; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Materials Research; Meeting

The National Science Foundation Announces the following meeting:

Name: Special Emphasis Panel Meeting in Materials Research.

Date: June 3, 1991.

Location: Princeton University, Princeton, New Jersey.

Time: 8 a.m.–5:30 p.m. June 3, 1991.

Type of Meeting: Closed.

Contact Person: Dr. Adriaan M. de Graaf, Deputy Division Director, Division of Materials Research, room 408, National Science Foundation, Washington, DC 20550 Telephone: (202) 357–9794.

Purpose of Meeting: To provide advice and recommendations concerning the support for the proposal "An Ultra-long (Quasistatic) 65 Tesla Pulsed Magnet".

Reason for Closing: The proposal being reviewed includes information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Dated: May 1, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–10710 Filed 5–6–91; 8:45 am]

BILLING CODE 7555–01–M

Division of Networking and Communications Research and Infrastructure Special Emphasis Panel; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Networking and Communications.

Dates: May 20–21, 1991.

Time: 8:30 a.m.–5 p.m. each day.

Place: Room 417, National Science Foundation, 1800 G St., NW., Washington, DC 20550.

Type of Meeting: Closed.

Agenda: Review and evaluate Networking and Communications Research proposals.

Contact: Dr. Aubrey Bush, Networking and Communications Research Program, National Science Foundation, room 416, Washington, DC 20550 (202 357–9717).

Dated: April 30, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–10712 Filed 5–6–91; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Memorandum of Understanding (MOU) Between NRC and the State of Michigan

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Publication of draft memorandum of understanding between U.S. NRC and the State of Michigan for public comment.

SUMMARY: Section 274i. of the Atomic Energy Act of 1954, as amended, allows the U.S. Nuclear Regulatory Commission (Commission or NRC) to enter into an agreement with a State "to perform inspections or other functions on a cooperative basis as the Commission deems appropriate." This section 274i.

agreement, typically in the form of a Memorandum of Understanding (MOU), differs from an agreement between NRC and a State under the "Agreement State" program; the latter is accomplished only by entering into an agreement under section 274b. of the Atomic Energy Act. A State can enter into a section 274i. MOU whether or not it has a section 274b. agreement.

The Draft Memorandum of Understanding provides the basis for mutually agreeable procedures whereby the Michigan Department of State Police may utilize the NRC Emergency Response Data System to receive plant data during an emergency at a commercial nuclear power plant in the State of Michigan.

DATES: Submit comments by June 6, 1991, to David L. Meyer, Chief, Regulatory Publications Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

For Further Information Contact: John R. Jolicoeur, Office for Analysis and Evaluation of Operational Data, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–4155.

SUPPLEMENTARY INFORMATION: As a result of the accident at Three Mile Island, Unit 2, on March 28, 1979, the Nuclear Regulatory Commission (NRC) and others recognized a need to substantially improve the NRC's ability to acquire accurate and timely data on plant conditions during emergencies. The Emergency Response Data System (ERDS) has been developed to respond to this need. ERDS is a direct computer link between licensee computers at commercial nuclear power plants and computers at the NRC Operations Center at Bethesda, Maryland. The system allows for direct electronic transmission of a limited set of data points from the licensee computers to ERDS. Data transmitted over ERDS provides information concerning (1) core and coolant system conditions, needed to assess the extent or likelihood of core damage, (2) conditions inside the containment building, needed to assess the likelihood and consequences of containment failure, (3) radioactivity release rates, needed to assess the immediacy and degree of public danger, and (4) data from the plant meteorological tower, needed to assess the likely patterns of potential or actual impact on the public. The ERDS design provides for access to ERDS data by State governments which have jurisdiction over any area which falls within the 10 mile plume exposure Emergency Planning Zone around each nuclear power plant.

This MOU may deviate from what could be considered a generic MOU in one area. Paragraph V.C. reflects a preexisting agreement between the State of Michigan and the affected utilities in which the utilities provide a technical liaison at the State Emergency Operations Center in the event of an accident at one of the Michigan nuclear power plants. These technical liaison personnel will both operate the Michigan ERDS terminal and interpret the ERDS data for the State. In most MOUs, it is anticipated that clarification of ERDS data would be requested from the NRC to minimize the impact on plant operators.

This Memorandum of Understanding is intended to formalize and define the manner in which the NRC will cooperate with the State of Michigan to provide data related to plant conditions during emergencies at commercial nuclear power plants in Michigan.

Dated at Rockville, Maryland, this 26th day of April 1991.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

Agreement Pertaining to the Emergency Response Data System Between the State of Michigan and the U.S. Nuclear Regulatory Commission

I. Authority

The U.S. Nuclear Regulatory Commission (NRC) and the State of Michigan enter into this Agreement under the authority of section 274i of the Atomic Energy Act of 1954, as amended.

Michigan recognizes the Federal Government, primarily the NRC, as having the exclusive authority and responsibility to regulate the radiological and national security aspects of the construction and operation of nuclear production or utilization facilities, except for certain authority over air emissions granted to States by the Clean Air Act.

II. Background

A. The Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended, authorize the Nuclear Regulatory Commission (NRC) to license and regulate, among other activities, the manufacture, construction, and operation of utilization facilities (nuclear power plants) in order to assure common defense and security and to protect the public health and safety. Under these statutes, the NRC is the responsible agency regulating nuclear power plant safety.

B. NRC believes that its mission to protect the public health and safety can be served by a policy of cooperation with State governments and has formally adopted a policy statement on "Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities" (54 FR 7530, February 22, 1989). The policy statement provides that NRC will consider State proposals to enter into instruments of cooperation for certain programs when these programs have provisions to ensure close cooperation with NRC. This agreement is intended to be consistent with, and implement the provisions of the NRC's policy statement.

C. NRC fulfills its statutory mandate to regulate nuclear power plant safety by, among other things, responding to emergencies at licensee's facilities, monitoring the status and adequacy of the licensee's responses to emergency situations.

D. Michigan fulfills its statutory mandate to provide for preparedness, response, mitigation, and recovery in the event of an accident at a nuclear power plant through the Emergency Management Division, Department of State Police as described in the Emergency Management Act of 1990.

III. Scope

A. This Agreement defines the way in which NRC and Michigan will cooperate in planning and maintaining the capability to transfer reactor plant data via the Emergency Response Data System during emergencies at nuclear power plants, with the exception of Big Rock Point, in the State of Michigan.

B. It is understood by the NRC and the State of Michigan that ERDS data will only be transmitted by a licensee during emergencies classified at the Alert level or above, during scheduled tests, or during exercises when available.

C. Nothing in this Agreement is intended to restrict or expand the statutory authority of NRC, the State of Michigan, or to affect or otherwise alter the terms of any agreement in effect under the authority of section 274b of the Atomic Energy Act of 1954, as amended; nor is anything in this Agreement intended to restrict or expand the authority of the State of Michigan on matters not within the scope of this Agreement.

D. Nothing in this Agreement confers upon the State of Michigan authority to (1) interpret or modify NRC regulations

and NRC requirements imposed on the licensee; (2) take enforcement actions; (3) issue confirmatory letters; (4) amend, modify, or revoke a license issued by NRC; or (5) direct or recommend nuclear power plant employees to take or not to take any action. Authority for all such actions is reserved exclusively to the NRC.

IV. NRC's General Responsibilities

Under this agreement, NRC is responsible for maintaining the Emergency Response Data System (ERDS). ERDS is a system designed to receive, store, and retransmit data from in-plant data systems at nuclear power plants during emergencies. The NRC will provide user access to ERDS data to one user terminal for the State of Michigan during emergencies at nuclear power plants which have implemented an ERDS interface and for which any portion of the plant's 10 mile Emergency Planning Zone (EPZ) lies within the State of Michigan. The NRC will provide any software which is not commercially available and is necessary for configuring an ERDS workstation.

V. Michigan's General Responsibilities

A. Michigan will, in cooperation with the NRC, establish a capability to receive ERDS data. To this end, Michigan will provide the necessary computer hardware and commercially licensed software required for ERDS data transfer to users.

B. Michigan agrees not to use ERDS to access data from nuclear power plants for which a portion of the 10 mile Emergency Planning Zone does not fall within its State boundary.

C. For the purpose of minimizing the impact on plant operators, clarification of ERDS data will be pursued through the utility provided technical liaison personnel or the NRC.

IV. Implementation

Michigan and the NRC agree to work in concert to assure that the following communications and information exchange protocol regarding the NRC ERDS are followed.

A. Michigan and the NRC agree in good faith to make available to each other information within the intent and scope of this Agreement.

B. NRC and Michigan agree to meet as necessary to exchange information on matters of common concern pertinent to this Agreement. Unless otherwise agreed, such meetings will be held in the NRC Operations Center. The affected utilities will be kept informed of pertinent information covered by this Agreement.

C. To preclude the premature public release of sensitive information, NRC and Michigan will protect sensitive information to the extent permitted by the Federasl Freedom of Information Act, the State Freedom of Information Act, 10 CFR 2.790, and other applicable authority.

D. NRC will conduct periodic tests of licensee ERDS data links. A copy of the test schedule will be provided to Michigan by the NRC. Michigan may test its ability to access ERDS data during these scheduled tests, or may schedule independent tests of the State link with the NRC.

E. NRC will provide access to ERDS for emergency exercises with reactor units capable of transmitting exercise data to ERDS. For exercises in which the NRC is not participating, Michigan will coordinate with NRC in advance to ensure ERDS availability. NRC reserves the right to preempt ERDS use for any exercise in progress in the event of an actual event at any licensed nuclear power plant.

VII. Contacts

A. The principal senior management contacts for this Agreement will be the Director, Division of Operational Assessment, Office for Analysis and Evaluation of Operational Data, and the Governor-appointed State Director of Emergency Management. These individuals may designate appropriate staff representatives for the purpose of administering this Agreement.

B. Identification of these contacts is not intended to restrict communication between NRC and Michigan staff members on technical and other day-to-day activities.

VIII. Resolution of Disagreements

A. If disagreements arise about matters within the scope of this Agreement, NRC and Michigan will work together to resolve these differences.

B. Resolution of differences between the State and NRC staff over issues arising out of this Agreement will be the initial responsibility of the NRC Division of Operational Assessment management.

C. Differences which cannot be resolved in accordance with Sections VIII.A and VIII.B will be reviewed and resolved by the Director, Office for Analysis and Evaluation of Operational Data.

D. The NRC's General Counsel has the final authority to provide legal interpretation of the Commission's regulations.

IX. Effective Date

This Agreement will take effect after it has been signed by both parties.

X. Duration

A formal review, not less than 1 year after the effective date, will be performed by the NRC to evaluate implementation of the Agreement and resolve any problems identified. This Agreement will be subject to periodic reviews, and may be amended or modified upon written agreement by both parties, and may be terminated upon 30 days written notice by either party.

XI. Separability

If any provision(s) of this Agreement, or the application of any provision(s) to any person or circumstances is held invalid, the remainder of this Agreement and the application of such provisions to other persons or circumstances will not be affected.

For the U.S. Nuclear Regulatory Commission,

James M. Taylor,

Executive Director for Operations.

For the State of Michigan,

Col. Michael D. Robinson,

Director, Department of State Police.

[FR Doc. 91-10810 Filed 5-6-91; 8:45 am]

BILLING CODE 7590-01-M

Tennessee Valley Authority, Sequoyah Nuclear Plant, Units 1 and 2; Withdrawal of a Provision of an Amendment Request to Facility Operating License

[Docket Nos. 50-327/328]

The U.S. Nuclear Regulatory Commission (NRC) has approved the withdrawal of a portion of a Technical Specification (TS) amendment request by the Tennessee Valley Authority (TVA or the licensee), to Facility Operating License Numbers DPR-77 and DPR-79, issued to the Sequoyah Nuclear Plant, Units 1 and 2, respectively. The plant is located in Soddy Daisy, Tennessee. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on February 21, 1990 (55 FR 6118).

The item being withdrawn was originally included in an amendment request dated January 22, 1990, and requested that the wide-range containment pressure and reactor vessel level instrumentation be removed from TS Table 3.3-10. However, in the NRC staff's letter dated December 7, 1990, which forwarded Amendment Numbers 149 and 135 (and approved other TS

changes requested in the January 22, 1990 application), the staff disagreed with the licensee's request to delete the instrumentation and requested that the licensee withdraw this item from the amendment request. By letter dated April 12, 1991, the licensee has withdrawn this item from the original amendment request.

For further details with respect to this action, see (1) the application for amendment dated January 22, 1990, (2) the staff's letter forwarding Amendment Numbers 149 and 135 for License Numbers DPR–77 and DPR–79 respectively, dated December 7, 1990, (3) the licensee's letter dated April 12, 1991, and (4) the staff's letter dated April 30, 1991.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Chattanooga Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Dated at Rockville, Maryland, the 30th day of April, 1991.

For the Nuclear Regulatory Commission.

David E. LaBarge,

Project Manager, Project Directorate II–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91–10811 Filed 5–6–91; 8:45 am]

BILLING CODE 7590–01–M

PENSION BENEFIT GUARANTY CORPORATION

Request for Reinstatement of Approval Under the Paperwork Reduction Act; Collection of Information Under 29 CFR Part 2675, Powers and Duties of Plan Sponsor of Plan Terminated by Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for reinstatement of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation has requested reinstatement of approval by the Office of Management and Budget for a collection of information (OMB no. 1212–0032) for which previous approval has expired. There is no change in the substance of the information to be collected or in the method of collection. The collection of information is contained in the PBGC's regulation on Powers and Duties of Plan Sponsor of Plan Terminated by Mass Withdrawal (29 CFR part 2675). The collection of information pertains to notices that are to be given by mass-withdrawal-terminated multiemployer pension plans to the PBGC and to plan participants and beneficiaries, and to applications by such plans to the PBGC for financial assistance or for permission to pay benefits in forms or amounts not otherwise permitted. The effect of this notice is to advise the public of this request for reinstatement of OMB's approval.

ADDRESSES: All written comments (at least three copies) should be addressed to: Office of Management and Budget, Paperwork Reduction Project (1212–0032), Washington, DC 20503. The request for reinstatement will be available for public inspection at the PBGC Communications and Public Affairs Department, suite 7100, 2020 K Street, NW., Washington, DC 20006, between 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202–778–8820 (202–778–8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This collection of information is contained in the Pension Benefit Guaranty Corporation's ("PBGC's") regulation on Powers and Duties of Plan Sponsor of Plan Terminated by Mass Withdrawal, 29 CFR part 2675.

Section 4041A of the Employee Retirement Income Security Act of 1974 ("ERISA") prescribes rules that, among other things, govern the payment of benefits under plans that have terminated by mass withdrawal. Section 4041A(f)(1) provides that such plans may request the approval of the PBGC to pay benefits in amounts or forms not otherwise permitted under section 4041A. Section 4041A(f)(2) authorizes the PBGC to establish reporting requirements for plans terminated by mass withdrawal, and other rules and standards for the administration of such plans, as may be necessary to protect plan participants and the multiemployer insurance program.

Under section 4281(c) of ERISA, when the annual valuation of a mass-withdrawal-terminated plan shows that plan assets are not sufficient to satisfy all nonforfeitable benefits under the plan, the plan sponsor must amend the plan to reduce or eliminate any benefits that are not guaranteeable by the PBGC, to the extent necessary to make the assets of the plan sufficient for all nonforfeitable benefits. If, after a plan has been so amended, the plan becomes insolvent (*i.e.*, unable to pay benefits when due for a plan year), the plan sponsor is required by section 4281(d) to suspend benefits in excess of guaranteed benefits to the extent that their payment cannot be supported by the plan's available resources. If the plan's available resources are inadequate to pay guaranteed benefits, the plan sponsor must request financial assistance from the PBGC. Section 2181(d) requires the PBGC to issue regulations providing for notice to plan participants and beneficiaries of benefit suspensions and otherwise governing the administration of insolvent mass-withdrawal-terminated plans.

The PBGC's regulation on Powers and Duties of Plan Sponsor of Plan Terminated by Mass Withdrawal (29 CFR part 2675) prescribes all of the various rules pursuant to ERISA sections 4041A and 4281, concerning the administration of plans (both solvent and insolvent) that have been terminated by mass withdrawal.

This regulation requires: (1) Notices to the PBGC and plan participants and beneficiaries when benefit reductions are required and notice to the PBGC when benefits are restored; (2) notices that the plan is or will be insolvent to the PBGC and participants after the first determination that the plan is or will be insolvent; (3) notices of insolvency benefit level to participants who are in pay status or who may reasonably be expected to enter pay status in the year of insolvency (and a brief notice to the PBGC); (4) annual updates to the PBGC and to participants who do not receive notices of insolvency benefit level; (5) an application to the PBGC for financial assistance whenever a plan is, or will soon be, unable to pay guaranteed benefits; and (6) in plans that are closing out, notices of election to participants who are eligible to receive lump sum benefit payments. In addition, the regulation permits plan sponsors to request PBGC approval to pay benefits not otherwise permitted, upon a showing that the requested payments would not be adverse to the interests of plan participants generally and would not unreasonably increase the PBGC's risk of loss with respect to the plan.

The information received by the PBGC is used to identify and estimate cash needs for financial assistance to troubled plans and enables the PBGC to make certain determinations required by ERISA. Plan participants and beneficiaries use the information to make personal financial decisions. Without this regulation, the notices required by ERISA section 4281 would be inconsistently given and of varying quality, as plan sponsors applied their individual interpretations to the law.

Further, PBGC financial assistance to troubled plans would likely be delayed.

The PBGC estimates the annual burden attributable to this regulation as follows: (1) For one notice of benefit reductions, 24 hours; (2) for one notice of insolvency, 25 hours; (3) for three notices of insolvency benefit level, 75 hours; (4) for three annual updates, 12 hours; (5) for one request for approval of special payments, 4 hours; (6) for notices of election provided by 9 plans to 15,750 participants, 3,938 hours; (7) for three requests for financial assistance, 108 hours; total annual burden, 4,186 hours.

Issued at Washington, DC, this 29 day of April 1991.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 91–10769 Filed 5–6–91; 8:45 am]

BILLING CODE 7708–01–M

Request for Extension of Approval Under the Paperwork Reduction Act; Collection of Information Under 29 CFR Part 2677, Procedures For PBGC Approval of Plan Amendments

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval.

SUMMARY: This notice advises the public that the Pension Benefit Guaranty Corporation has requested extension of approval by the Office of Management and Budget for a currently approved collection of information (1212–0031) contained in its regulation on Procedures for PBGC Approval of Plan Amendments (29 CFR part 2677). Current approval of the collection of information expires on May 31, 1991.

ADDRESSES: All written comments (at least three copies) should be addressed to: Office of Management and Budget, Paperwork Reduction Project (1212–0031), Washington, DC 20503. The request for extension will be available for public inspection at the PBGC Communications and Public Affairs Department, suite 7100, 2020 K Street, NW., Washington, DC 20006, between the hours of 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202–778–8820 (202–778–8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This collection of information is contained n the Pension Benefit Guaranty Corporation's ("PBGC's") regulation on Procedures for PBGC Approval of Plan Amendments (29 CFR part 2677).

Section 4220 of the Employee Retirement Income Security Act of 1974 ("ERISA") requires the plan sponsor of a multiemployer pension plan covered by title IV of ERISA to submit for PBGC review certain plan amendments authorized by ERISA sections 4201–4219 that are adopted after September 25, 1983. Section 4220(a) provides that any such plan amendment shall be effective only if the PBGC approves it or fails (within 90 days after it is submitted for review) to disapprove it. Under section 4220(c), they PBGC may disapprove an amendment only if it determines that the amendment creates an unreasonable risk of loss to plan participants and beneficiaries or to the PBGC.

The PBGC's regulation on Procedures for PBGC Approval of Plan Amendments (29 CFR part 2677) tells plan sponsors how to submit plan amendments for PBGC review under ERISA section 4220. The regulation's information collection requirements, set forth in § 2677.2, are necessary to give the PBGC the information needed to decide whether to approve or disapprove plan amendments.

The PBGC estimates that it will receive three submissions under the regulation annually. Since the PBGC assumes that each submission takes two hours to prepare, the estimated annual burden imposed on the public by this collection of information is six hours.

Issued at Washington, DC, this 29 day of April 1991.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 91–10768 Filed 5–6–91; 8:45 am]

BILLING CODE 7708–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

(1) *Collection title:* Pilot Study—Medical Assessment Reports for Disability Claimants Under the Railroad Retirement Act.

(2) *Form(s) submitted:* T–250, T–250a, T–6.

(3) *OMB Number:* New collection.

(4) *Expiration date of current OMB clearance:* Six months from date of OMB approval.

(5) *Type of request:* New collection.

(6) *Frequency of response:* On occasion.

(7) *Respondents:* Individuals or households, businesses or other for-profit, small businesses or organizations.

(8) *Estimated annual number of respondents:* 1,000.

(9) *Total annual responses:* 2,000.

(10) *Average time per response:* .5705.

(11) *Total annual reporting hours:* 1,141.

(12) *Collection description:* A pilot study conducted for the purpose of determining the effectiveness of three proposed forms designed to obtain improved and more specific medical information from examining physicians with respect to claimants for disability annuities under the Railroad Retirement Act. The forms obtain information needed by the Railroad Retirement Board for determining the nature and severity of claimed impairments.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312–751–4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 91–10792 Filed 5–6–91; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–29144; International Series No. 264; SR–DTC–90–09]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by Depository Trust Co., Granting Participants the Option of Receiving Dividend, Interest or Principal Payments in Foreign Currency

April 30, 1991.

On March 25, 1990, the Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–DTC–90–09) under section

19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The proposal would enable DTC participants to exercise, through DTC, the option of receiving a dividend, interest or principal payment in a foreign currency. Notice of the proposal appeared in the **Federal Register** on July 24, 1990.[2] The Commission did not receive any letters of comments. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description of the Proposal

DTC is proposing to implement a service enabling participants to exercise the option of receiving periodic dividend, interest or principal payments on certain issues directly from the paying agent in a foreign currency. DTC will offer the service for dividend or interest yielding securities, for which the terms of the instrument allow the beneficial owner of the security the option of receiving all or a portion of the payment in a foreign currency.

Ordinarily, dividend, interest and principal payments on securities eligible for deposit at DTC are issued and credited to a participant's account in U.S. Dollars. With limited exceptions, if the terms of the security provide for payment in another currency, a participant who wants to receive payments in that currency must withdraw physical certificates from DTC and arrange for processing of the foreign currency payment directly with the paying agent.[3] After receiving a foreign currency dividend or interest payment outside DTC, a participant may re-deposit the certificates at DTC.[4]

As part of the proposed service, DTC will notify participants of an impending principal, interest and/or dividend payment and, if applicable, of the option of receiving that particular payment in foreign currency.[5] This notification will also inform participants of the number of days after record date [6] within which DTC must be notified of a participant's decision to exercise the option of receiving such payment in foreign currency.[7] Under the proposal, participants must instruct DTC to decrease the subsidiary record [8] of the participant's position at the close of business of the day prior to record date by the number of securities on which the participant wishes to receive payment in foreign currency. In addition, the participant must also instruct the DTC to advise the issuer's paying agent to make payment due on such securities in foreign funds directly to the participant, outside DTC,[9] on payable date. DTC will notify the issuer's paying agent no less than five business days after the record date.[10]

Participants may deliver securities at DTC, even if those securities are the subject of foreign currency payments. Movements of dividend-yielding securities between record date and payable date will be debited and credited to participants' accounts pursuant to DTC's ordinary settlement process. Routine trade settlement in the United States occurs on the fifth day after the date of execution of a trade ("T+5"), thus transactions involving securities with an impending dividend payment usually stop trading with the dividend ("ex-dividend") on the fourth day prior to record date. This time frame is sufficient to allow a participant who will be the holder of a security on record date to notify DTC that it will exercise the option of receiving the dividend payment in foreign currency, outside DTC.

Interest paying instruments (*e.g.*, debt securities) continue to accrue interest between record date and payable date. Accordingly, DTC records, in an interim account, any activity between the close of business on record date and the close of business on the night prior to payable date.[11] This procedure, called interim accounting, allows DTC to account for the interest accrued between record date and payable date and to determine a subsequent holder's entitlement to the impending interest payment.

Initially, the interim account of a participant expecting payment in foreign currency will reflect the participant's position in that security as of record date, minus the number of securities for which the participant expects interest payment outside DTC (*i.e.*, securities on which payment is due in foreign funds). During the interim accounting period, DTC will debit from a participant's interim account any deliveries of securities and credit those securities to the receiving participant's interim account.[12] If, as a result of this

---

[1] 15 U.S.C. 78s(b)(1) (1989).

[2] Securities Exchange Act Release No. 28216 (July 17, 1990), 55 FR 30053 (July 24, 1990).

[3] Presently, however, DTC allows participants to deposit certain Canadian issued securities. Payments related to these securities, made in Canadian funds are converted into U.S. Dollars outside DTC and credited to the participant's account. DTC, Participant Operating Procedures, Dividends/Rights F-150 (February 1988).

[4] Securities issues subject to impending redemptions follow similar procedures. Three weeks prior to redemption date, DTC places a freeze on maturing securities, which prevents any physical movement, including deposit or withdrawal activity. The freeze, however, does not affect book-entry movements in these securities until one week prior to redemption date. At that time, DTC captures positions in the maturing securities and on redemption date the securities are presented to the issuer for redemption. Redemption date for maturing securities usually coincides with the payable date for the last interest payment. Consequently, for purposes of the proposed rule filing, DTC will use the record date of the last interest payment to capture positions on the maturing securities.

[5] DTC notifies participants of an impending payment, prior to record or redemption date, through Important Notices. In addition, DTC makes this information available to participants through informational messages broadcast through its Participant Terminal System ("PTS") Network.

DTC's PTS network is an electronic system that permits direct communication between DTC and its participants, enabling participants to perform account related activity via remote terminal. See Securities Exchange Act Release No. 20519 (December 30, 1983), 49 FR 966 (January 6, 1984).

[6] Record date is the calendar date on which an investor must be registered on the issuer's books as a holder, in order to receive a declared dividend or interest payment.

[7] The contractual terms of the instrument will specify the time period during which a participant must notify DTC that it wishes to exercise its option to receive payment in foreign denomination.

[8] Currently, DTC creates a subsidiary record based on participants' positions at the close of business on record date. This subsidiary record indicates the number of securities held in a participant's position on which dividend or interest payments are due on payable date (the calendar date on which the issuer's paying agent disburses any declared dividend or interest payments). Upon receipt by DTC of a dividend or interest payment, DTC credits a participant's account based on the participant's record date position in that security.

[9] Participants electing this option must provide the bank name, account number and account name where payment is to be made. At first, DTC will only accept these instructions in paper form. DTC, however, expects to phase in the proposed service to the PTS Network before the end of this year or early in 1991. Once the proposed service is available through the PTS Network, participants will be able to submit instructions in an automated fashion, via remote terminal. DTC, Bulletin #7396-90 (June 22, 1990).

[10] Currently, DTC requires at least five business days to process participants' instructions. DTC, however, will continue to review this operational guideline in light of technological developments, and, if possible, will notify paying agents within a shorter time period, so long as such shorter time period furthers the efficient processing of participant's instructions. Telephone conversation between Raymond DeCesare, Vice-President, Dividends Department, DTC, and Julius R. Leiman-Carbia, Staff Attorney, Division of Market Regulation, Commission (October 11, 1990).

[11] DTC will apply interim accounting procedures to equity securities movements when related to stock or large cash distributions. The interim accounting period for equity securities runs from record date until the close of business of the fourth business day after the date when the security ceases to trade with a dividend payment obligation.

[12] For example, assume, participant A, holding 100 bonds on record date, notifies DTC that it will exercise its right to receive interest payment in foreign funds on 25 bonds. Participant A's interim account will reflect a balance of 75 bonds. On the day following record date, participant A sells 50 bonds to participant B. Pursuant to the transaction, DTC will debit 50 bonds from participant A's interim account and credit those bonds to

Continued

transaction, a participant delivers securities in excess of the delivering participant's interim account balance, the interim account will reflect a negative balance. Since the securities continue to be held in custody at DTC, the receiving participant's interim account will be credited with the corresponding amount of securities.[13]

On the last day of the interim accounting period, debit and credit amounts are netted to the participants' net settlement position. Accordingly, on payable date, a delivering participant's securities net settlement position will reflect a debit for the securities delivered and its funds net settlement position will reflect a debit for the dividend due on the delivered securities.[14] If, during the interim accounting period, the participant delivered securities on which it received payment in foreign currency, the delivering participant's net settlement position will reflect a debit for the equivalent amount in U.S. Dollars of the interest payment received outside DTC. At the same time, the receiving participant's securities and funds net settlement position will reflect corresponding credits.

If, prior to payable date, DTC is made aware of a potential failure by a paying agent to fulfill the expected payment obligation, DTC will not debit or credit participants' positions on payable date. If DTC is made aware of a paying agent's default after DTC has credited or debited participant positions for expected payments in U.S. Dollars, DTC will reverse corresponding debits and credits.[15]

II. DTC's Rationale

DTC believes that the proposed rule change is consistent with the requirements of section 17A(b)(3) of the Act in that it promotes the prompt and accurate clearance and settlement of securities transactions. According to DTC, under its present procedures, there is no provision for participants to use DTC's facilities to exercise the option, where available under the terms of an issue, to receive dividend, interest or principal payments in the foreign currency in which the security is denominated. Instead, in order to exercise such an option, a participant must withdraw physical certificates from DTC and arrange for processing of the foreign currency payment directly with the paying agent. According to DTC, in order to again achieve the benefits of immobilization, such a participant would be required to re-deposit the certificates after payment has been made. DTC believes that the proposed rule change will eliminate the inefficiencies and costs associated with the physical movement of certificates solely to exercise the foreign currency payment option and will help remove an impediment to the issuance of foreign-currency denominated issues in book-entry-only form.

III. Discussion

The Commission believes that the proposal enhances DTC's ability to facilitate and promote prompt and accurate settlement of movements involving securities on which principal, interest and dividend payments in foreign currency are due. For this reason, the Commission believes that DTC's proposal is consistent with sections 17A(b)(3)(A) and (F) of the Act.[16]

Currently, if a participant wishes to exercise the right to receive principal, interest or dividend payments in foreign currency, the participant must withdraw physical certificates from DTC and arrange for processing of the foreign currency payment directly with the paying agent. In the case of securities paying interest or dividends outside DTC, a participant may re-deposit the certificates at DTC. DTC's proposed rule change enables participants to keep on deposit (*i.e.*, immobilized), during the period between record date and payable date, securities on which foreign funds payments are expected.

Immobilization of securities offers substantial savings to secondary market participants by facilitating the use of book-entry settlement which reduces transfer activity.[17] Book-entry settlement, moreover, promotes efficiency by eliminating the physical packaging and movement normally required to settle transactions, as well as the need to examine each certificate for authenticity every time a delivery takes place.[18] DTC's proposal extends the benefits of immobilization and, therefore, the advantages of book-entry settlement to transactions involving securities that offer participants the alternative of receiving principal, interest and dividend payments in foreign currency.

DTC's proposal eliminates the need to withdraw physical securities in order to receive dividend, interest or redemption payments in foreign currency and allows participants to receive payment credits on a timely basis. Pursuant to the proposal, participants will be able to employ DTC's book-entry facilities, between record date and payable or redemption date, to deliver and receive securities by book-entry movement. The current proposal precludes the need to physically withdraw maturing securities three weeks prior to redemption date in order to present the securities for redemption.

The Commission, therefore, believes that the proposal will enable participants to benefit from DTC's custody service for securities with an impending principal, interest or dividend payment. Participants' ability to

---

participant B's interim account. Accordingly, participant A's interim account will reflect a balance of 25 bonds while participant B's interim account will reflect a balance of 50 bonds.

[13] For example, assume in the previous example, participant A's interim account reflected a balance of 25 bonds and that participant A delivers 50 bonds to participant C (*i.e.*, the 25 bonds left in its interim account, plus 25 bonds on which participant A will receive payment in foreign currency, outside DTC). Pursuant to the transaction, DTC will debit 50 bonds from participant A's interim account and credit them to participant C's interim account. Thus, participant A's account will reflect a negative balance of 25 ("−25") bonds and participant C's account will reflect a positive balance of 50 bonds.

[14] In order to determine the U.S. Dollar amount to be debited from or credited to a participant's account as a result of movements during the interim accounting period, DTC will use the same exchange rate that is used by the issuer's paying agent. As a matter of standard industry practice, two business days prior to payable date, the paying agent informs DTC of the exchange rate to be applied to the interest payment. Telephone conversation between Raymond DeCesare, Vice-President, Dividends Department, DTC, and Julius R. Leiman-Carbia, Staff Attorney, Division of Market Regulation, Commission (October 11, 1990).

[15] Accordingly, in the case of partial or full interest, dividend or principal payments in U.S. Dollars at DTC, DTC will debit the amounts previously credited. Likewise, in the event of a non-payment outside DTC, the equivalent U.S. Dollar amounts debited from a participant's position would be re-credited to the participant who delivered the securities. At the same time, DTC would debit the account of the delivering participant for the equivalent U.S. Dollar amount of the defaulted payment. DTC generally credits dividend and interest payments to participants on payable date. DTC also may credit participants for payments of principal on redemptions of certain types of securities in advance of DTC's receipt of such payment. If DTC subsequently determines that a credit was mistakenly made, whether due to the issuer's default on the payment, an error on DTC's part, or for some other reason, DTC may charge back the account credited. Securities Exchange Act Release No. 26070 (September 9, 1988), 53 FR 36142 (September 16, 1988).

[16] 15 U.S.C. 78q–1(b)(3)(A) & (F).

[17] Book-entry settlement requires no physical movement of securities. Instead, delivery and receipt of securities and funds are accomplished via a computerized accounting process that allows the depository to transfer ownership by making notations to participants' depository accounts. For an analysis of the cost saving advantages associated with the immobilization of securities and book-entry settlement, see, Division of Market Regulation, Commission, Progress and Prospects: Depository Immobilization of Securities and Use of Book-Entry Systems 6–7 (June 14, 1985).

[18] Consultative Group on International Economic and Monetary Affairs, Inc. ("G–30 Group"), Clearance and Settlement Systems in the World's Securities Markets 54 (1989).

immobilize securities while expecting payment in foreign currency, outside DTC, will eliminate settlement delays and the potential for loss, typically associated with the physical handling of securities. For this reason, the Commission believes that DTC's proposal not only will promote prompt and accurate settlement, but also will assure the safeguarding of securities, as required by section 17A(b)(3)(F) of the Act.[19]

The Commission also believes that the proposal is consistent with the statutory requirement that DTC's rules be designed to assure the safeguarding of funds which are in its custody or control.[20] Currently, DTC's procedures are designed to protect DTC from losing any dividend or interest payment amounts erroneously credited to a participant's account. DTC's proposal does not alter these procedures, allowing DTC to charges back any mistaken credit to a participant's account due to the issuer's default on the dividend or interest payment, an error on DTC's part or for any other reason.

Under most circumstances, interim accounting procedures will not apply to transactions involving dividend-paying instruments. These transactions usually start trading ex-dividend on the fourth business day prior to the record date. Accordingly, settlement occurs after record date, at which point a holder no longer has a right to receive the dividend payment. Stock distributions involving 25% or more of the value of the underlying security, however, usually are required by the location where the trade is executed to commence trading ex-dividend no later than the fourth day prior to record date.[21] Under these circumstances, DTC would apply interim accounting in order to ensure proper credit of the amounts disbursed on payable date.[22]

Recently, DTC expanded participation in some of its settlement services, such as the International Institutional Delivery System, making them available to foreign entities.[23] Until today, however, with the exception of certain Canadian issues, processing of dividend, interest and principal payment at DTC remained limited to securities issues disbursing such payments in U.S. Dollars. DTC's proposal to enable participants to receive periodic dividend, interest or principal payments on certain issues directly from the paying agent in a foreign currency will contribute to processing efficiency by enabling DTC participants, both domestic and foreign, to centralize the processing stream of payments associated with securities on deposit at DTC.

Providing foreign currency accounting for, at least, principal, interest and dividend payments improves DTC's ability to safeguard securities. The Commission believes that DTC should expand foreign currency payment accounting to transactions involving the purchase and sale of securities. This action would enable DTC to provide simultaneous movement of funds and securities among participants' accounts (*i.e.*, delivery versus payment ["DVP"]) for transactions involving securities quoted in foreign currencies.[24] The Commission believes that DVP through DTC's facilities would eliminate the risk of price changes, thus reducing the exposure due to delivery delays by a counterpart [25] and further facilitating the prompt and accurate clearance and settlement of securities transacted in foreign currency. For this reason, the Commission expects DTC to continue expanding its processing capability in order to account for purchase and sale transactions that require the transfer of foreign currency funds.

IV. Conclusion

It Is Therefore Ordered, Pursuant to section 19(b)(2) of the Act,[26] that the proposed filing (SR–DTC–90–9) be, and is hereby, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30–3(a)(12) (1990).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–10822 Filed 5–6–91; 8:45 am]

BILLING CODE 8010–01–M

[19] 15 U.S.C. 78q–1(b)(3)(F).

[20] See 15 U.S.C. 78q–1(b)(3)(F).

[21] See, *e.g.*, New York Stock Exchange ("NYSE"), Constitution & Rules, R. 235 (February 1990), 2 NYSE Guide (CCH) ¶ 2235.

[22] See DTC, Participants Operating Procedures, Dividends/Rights F–110 (February 1988).

[23] Securities Exchange Act Release No. 27545 (December 18, 1989), 54 FR 53017 (December 26, 1989).

[24] DTC recently solicited comment from its participants concerning possible enhancements DTC might effect to facilitate international clearing and settlement. Many responding participants urged DTC to provide foreign currency settlement facilities. See DTC, Memorandum to Participants and Other Users (January 17, 1991). The Commission urges DTC to continue exploring the cost and the changes, if any, that are pre-requisites to the feasibility of such a service.

[25] See G–30 Group, *supra* note 18 at 11.

[26] 15 U.S.C. 78s(b)(2).

[Release No. 34–29143; File No. SR–MCC–91–02]

Self-Regulatory Organizations; Midwest Clearing Corporation; Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Revision of its Member-to-Member Securities Loan Pricing Schedule

April 30, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 5, 1991, the Midwest Clearing Corporation ("MCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would revise MCC's Member-to-Member Securities Loan pricing schedule in an effort to make this service more competitive to all its users.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MCC 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 and Statutory Basis for, the Proposed Rule Change

The purpose of the attached rule filing is to revise the fees for Member-to-Member Securities Loans. Currently, MCC charges Participants for Member-to-Member Securites $1.30 per delivery or receipt plus a $.60 data entry charge per delivery or receipt for each set-up or take down of the loan. (Member-to-Member Securities Loans are "set-up" at the beginning of each loan, and "taken down" as the securities are returned to the lending Participant.)

Under the proposed fee change, MCC will charge Participants $2.00 per delivery or reciept for each set-up of a loan. MCC will no longer impose a separate take-down charge as the securities are returned to the lending Participant.

After analyzing the charges incurred by Participants when returning Member-to-Member Securities Loans, MCC has detemined that the existing fee structure caused Participants unnecessary expenses per loan. MCC has now imposed one set-up fee of $2.00 (which includes delivery and receipts) in an effort to make this service more competitive to all users of the Member-to-Member Securities Loan service.

Since the proposed rule change relates to the equitable allocation of dues, fees and other charges among Participants, it is consistent with the requirement of section 17A(b)(3)(D) of the Securities Exchange Act of 1934.

B. Self-Regulatory Organization's Statement on Burden on Competition

MCC does not believe that any burdens will be placed on competition as a result of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor 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 subparagraph (e) of rule 19b–4 thereunder, because the proposed rule change establishes or changes a due, fee, or other charge imposed by the self-regulatory organization. At any time within 60 days of the filing of such 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 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 principle office of MCC. All submissions should refer to File No. SR–MCC–91–02 and should be submitted by May 28, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–10701 Filed 5–6–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–29134; File No. SR–NASD–91–13]

Self-Regulatory Organizations; Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Amendments to the Uniform Practice Code

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 14, 1991, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend its Uniform Practice Code to eliminate certain obsolete provisions, consolidate certain redundant provisions, clarify certain provisions, amend certain provisions to conform to current industry standards and amend certain provisions to provide for the ultimate delivery of aged fails such as non-transferable, bankrupt, worthless and expired securities.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD recently completed a comprehensive review of the Uniform Practice Code. The goal of the review was to update and amend, where necessary, provisions which were obsolete or which did not conform to current industry standards and procedures. Among the specific accomplishments of the review were the consolidation of redundant provisions, clarification of certain provisions and providing for the ultimate delivery of aged fails such as non-transferable, bankrupt, worthless and expired securities.

Summary of Proposed Amendments

Section 3—Definitions

Section 3 is proposed to be amended by the addition of definitions of the terms ex-date, trade date and *immediate return receipt*. The definition of *immediate return receipt* is proposed to be added to clarify the process for the transmittal of written notices. In addition, clarifying amendments are proposed for the definitions of *written notices, Committee* and *record date*.

The proposed definition of the term *ex-date* is the date on which a security is traded without a specified dividend. The proposed definition of the term *trade date* is the day on which the dealer in a later time zone, provided that dealer is accepting a bid or offer, accepts the trade. The proposed definition of the term *immediate return receipt* means the acknowledgement by the receiving member of a written notice. The return receipt must be made via the same media as the notice.

Under the proposed amendments to existing definitions, a written notice could be delivered by FAX, in addition to the methods currently specified. The definition of *record date* is proposed to

be broadened to include equity securities among the types of securities, and dividends or any other distribution among the types of distributions, for which a record date is fixed for a distribution.

Section 4—Delivery Dates

Current subsections (a) through (d), relating to cash, regular way, seller's option and buyer's option delivery dates, respectively, are proposed to be deleted from section 4 and added to section 12. Subsections (e) and (f), relating to "when, as and if issued/delivered" delivery dates, will be retained in Section 4 and renumbered as subsections (c) and (d).

Proposed new subsections 4(a) and 4(b), relocated from section 11, set forth the requirements for the contents of confirmations related to "when, as and if issued/distributed" contracts. Proposed new section 4, when published in the NASD Manual, will also include sample form confirmations. The sample form confirmations are attached to the NASD's rule filing as exhibits 2 and 3.

Section 5—Transactions in Securities "Ex-Dividend," "Ex-Rights" or "Ex-Warrants"

The NASD is proposing to amend section 5 to renumber the subsections of section 5, to add language in subsection (b) to codify the currently employed treatment of cash dividends or distributions, to reorganize subsection (b), and to eliminate current subsections (d)(1) and (d)(2) as redundant of language contained in renumbered subsections (b) and (c).

Section 6—Transactions "Ex-Interest" in Bonds Which Are Dealt in "Flat"

The NASD is proposing to amend section 6 to conform with the amendments to section 5, and to renumber certain subsections.

Section 7—"Ex" Liquidating Payments

The NASD is proposing to amend section 7 to add a reference to section 6 to the current reference to section 5 as a reflection that liquidating payments may be applied to both equity and debt.

Section 11—Reserved

Section 11 currently addresses confirmations on "when, as and if issued/distributed" contracts. The language of section 11 is proposed to be moved to section 4 and section 11 is proposed to be reserved for future amendments to the Code.

Section 12—Dates of Delivery

The NASD is proposing to amend section 12 by moving language from section 4 relating to the time, place and date of delivery for all types of transactions. New subsections (e) through (g) relate to contracts due on holidays or Saturdays, delayed-delivery, and prior to delivery date. The existing language of section 12 relating to time and place of delivery is to be retained and renumbered as subsection (h) of section 12.

Under proposed new subsection (e) contracts due on a day other than a business day shall mature on the next business day. Proposed subsection (f) provides that delayed delivery shall be at the office of the purchaser on the date agreed upon at the time of the transaction. Finally, proposed subsection (g) provides that if a seller tenders delivery before the stated time, acceptance shall be at the buyer's election, and rejection of delivery will not prejudice the buyer's rights.

Section 27—Delivery of Securities Called for Redemption or Which are Deemed Worthless

The NASD is proposing to amend section 27 to add a new subsection (b) to provide an alternative method of resolving a fail-to-deliver where the security is deemed worthless. The proposed new subsection (b) provides that where securities have no market value and there has been a public announcement to that effect, delivery may consist of the worthless securities or a Letter of Indemnity securing any rights and privileges which may accrue to the holders of the physical security. Such delivery will close out the contract and must be accompanied by documentation evidencing the worthlessness of the security.

Section 29—Assignments and Powers of Substitution; Delivery of Registered Securities

The NASD is proposing to amend section 29 by consolidating the provisions of section 38 therein as subsection (e). The remaining subsections of section 29 will be renumbered as necessary.

Sections 31, 32, 35, 36, 27 and 38—Elimination of Notorials and Miscellaneous Amendments

The NASD is proposing to amend section 31 to eliminate the requirement that notorials be attached to securities where the transfer books are closed indefinitely. A transfer indemnification may be used in lieu of a notorial. The NASD believes that the proposed amendment will eliminate the need to attach large quanitities of paper to securities, and will allow the removal of such notorials where they are currently used. Under the proposed amendments the member will then assume liability for the correctness of the certificate. The NASD does not believe there will be any significant liability exposure to the member, and any additional exposure will be offset by the availability of timely settlement.

Section 32 is proposed to be amended to eliminate reference to notorials and to reference the transfer indemnification provision set forth in section 31. Section 36 is proposed to be amended to reflect the renumbering of section 29.

The provisions of section 35 relating to certificates in the name of married women are proposed to be deleted as obsolete and the section reserved for use in later amendments. And finally, the provisions of section 37 relating to certificates in joint tenancy are proposed to be eliminated as redundant of the provisions in section 29 and the section reserved for use in later amendments.

Section 56—Irregular Delivery—Transfer Refused—Lost or Stolen or Confiscated Securities

The NASD is proposing to amend section 56 to add the term "confiscated" to the category of irregular deliveries to accommodate situations where securities are seized by government officials.

Section 60—Selling Out

The NASD is proposing to amend section 60 to properly identify the Uniform Reclamation Form ("Form") and to provide for equivalent depository generated advice in the absence of the Form. Subsection (b) relating to the proper notice of sell-out is proposed to be amended to conform to the recent amendments to section 59 relating to buy-ins. Section 59 was amended pursuant to NASD rule filing SR–NASD–90–1 and approved by the SEC December 18, 1990.

Section 81—Rights and Warrants

The NASD is proposing to amend section 61 to provide for alternative methods of settling contracts where the securities have expired by their terms. The method may only be used more than 30 days after expiration. Deliveries under this proposed method shall consist of the expired securities or a Letter of Indemnification, and, in the case of units where some of the components have expired, the unexpired components.

The proposed rule change to the Uniform Practice Code is consistent with the provisions of section 15A(b)(6) of the Act, which requires that the rules

of the NASD be designed to foster cooperation with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by May 28, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: April 26, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–10700 Filed 5–6–91; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Application for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Incorporated

May 1, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Amsco International, Inc.
Common Stock, $.01 Par Value (File No. 7–6801)
Destec Energy, Inc.
Common Stock, $.01 Par Value (File No. 7–6802)
Molecular Miosystems
Common Stock, $.01 Par Value (File No. 7–6803)
Grand Metropolitan, Plc
American Depository Shares (File No. 7–6804)
NWNL Companies, Inc.
Common Stock, $1.25 Par Value (File No. 7–6805)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 22, 1990, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–10826 Filed 5–6–91; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

May 1, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f–1 thereunder for unlisted trading privileges in the following security:

Caldor Corporation Common Stock, $0.01 Par Value (File No. 7–6800).

This security is listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 22, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–10825 Filed 5–6–91; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–18121; 811–5095]

Columbus Income Shares, Inc.; Application

April 29, 1991

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Columbus Income Shares, Inc.

RELEVANT 1940 ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N–8F was filed on February 4, 1991, and amended on April 10, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 24, 1991, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC. 450 5th Street, NW., Washington, DC 20549. Applicant, c/o ABD Securities Corporation, One Battery Park Plaza, New York, New York 10004, with a copy to Matthew G. Maloney, Esq., Dicksten, Shapiro & Morin, 2101 L Street, NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Eva Marie Carney, Senior Attorney, at (202) 504–2274, or Max Berueffy, Branch Chief, at (202) 272–3016 (Office of Investment Regulation, Division of Investment Managment).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a diversified open-end management investment company incorporated under the laws of the State of Maryland. On March 12, 1985, Applicant filed a Notification of Registration on Form N–8A, pursuant to section 8(a) of the Act. On June 10, 1985, Applicant filed a registration statement on Form N–1A pursuant to section 8(b) of the 1940 Act. Applicant has made no filings under the Securities Act of 1933, as its shares have been offered on a private placement basis to certain investors outside the United States and to certain employees of Applicant's adviser, ABD Securities Corporation ("ABD").

2. On November 19, 1990, after ABD advised Applicant's Board of Directors that Muenchener Ruechkversicherungs AG, Applicant's principal shareholder ("Muenchener"), intended to redeem its shares in January 1991, because, as of December 31, 1990, a newly-negotiated income tax treaty between the United States and the Federal Republic of Germany would eliminate the tax advantages inherent in its investment in Applicant, the Board approved a Plan of Liquidation and Dissolution (the "Plan"). On January 8, 1991, this Plan was unanimously approved by the stockholders of Applicant.

3. On January 2, 1991, Muenchener redeemed 50,105,000 of its 50,112,800.605 shares of Applicant's common stock, an amount representing over 99% of the common stock issued and outstanding. To satisfy the redemption, Applicant distributed to Muenchener portfolio securities and cash in kind, valuing its portfolio securities in accordance with Applicant's procedures for computing net asset value as described in its registration statement on Form N–1A. The net asset value per share Applicant paid to Muenchener on the redemption date was $10.946124542 ($548,455,570.18 in the aggregate).

4. Therefore, certain fund expenses continued to accrue. On January 29, 1991, Applicant distributed to Muenchener and its other shareholders, holding a total of 9,387,387.15 shares ($102,042.66 in the aggregate), all its remaining shares, in the amount of $10.871 per share, in cash by check or wire transfer to each stockholder at its address of record.

5. Applicant incurred a total of $43,864 in liquidation expenses, including the costs of legal, accounting and tax advice and of preparing, printing and mailing proxy materials and other filings. These expenses were amortized during the period commencing September 6, 1990 and ending December 31, 1990, so that Muenchener bore its pro-rate share of liquidation expenses.

6. Pursuant to Maryland law, Applicant was dissolved on February 1, 1991. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–10698 Filed 5–6–91; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–18125; 812–7686]

Transamerica Cash Reserve, Inc. and Transamerica Current Interest, Inc.

April 30, 1991.

AGENCY: Securities and Exchange Commission (the "SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Transamerica Cash Reserve, Inc., a Maryland corporation ("TCR"), and Transamerica Current Interest, Inc., a Texas corporation ("Current Interest"), on behalf of one of its portfolios known as Transamerica Money Market Fund ("Money Market Fund") (the "Applicants").

RELEVANT 1940 ACT SECTIONS: Order requested pursuant to section 17(b) for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: The Applicants seek an order permitting TCR to acquire substantially all of the assets and certain liabilities of Money Market Fund in exchange for shares of TCR.

FILING DATE: The application was filed on February 19, 1991, amended on April 26, 1991, and supplemented by letter to be received during the notice period, the substance of which is incorporated herein.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving the Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 28, 1991, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, 1000 Louisiana, Houston, Texas 77002.

FOR FURTHER INFORMATION CONTACT: Eva Marie Carney, Senior Attorney, at (202) 504–2274, or Max Berueffy, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representation

1. TCR and Current Interest are each registered under the Act as open-end diversified management investment companies. Money Market Fund is one of two diversified portfolios of Current Interest.

2. Subject to, and contingent upon, the affirmative vote of the holders of at least a majority of the outstanding shares of Money Market Fund, TCR proposes to acquire the assets of Money Market Fund in exchange for shares of TCR's existing class of stock (the "Reorganization"). Pursuant to the terms of an agreement and plan of reorganization by and between TCR and Current Interest (the "Agreement"), TCR will acquire all of the assets and liabilities of Money Market Fund in exchange for shares of TCR having an aggregate net asset value equal to the aggregate value of the net assets of Money Market Fund being exchanged. Money Market Fund will then distribute the TCR shares to its shareholders on a *pro rata* basis in liquidation of Money Market Fund. Money Market Fund will endeavor to discharge all of its known liabilities and obligations prior to the date of the proposed exchange (the "Exchange Date"). TCR will assume all liabilities of Money Market Fund reflected on an unaudited statement of assets and liabilities prepared in accordance with generally accepted accounting principles and dated as of the close of business on the Exchange Date. TCR will not assume any other liabilities of Money Market Fund, whether absolute or contingent, known or unknown, accrued or unaccrued.

3. The Agreement was approved by each Applicant's Board of Directors, including a majority of the directors of each who are not "interested persons" of Applicants, at meetings held on February 26, 1991.

4. Under the Agreement, each Applicant will bear all of its own expenses of the proposed transaction, except to the extent that such expenses may be assumed by its investment adviser.

5. The consummation of the Reorganization is subject to certain conditions, including that the Applicants shall have received all necessary consents, permits, and order from federal, state and local regulatory authorities (including the SEC), and that the holders of at least a majority of the outstanding shares of Money Market Fund shall have approved the Agreement and the transactions contemplated.

6. The prospectus/proxy statement to be sent to shareholders of Money Market Fund will include a description of the material aspects of the Reorganization, information about TCR, a comparison of the Applicants and pertinent financial information regarding the Applicants. The Agreement will be appended as an exhibit to the prospectus/proxy statement.

7. Transamerica Fund Management Company, a Delaware Corporation ("TFMC"), serves as the investment adviser to TCR and Money Market Fund. TFMC is a wholly-owned subsidiary of Transamerica Criterion Group, Inc., a Delaware corporation ("Criterion Group"), which in turn is a wholly-owned subsidiary of Transamerica Corporation, a Delaware corporation ("Transamerica"). Transamerica Fund Distributors, Inc., a Maryland corporation ("Distributors"), serves as the distributor of shares of TCR and Money Market Fund. Distributors is a wholly-owned subsidiary of TFMC.

8. Transamerica Investment Services, Inc., a Delaware corporation ("TIS"), serves as the sub-adviser to TCR. TIS is a wholly-owned subsidiary of Transamerica.

Applicants' Legal Analysis

1. As of January 31, 1991, Transamerica, through companies controlled by it, owned approximately 33% of TCR's shares and less than five percent of the shares of Money Market Fund.

2. The exchange of Money Market Fund assets for TCR shares in connection with the Reorganization could be deemed to be an affiliated transaction prohibited under section 17(a) of the Act absent prior approval by the SEC. Among other things, section 17(a) prohibits the sale of securities or property to a registered investment company, and the purchase of securities or property from such company, by an affiliated person of the company or by an affiliated person of the principal underwriter of the company. Rule 17a–8 under the Act provides an exemption from the provisions of section 17(a) for a purchase or sale of substantially all of the assets involving registered investment companies that are affiliated solely because the companies have a common investment adviser, common directors, and/or common officers, provided that the companies' non-interested directors make certain findings specified in the rule and record these findings and their bases on the companies' minute books. However, given the various affiliations, share ownerships, and contractual relationship here, Current Interest and TCR may be deemed to be affiliated persons of one another for reasons other than that they have a common investment adviser, common directors, and/or common officers, and the Reorganization therefore may not be exempt from the prohibitions of section 17(a) pursuant to rule 17a–8.

3. The Reorganization meets the standards for an exemption from the provisions of section 17(a) of the Act. The Applicants argue that the terms of the Reorganization are reasonable and fair and do not involve overreaching on the part of any person concerned, and the Reorganization is consistent with the investment policies of each Applicant, and with the general purposes and policies of the Act. Further, the Applicants claim that the policy considerations that support exempting the type of transaction contemplated by rule 17a–8 from the provisions of section 17(a) are equally applicable to the proposed transaction. Accordingly, as a condition to relief from section 17(a), the directors of each Applicant, including the non-interested directors, will be required to make the findings required by rule 17a–8 (a) and (b).

4. Moreover, in considering the terms of the proposed transaction and determining whether to adopt the Agreement, and, in the case of Board of Directors of Current Interest, whether to recommend its approval to shareholders of Money Market Fund, the directors of each Applicant (including the non-interested directors of each acting with the advice and assistance of legal counsel) have fully considered the following factors, among others, from the perspective of each Applicant: (a) The compatibility of the Applicants' investment objectives, (b) the advantages to the Applicants of eliminating the competition and duplication of effort involved in offering shares of open-end investment companies having similar investment objectives, (c) the comparative performance and expense ratios of the Applicants, and (d) the costs and tax consequences of the proposed transaction.

5. The Applicants also argue that shareholders of Money Market Fund

should benefit from the flexibility and greater diversity of investments available from a portfolio of TCR's size. Shareholders of TCR should benefit from the proposed transactions through the increase in TCR's total net assets, as well as from the increase in the investment diversification of TCR that can be obtained from the transactions. In addition, the Applicants state that the Reorganization will not affect the rights of TCR shareholders.

Conditions to the Requested Relief

If the requested order is granted, the Applicants expressly consent to the following conditions:

1. The number of shares of TCR to be issued in exchange for the assets for Money Market Fund will be determined on the basis of the aggregate value of the assets and liabilities of Money Market Fund to be transferred and the net asset value per share of TCR, each fixed as of the close of business on the New York Stock Exchange on the Exchange Date. The aggregate value of the assets and liabilities of Money Market Fund to be acquired by TCR and the net asset value of the TCR shares to be issued therefor will each be detemined in accordance with the procedures set forth in TCR's then-current prospectus and statement of additionial information.

2. The proposed transaction will conform to the conditions set forth in rule 17a–8(a) and (b) under the Act.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–10699 Filed 5–6–91; 8:45 am]

BILLING CODE 8010–01–M

[File No. 1–10432]

Issuer Delisting; Application To Withdraw from Listing and Registration Roberts Pharmaceutical Corp., Common Stock, $.01 Par Value

May 1, 1991.

Roberts Pharmaceutical Corporation ("Company"), has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2–2(d) promulgated thereunder to withdraw the above specified security from listing and registration on the Boston Stock Exchange ("BSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The Company initially listed its Common Stock on the BSE to facilitate trading. The Company seeks to effect the delisting and withdrawal of its Common Stock from the BSE because there is minimal trading of the Common Stock on the BSE. Moreover, the limited trading volume affects prices quoted on the BSE for the Company's Common Stock, which prices are not comparable to price quotations reported by the National Association of Securities Dealers Automated Quotation System/National Market System ("NASDAQ/NMS"). The inclusion of the Common Stock on NASDAQ/NMS provides widespread access for trading in the Common Stock and the administrative effort and costs associated with continued listing of the Common Stock on the BSE are not warranted in light of the limited trading.

Any interested person may, on or before May 22, 1991 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the infomation submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–10824 Filed 5–6–91; 8:45 am]

BILLING CODE 8010–01–M

[File No. 500–1]

Trading in Securities of Texscan Corp.; Order Lifting Suspension of Trading

May 1, 1991.

On April 22, 1991, the Commission entered an Order, pursuant to section 12(k) of the Securities Exchange Act of 1934, suspending trading in the securities of Texscan Corporation, on the American Stock Exchange or otherwise, for the period from 9:30 a.m. e.s.t., April 22, 1991, through 11:59 p.m. e.s.t., on May 3, 1991, because there had been recent market activity in the securities of Texscan Corporation ("Texscan") that may have been the result of manipulative conduct or other illegal activity.

The Commission has filed an action in the United States District Court for the Southern District of New York captioned *Securities and Exchange Commission* v. *Mark P. Malenfant, Thomas C. Payne, and Payne Financial Group*, 91 Civ. 2996 (MBM), alleging that the defendants have engaged and were about to engage in manipulative conduct with respect to Texscan securities. Furthermore, the Court in the above-referenced matter has entered a temporary restraining order enjoining the defendants from engaging in manipulative conduct and employing manipulative and deceptive devices in connection with the trading of securities. The Commission is of the opinion that the public interest and the protection of investors no longer require a suspension of trading in the securities of Texscan.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that the suspension of trading in the securities of Texscan, on the American Stock Exchange or otherwise, is lifted effective 9:30 a.m. e.d.t., on May 2, 1991.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–10821 Filed 5–6–91; 8:45 am]

BILLING CODE 8010–01–M

[File No. 1–9979]

Issuer Delisting; Application to Withdraw from Listing and Registration; USP Real Estate Investment Trust, Shares of Beneficial Interest, $1.00 Par Value

May 1, 1991.

USP Real Estate Investment Trust ("Trust") has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2–2(d) promulgated thereunder to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The Board of Trustees of the Trust unanimously approved resolutions on January 25, 1991, to withdraw the Trust's Shares from listing on the Amex and, instead, list such share on the National Association of Securities Dealers Automated Quotations System ("NASDAQ"). The decision of the Boar. followed a study of the matter, and was based upon the belief that listing of the shares on NASDAQ will be more beneficial to its shareholders than present listing on Amex.

In this regard, it is believed that the NASDAQ system of competing market makers will result in increased visibility and sponsorship for the shares than is presently the case with the single specialist assigned to the stock on the Amex. In addition, on NASDAQ, the Trust will have the opportunity to secure its own group of market makers and, in doing so, expand the capital base available for trading in its shares. Finally, it is believed that firms making a market in the Trust's shares will also be inclined to issue research reports concerning the Trust, thereby increasing the number of firms providing institutional research and advisory reports.

Any interested person may, on or before May 22, 1991, submit by letter to the Secretary of the Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-10823 Filed 5-6-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18122; 811-4239]

Voyageur Granit Government Securities Fund, Inc.; Application

April 30, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Voyageur Granit Government Securities Fund, Inc.

RELEVANT 1940 ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

FILING DATE: The application on Form N-8F was filed on October 15, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 28, 1991 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 100 South Fifth Street, suite 2200, Minneapolis, Minnesota 55402.

FOR FURTHER INFORMATION CONTACT: Robert B. Carroll, Senior Staff Attorney, (202) 272-3043, or Jeremy N. Rubenstein, Branch Chief, (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified management company that was organized as a corporation under the laws of the State of Minnesota. On February 4, 1985, applicant filed its initial registration statement pursuant to section 8(b) of the 1940 Act. Applicant's registration statement was declared effective on May 16, 1985. The initial public offering of applicant's shares of common stock commenced on or about August 1, 1985, and applicant's shares of common stock were continuously offered for sale to the public until August 30, 1990.

2. By letter dated August 3, 1990, Voyageur Fund Managers ("Voyageur"), applicant's investment adviser, informed applicant's shareholders of its intention to terminate its voluntary expense reimbursement program with respect to applicant and recommended that applicant's shareholders redeem their shares.

3. As of August 30, 1990, there were 554,788 outstanding shares of applicant's common stock. On August 31, 1990, all of applicant's outstanding shares of common stock were redeemed and all of applicant's assets were distributed *pro rata* to applicant's shareholders of record as of that date. Pursuant to the liquidation of applicant, all of its portfolio securities were sold without the payment of brokerage commissions, but at net prices that may have included a spread or markup.

4. All expenses, including legal, accounting, and other general and administrative expenses, incurred in connection with the liquidation of applicant and the redemption of its shares were paid by Voyageur.

5. On October 12, 1990, applicant filed articles of dissolution with the Secretary of State of the State of Minnesota.

6. Applicant has no assets, liabilities, or shareholders. Applicant is not a party to any litigation or administrative proceeding.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-10696 Filed 5-6-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18123; 811-4249]

Voyageur Granit Insured Tax Exempt Fund, Inc.; Application

April 30, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Voyageur Granit Insured Tax Exempt Fund, Inc.

RELEVANT 1940 ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

FILING DATE: The application on Form N-8F was filed on October 15, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 28, 1991 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549.

Applicant, 100 South Fifth Street, suite 2200, Minneapolis, Minnesota 55402.

FOR FURTHER INFORMATION CONTACT: Robert B. Carroll, Senior Staff Attorney, (202) 272–3043, or Jeremy N. Rubenstein, Branch Chief, (202) 272–3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified management company that was organized as a corporation under the laws of the State of Minnesota. On March 11, 1985, applicant filed its initial registration statement pursuant to section 8(b) of the 1940 Act. Applicant's registration statement was declared effective on July 18, 1985. The initial public offering of applicant's shares of common stock commenced on or about August 1, 1985, and applicant's shares of common stock were continuously offered for sale to the public until August 30, 1990.

2. By letter dated August 3, 1990, Voyageur Fund Managers ("Voyageur"), applicant's investment adviser, informed applicant's shareholders of its intention to terminate its voluntary expense reimbursement program with respect to applicant and recommended that applicant's shareholders redeem their shares.

3. As of August 30, 1990, there were 373,481 outstanding shares of applicant's common stock. On August 31, 1990, all of applicant's outstanding shares of common stock were redeemed and all of applicant's assets were distributed *pro rata* to applicant's shareholders of record as of that date. Pursuant to the liquidation of applicant, all of its portfolio securities were sold without the payment of brokerage commissions, but at net prices that may have included a spread or markup.

4. All expenses, including legal, accounting, and other general and administrative expenses, incurred in connection with the liquidation of applicant and the redemption of its shares were paid by Voyageur.

5. On October 12, 1990, applicant filed articles of dissolution with the Secretary of State of the State of Minnesota.

6. Applicant has no assets, liabilities, or shareholders. Applicant is not a party to any litigation or administrative proceeding.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–10697 Filed 5–6–91; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[AC NO. 120–45A]

Proposed Advisory Circular on Airplane Flight Training Device Qualification

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability; request for comments.

SUMMARY: The proposed advisory circular revision is intended to provide information regarding airplane flight training device evaluation criteria and procedures. This revision expands the scope of training devices discussed to include all flight training devices used for flight training, qualification, or certification of airmen and categorizes them into levels. Validation and functional tests have been added for the newly established levels and test parameters have been clarified. The format has been completely revised for ease of reference and consistency with other recent guidance material and current regulatory projects. It cancels and replaces AC 120–45, Advanced Training Devices (Airplane Only) Evaluation and Qualification.

DATES: Comments must be received on or before June 21, 1991.

ADDRESSES: Send all comments and requests for copies of the proposed advisory circular to: Federal Aviation Administration, National Simulator Program (Attention: ASO–205), P.O. Box 20636, Atlanta, Georgia 30320.

FOR FURTHER INFORMATION CONTACT: Ed Cook, ASO–205, at the above address, telephone: (404) 763–7773 (8 a.m. to 4:30 p.m. EDT).

COMMENTS INVITED: Comments are invited on all aspects of the proposed advisory circular.

Commentators must identify file number AC 120–45A.

SUPPLEMENTARY INFORMATION: The guidance material contained in this advisory circular reflects information to assist all operators in the qualification of airplane flight training devices to be used in training programs or for airman checking under title 14, Code of Federal Regulations.

Issued in Washington, DC, on April 26, 1991.

David Gilliom,

Acting Director, Flight Standards Service.

[FR Doc. 91–10762 Filed 5–6–91; 8:45 am]

BILLING CODE 4910–13–M

Radio Technical Commission for Aeronautics (RTCA) Executive Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., appendix I), notice is hereby given for the meeting of the Executive Committee to be held May 24, 1991, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., suite 500, Washington, DC 20005, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's remarks and introductions; (2) Approval of the March 27, 1991 Executive Committee Meeting minutes; (3) Executive Director's report; (4) Special Committee activities report for March-April 1991; (5) Fiscal and Management Subcommittee report; (6) Facilities Working Group report; (7) Review proposed revised terms of reference of SC–159 and SC–162; (8) Consideration of proposals to establish new special committees; (9) Other business; (10) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., suite 500, Washington, DC 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 1, 1991.

Herbert P. Goldstein,

Designated Officer.

[FR Doc. 91–10761 Filed 5–6–91; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 13–91]

Treasury Notes, Series N–1996; Interest Rate

Washington, April 26, 1991.

The Secretary announced on April 25, 1991, that the interest rate on the notes

designated Series N–1996, described in Department Circular—Public Debt Series—No. 13–91 dated April 18, 1991, will be 7⅝ percent. Interest on the notes will be payable at the rate of 7⅝ percent per annum.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 91–10805 Filed 5–6–91; 8:45 am]

BILLING CODE 4810–40–M

[Supplement to Department Circular—Public Debt Series—No. 12–91]

Treasury Notes, Series Z–1993; Interest Rate

Washington, April 25, 1991.

The Secretary announced on April 24, 1991, that the interest rate on the notes designated Series Z–1993, described in Department Circular—Public Debt Series—No. 12–91 dated April 18, 1991, will be 7 percent. Interest on the notes will be payable at the rate of 7 percent per annum.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 91–10806 Filed 5–6–91; 8:45 am]

BILLING CODE 4810–40–M

Customs Service

Customs Broker Licenses

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

ACTION: General notice.

SUMMARY: Since at lest 1978 the policy of the Customs Service has been not to issue a Customs Broker License to an individual whose spouse was employed by the agency. This was based on Legal Determination 3532–08, dated July 17, 1978, which held that a conflict of interest would exist in such situations. In 1987 and 1989 Customs issued internal directives requiring Customs employees to report any relatives and household members employed in industries dealing with the agency, including the Customs Brokerage industry, and to obtain an opinion on conflicts of interest which might be present in each reported situation. The Chief Counsel of Customs, designated as the agency's Ethics Officer, renders those opinions.

In light of the procedure now in place to treat such situations on a case-by-case basis, Customs now considers that the blanket policy of denying issuance of Customs Broker Licenses to spouses of employees serves no purpose. Accordingly, effective immediately, the policy is hereby terminated. Any applicants who were previously denied a license solely due to the aforementioned policy may reapply to the appropriate district director on Customs Form 3124. There should be attached to the application a narrative description listing the applicant's work history and residence addresses from the date of Customs denial of a license to the date of the application. The district director will forward the application, along with his/her recommendation, to the Office of Trade Operations, Customs Headquarters. If it is decided that a new background investigation or reexamination is required, the applicant will be so notified and fees will be charged.

Samuel H. Banks,

Assistant Commissioner, Office of Commercial Operations.

[FR Doc. 91–10671 Filed 5–6–91; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before June 6, 1991.

Dated: April 26, 1991.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Extension

1. Marital Status Questionnaire, VA Form 21–0537.

2. The form is used to request certification of a continued unremarried status by surviving spouses in receipt of dependency and indemnity compensation. The information is used to determine continued eligibility to benefits.

3. Individuals or households.

4. 2,875 hours.

5. 5 minutes.

6. Once every eight years.

7. 34,500 respondents.

[FR Doc. 91–10757 Filed 5–6–91; 8:45 am]

BILLING CODE 8320–01–M

Veterans Advisory Committee on Environmental Hazards

AGENCY: Department of Veterans Affairs.

ACTION: Notice of meeting.

The Department of Veterans Affairs gives notice under Public Law 92–463, section 10(a)(2), that a meeting of the Veterans' Advisory Committee on Environmental Hazards will be held on May 23–24, 1991. The purpose of the meeting is to consider what recommendations should be made to the Secretary of the Department of Veterans Affairs concerning the issue of the conditions related to dioxin exposure. The meeting will convene at 9 a.m. until 5 p.m. in room 119, at the Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

These meetings will be open to the public up to the seating capacity of the room. Because this capacity is limited, it will be necessary for those wishing to attend to contact Ms. Leney Holohan, Department of Veterans Affairs Central Office (phone 202/233–8018), prior to May 16, 1991.

Members of the public may direct questions or submit prepared statements for review by the Committee in advance of the meeting, in writing only, to Mr. Frederic L. Conway, (026B), Deputy Assistant General Counsel, Department of Veterans Affairs Central Office. Submitted material must be received at least five days prior to the meeting. Such members of the public may be asked to

clarify submitted material prior to consideration by the Committee.

Dated: April 23, 1991.

By direction of the Secretary.

Laurence M. Christman,

Executive Assistant, Office of the Deputy Assistant Secretary for Program Coordination and Evaluation.

[FR Doc. 91–10755 Filed 5–6–91; 8:45 am]

BILLING CODE 8320–01–M

Scientific Review and Evaluation Board for Rehabilitation Research and Development; Meeting

In accordance with Public Law 92–463, the Department of Veterans Affairs gives notice of a meeting of the Scientific Review and Evaluation Board for Rehabilitation Research and Development. This meeting will convene at the Vista International Hotel, 1400 M Street NW., Washington, DC, July 23 through July 26, 1991. The session on July 23, 1991, is scheduled to begin at 6:30 p.m. and end at 10:30 p.m. The sessions on July 24, 25, and 26, 1991, are scheduled to begin at 8 a.m. and end at 5 p.m. The purpose of the meeting is to review rehabilitation research and development applications for scientific and technical merit and to make recommendations to the Director, Rehabilitation Research and Development Service, regarding their funding.

The meeting will be open to the public (to the seating capacity of the room) for the July 23, session for the discussion of administrative matters, the general status of the program, and the administrative details of the review process. On July 24–26, 1991, the meeting is closed during which the Board will be reviewing research and development applications.

This review involves oral comments, discussion of site visits, staff and consultant critiques of proposed research protocols, and similar analytical documents that necessitate the consideration of the personal qualifications, performance and competence of individual research investigators. Disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. Disclosure would also reveal research proposals and research underway which could lead to the loss of these projects to third parties and thereby frustrate future agency research efforts.

Thus, the closing is in accordance with 5 U.S.C. 552b (c)(6), and (c)(9)(b) and the determination of the Secretary of the Department of Veterans Affairs under sections 10(d) of Public Law 92–463 as amended by section 5(c) of Public Law 94–409.

Due to the limited seating capacity of the room, those who plan to attend the open session should contact Ms. Victoria Mongiardo, Program Analyst, Rehabilitation Research and Development Service, Department of Veterans Affairs Central Office, 810 Vermont Avenue, NW., Washington, DC 20420 (phone: 202–535–7278) at least five days before the meeting.

Dated: April 26, 1991.

By direction of the Secretary.

Sylvia Chavez Long,

Committee Management Officer.

[FR Doc. 91–10713 Filed 5–6–91; 8:45 am]

BILLING CODE 8320–01–M

Privacy Act of 1974; Report of Matching Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Matching Program.

SUMMARY: Notice is hereby given that the Department of Veterans Affairs (VA) intends to conduct a recurring computer matching program matching Internal Revenue Service (IRS) and Social Security Administration (SSA) income tax records with VA pension, compensation and parents' dependency and indemnity compensation records.

The goal of these matches is to compare income and employment status as reported to VA with income tax records maintained by IRS and SSA. For the information of all concerned, a summary of report of the VA matching program, describing the computer matches follows. In accordance with 5 U.S.C. 552a(o)(2), copies of the matching agreement are being sent to both houses of Congress.

These matches are expected to commence on June 1, 1991, or 30 days after agreements by the parties are submitted to Congress and the Office of Management and Budget whichever is later.

The match with IRS is estimated to start June 1, 1991, and will end June 30, 1991, for tax year 1989 information. This agreement may not be extended. A new matching agreement will be required for each year. The match will not continue past the date the legislative authority to obtain this information expires.

The match with SSA is estimated to start June 1, 1991, and will end September 30, 1992. The match may be extended by the involved Data Integrity Boards for a twelve month period provided VA and SSA certify to the Data Integrity Boards, within three months of the termination date of the original match, that the matching program will be conducted without change and the matching program has been conducted in compliance with the original matching agreement. The match will not continue past the date the legislative authority to obtain this information expires.

ADDRESSES: Interested individuals may comment on the proposed matches by writing to the Director, Compensation and Pension Service (21), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT: Robert Yurgal (213B), (202) 233–3504.

SUPPLEMENTARY INFORMATION: Further information regarding the matching program is provided below. This information is required by title 5 U.S.C. 552a(e)(12), the Privacy Act of 1974. A copy of this notice has been provided to both houses of Congress and the Office of Management and Budget.

Approved: April 23, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

Report of Matching Program: Department of Veterans Affairs Compensation, Pension and Dependency and Indemnity Compensation Records with Income Tax Records maintained by the Internal Revenue Service and the Social Security Administration.

a. *Authority.* Title 38 United States Code, section 3006 and Public Law 101–508.

b. *Program Description.*

(1) *Purpose.* (a) The Department of Veterans Affairs (VA) plans to match records of veterans, dependents of veterans, surviving spouses, dependents of surviving spouses who receive pension and parents and their spouses who receive Dependency and Indemnity Compensation (DIC) with income tax records maintained by the Internal Revenue Service (IRS) and the Social Security Administration (SSA).

(b) VA also plans to match records of veterans who are receiving compensation pursuant to a rating of disability awarded by reason of inability to secure or follow a substantially gainful occupation as a result of a service-connected disability or disabilities, not rated as total, with wage and self employment income tax information maintained by SSA.

(c) Currently information about a VA beneficiary's receipt of wage, self employment and other income as well as employment status is obtained from reporting by the beneficiary. The proposed matching programs will enable

VA to ensure accurate reporting of income and employment status.

(2) *Procedures.* VA will prepare an extract file of beneficiaries receiving income dependent benefits and those who are receiving total compensation due to unemployability caused by a service-connected disability or disabilities whose VA records contain a valid social security number. The VA extract file will be matched against IRS and SSA income tax records. If a VA record and SSA or IRS record match on Social Security number and name, VA will refer the cases to field stations for development to assure the validity of the matched cases, to verify the reported income amount with the payer of the income, to contact the beneficiary identified by the match, to inform the individual of the income identified by the match and to make any required award adjustment. Before any adverse action is taken, the individual identified by the match will be given the opportunity to contest the findings. Where there are reasonable grounds to believe that there has been a violation of criminal laws, the matter will be investigated and referred for prosecutive consideration in accordance with existing VA policies.

c. *Records to be Matched.* The VA records involved in the match are compensation, pension and parents' dependency and indemnity compensation records maintained in the "VA Compensation, Pension, Education and Rehabilitation Records—VA (58 21/22)" contained in the Privacy Act issuances, 1987 compilation, Volume V, Page 808 as amended at Federal Register 52 FR 4078. The SSA records consist of information from the Earnings Recording and Self-Employment Income System, HHS/SSA/OSR, 09–60–0059. The IRS records are from the Wage and Information Returns (IRP) Master File, Privacy Act System Treas/IRS 22.061.

d. *Period of Match.* The initial data exchanges are expected to begin about June 1, 1991. The match with IRS will end June 30, 1991, for tax year 1989 information. The match may not be extended. A new matching agreement will be required for each year. The match will not continue past the date the legislative authority to obtain this information expires. The matching program with SSA will end September 30, 1992. The match may be extended by the involved DIBS for a twelve month period provided the agencies participating in the match certify to the Data Integrity Boards, within three months of the termination date of the original match, that the matching program will be conducted without change and the matching program has been conducted in compliance with the original matching agreement. The match will not continue past the date the legislative authority to obtain this information expires.

[FR Doc. 91–10756 Filed 5–6–91; 8:45 am]
BILLING CODE 8320–01

Sunshine Act Meetings

Federal Register
Vol. 56, No. 88
Tuesday, May 7, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION:

Farm Credit Administration Board; Regular Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on May 9, 1991, from 10:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be closed to the public. The matters to be considered at the meeting are:

Closed Session *

New Business

1. Enforcement Actions; and
2. Government-Sponsored Enterprises—Agency Options.

Dated: May 3, 1991.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 91–10950 Filed 5–3–91; 3:55 pm]

BILLING CODE 6705–01–M

FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold Open Commission Meeting, Thursday, May 9, 1991

May 2, 1991.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, May 9, 1991, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, N.W., Washington, D.C.

Item No, Bureau, and Subject

1—General Counsel—*Title:* Proposals to Reform the Commission's Comparative Process to Expedite the Resolution of Cases (GEN Docket No. 90–264). *Summary:* The Commission will consider petitions for reconsideration of the *Report and Order* in this proceeding.

2—Mass Media—*Title:* Amendment of Section 73.3525 of the Commission's Rules Regarding Settlement Agreements Among Applicants for Construction Permits (MM Docket No. 90–263). *Summary:* The Commission will consider whether to adopt a *Memorandum Opinion and Order* concerning settlement limitations to deter abuse of the Commission's processes.

3—Mass Media—*Title:* Revision of Radio Rules and Policies. *Summary:* The Commission will consider whether to adopt a *Notice of Proposed Rule Making* to explore changes in the structural and ownership regulations governing radio broadcasting service.

4—Common Carrier—*Title:* Regulation of International Accounting Rates (CC Docket No. 90–337, Phase I). *Summary:* The Commission will consider adoption of a *Report and Order* concerning the U.S. carrier accounting and settlement arrangements with their foreign correspondents.

5—Common Carrier—*Title:* Regulation of International Accounting Rates (CC Docket No. 90–337, Phase II). *Summary:* The Commission will consider adoption of a *Further Notice of Proposed Rule Making* concerning the U.S. carrier accounting and settlement arrangements with their foreign correspondents.

6—Common Carrier—*Title:* Interconnection of Exchange Access Carrier Facilities (RM–7249). *Summary:* The Commission will consider a petition for rule making filed by Metropolitan Fiber Systems (MFS) on November 14, 1989. In its petition, MFS requested the Commission to develop rules providing alternative access providers with access to the local exchange carriers' networks on reasonable and nondiscriminatory terms.

7—Common Carrier—*Title:* Inquiry into the Existence of Discrimination in the Provision of Superstation and Network Station Programming (GEN Docket No. 89–88). *Summary:* The Commission will consider adoption of a *Second Report* on whether and the extent to which satellite carriers unlawfully discriminate against home satellite dish distributors in the provision of superstation and network station programming.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Steve Svab, Office of Public Affairs, telephone number (202) 632–5050.

Issued: May 2, 1991.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91–10875 Filed 5–3–91; 8:45 am]

BILLING CODE 6712–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM:

TIME AND DATE: 12:00 noon, Monday, May 13, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m., two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 3, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91–10941 Filed 5–3–91; 3:18 pm]

BILLING CODE 6210–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, May 14, 1991.

PLACE: Board Room, Eighth Floor, 800 Independence Avenue, S.W., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

5488—Safety Study: Transport of Hazardous Materials by Rail.

5369A—Highway Accident Report: Multiple Vehicle Collision and Fire in a Work Zone on Interstate Highway 79, Sutton, West Virginia, July 26, 1991.

NEWS MEDIA CONTACT: Telephone (202) 382–6600.

* Session closed to the public—exempt pursuant to 5 U.S.C. § 552(c)(8) and (9).

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: May 2, 1991.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 91–10931 Filed 5–3–91; 2:13 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of May 6, 13, 20, and 27, 1991.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of May 6

Monday, May 6

9:00 a.m.
Briefing on Maintenance Rule (Public Meeting)

Tuesday, May 7

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of May 13—Tentative

Wednesday, May 15

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of May 20—Tentative

Monday, May 20

10:00 a.m.
Briefing on Final Rule on Performance Based QA—Part 35 (Public Meeting)

Tuesday, May 21

10:00 a.m.
Briefing on BRC Consensus Process (Public Meeting)

2:00 p.m.
Briefing on Final Rule on License Renewal—Part 54 (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of May 27—Tentative

Friday, May 31

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meetings Call (Recording)—(301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

Dated: May 2, 1991.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 91–10935 Filed 5–3–91; 2:31 pm]

BILLING CODE 7590–01–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Meeting of the Board of Directors

TIME AND DATE: 1:30 p.m. (closed portion), 3:30 p.m. (open portion), Tuesday, May 21, 1991.

PLACE: Offices of the Corporation, Fourth Floor Board Room, 1615 M Street, N.W., Washington, DC.

STATUS: The first part of the meeting from 1:30 p.m. to 3:30 p.m. will be closed to the public. The open portion of the meeting will commence at 3:30 p.m. (approximately).

MATTERS TO BE CONSIDERED: (Closed to the public 1:30 p.m. to 3:30 p.m.):

1. President's Report.
2. Insurance Project in Hungary
3. Insurance and Finance Project in Venezuela
4. Finance Project in Bolivia
5. Claims Report
6. Finance and Insurance Reprots
7. Approval of 3/26/91 Minutes (Closed Portion)

FURTHER MATTERS TO BE CONSIDERED: (Open to the public 3:30 p.m.)

1. Approval of 3/26/91 Minutes (Open Portion)
2. Credit Reform Implementation
3. Information Reports
   (a) Notice to Board of Changes to OPIC Country List
   (b) Political Risk Insurance Issued for 2nd Qtr FY 91
   (c) Country Consentration
   (d) Financial Statements as of March 31, 1991
   (e) Report on Smaller Business and Cooperative Activities for 2nd Qtr FY 1991
   (f) U.S. Benefits and Less Developed Country Developmental Effects of Projects Assisted by OPIC for 2nd Qtr FY 1991
4. Reconfirmation of meetings schedule for remainder of 1991

CONTACT PERSON FOR INFORMATION: Information with regard to the meeting may be obtained from the Corporation Secretary on (202) 457–7007.

Dated: May 3, 1991.

Dennis K. Dolan,

OPIC Corporate Secretary.

[FR Doc. 91–10876 Filed 5–3–91; 10:57 am]

BILLING CODE 3210–01–M

federal register

Tuesday
May 7, 1991

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

NOFA for the Operating Assistance and Capital Improvement Loan Components Under the Flexible Subsidy Program; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-91-3250; FR-3010-N-01]

NOFA for the Operating Assistance and Capital Improvement Loan Components Under the Flexible Subsidy Program

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of fund availability for Fiscal Year 1991.

SUMMARY: This notice announces HUD's funding for the Operating Assistance and Capital Improvement Loan components of the Flexible Subsidy Program. This document includes information concerning the following:

(a) The purpose of the NOFA and information regarding eligibility, available amounts, and selection criteria;

(b) Application processing, including how to apply and how selections will be made; and

(c) A checklist of steps and exhibits involved in the application process.

DATES: The deadline date for submission of applications by project owners in response to this Notice of Fund Availability is July 8, 1991. See the Application Process section of this NOFA to determine where to submit applications and what constitutes proper submission.

FOR FURTHER INFORMATION CONTACT: Questions concerning this NOFA should be directed to the Program Support Branch, Office of Multifamily Housing Management, 451 Seventh Street SW., Washington, DC. 20410, telephone (202) 708–2654 (voice) or (202) 708–3938 (TDD for hearing-impaired). (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION: Paperwork Reduction Statement: The Office of Management and Budget has approved the use of the Flexible Subsidy forms under OMB control number 2502–0395 through September 30, 1992.

I. Purpose and Substantive Description

A. Statutory Background and Authority

Section 201 of the Housing and Community Development Amendments (HCDA) of 1978 created the Flexible Subsidy Program to provide Operating Assistance to eligible projects experiencing financial difficulty. Operating Assistance is provided in the form of a deferred loan and, in conjunction with other resources, is designed to restore or maintain the physical and financial soundness of eligible projects. The 1983 amendments to section 201 of the HCDA expanded the universe of eligible projects and clarified that a project need not have an FHA-insured mortgage to be eligible for Flexible Subsidy assistance (e.g., a non-insured section 236 project is eligible).

The 1987 amendments to section 201 of HCDA created a new category of assistance to be provided under the Flexible Subsidy Program for projects that needed capital improvements to achieve physical soundness that cannot be funded from project reserve funds without jeopardizing other major repairs or replacements that are reasonably expected to be required in the near future.

The 1987 amendments to the Flexible Subsidy statute (sections 185 and 186 of the Housing and Community Development Act of 1987) also recognized the need to coordinate assistance under the Flexible Subsidy Program with the preservation of low- and moderate-income housing initiative enacted in sections 221 through 235 of that Act. (In its comprehensive revision of the 1987 Act, section 601 of the Cranston-Gonzalez National Affordable Housing Act, at the new section 219, repeated the listing of incentives the Secretary could agree to provide an owner as part of a plan of action to prevent prepayment of a mortgage on a project serving low- and moderate-income tenants.) Section 219.330 of the rule governing the Capital Improvement Loan portion of the program contains a set-aside provision to assure maximum support for such preservation activities.

This notice assures support of preservation efforts by providing for a set-aside of $25 million for Flexible Subsidy capital improvement funding to projects that are eligible to receive incentives in exchange for extending the low- to moderate-income use of the projects under plans of action approved in accordance with 24 CFR part 248. The remainder of the Flexible Subsidy Fund is available for award to all eligible projects on a competitive basis, in accordance with the priorities specified in this notice.

B. Allocation Amounts

The Flexible Subsidy Fund is comprised of excess rental receipts paid to HUD from owners of section 236 projects, interest earned on the fund, and repayment of Operating Assistance loans made by the Department in past fiscal years, and amounts appropriated by Congress, if any, to carry out the purposes of the Flexible Subsidy Program.

Funds are allocated separately for two types of projects: State-agency financed non-insured projects and all others, including projects with FHA-insured and HUD-held mortgages. Section 219.115 of the HUD regulations requires that the State Agency allocation be based on the number of units in potentially eligible non-insured projects as a percentage of the total number of units in all potentially eligible projects. In accordance with that section, the Department has determined that 9.3 percent of the available funding for Fiscal year 1991 will be earmarked for eligible State Agency projects.

In addition, the Capital Improvement Loan portion of the program is required by statute to be funded at a minimum level of $30 million or 40 percent of the amount in the Flexible Subsidy fund, whichever is less. Any of that amount not used for loans under that program before the last 60 days of a fiscal year shall become available for Operating Assistance loans. This year, $30 million is less than 40 percent of the fund, and, therefore is the amount designated for Capital Improvement Loan.

Funding availability for Fiscal Year 1991 is estimated as follows:

Flexible Subsidy Available 12/31/90	$76,627,000
Plus: Estimated Transfers for the Balance of the Fiscal Year	51,929,000
Estimated Available Funds—Fiscal Year 1991	$128,556,000
Less: Set-aside for capital improvements for projects with incentives under Part 248 (estimated)	25,000,000
Net Available Funds to be allocated under NOFA	$103,556,000
Net Available Funds—State Agency Projects (9.3%)	$ 9,630,708
Net Available Funds—All Other Eligible (90.7%)	$93,925,292
Amount of Available Funds segregated for the Capital Improvement Loan component	$30,000 000
State Agency share (9.3%)	$ 2,790,000
All other eligible projects (90.7%)	$27,210,000
Amount of Available Funds set aside for the Operating Assistance component	$73,556,000
State Agency share (9.3%)	$ 6,840,708
All other eligible projects (90.7%)	$66,715,297

The $25 million estimated set aside for capital improvement incentives under a plan of action may be increased or decreased during the fiscal year, as appropriate. Any adjustment to the estimate will affect the Net Available Funds shown above.

C. Eligibility

1. Types of Projects

The following types of rental or cooperative housing are eligible for Flexible Subsidy assistance:

a. A project assisted under the section 236 interest reduction program, including State Agency non-insured projects, the section 221(d)(5) program (commonly known as the 221(d)(3) Below Market Interest Rate Program), or the Rent Supplement Program.

b. A project that was constructed more than 15 years before assistance is to be provided under the Flexible Subsidy Program with a direct loan under the section 202 Program for Housing for the Elderly or Handicapped.

c. A project assisted under section 23 of the United States Housing Act of 1937 as in effect immediately before January 1, 1975, that is ineligible for assistance under the modernization program operated under the 1937 Act.

d. A project assisted under the section 8 Housing Assistance Payments Program after conversion from assistance under the section 236 Rental Assistance Payments Program or the Rent Supplement Program.

e. A project that met the criteria in item 1 or 2 above before acquisition by the Secretary of HUD and that has been sold by the Secretary subject to a mortgage insured or held by the Secretary and subject to an agreement which provides that the low- and moderate-income character of the project will be maintained. An application for Operating Assistance for a project in this category must be received by HUD within three years of the date of the sale of the project by the Secretary.

2. Conditions

Flexible subsidy assistance will be made available, in accordance with 24 CFR 219.110, only if the following conditions are determined to exist:

a. The assistance is necessary, when considered with other resources available to the project; it will restore or maintain the financial or physical soundness of the project; and it will preserve the low- and moderate-income character of the project.

b. The owner has agreed to maintain the low- and moderate-income character of the project for a period at least equal to the remaining term of the project mortgage.

c. The assistance will be less costly to the Federal Government over the useful life of the project than other reasonable alternatives of preserving the occupancy character of the project.

d. The project owner, and any mortgagee of a project that does not have an FHA-insured mortgage, has provided or agreed to provide the required owner contribution.

e. The project is or can reasonably be made structurally sound, as determined in accordance with an on-site inspection.

f. The project is operated competently, as determined by HUD in a management review.

g. Project management is in accordance with any management improvement and operating plan approved by HUD for the project.

h. In the case of an application for a Capital Improvement Loan, the owner must have funded the reserve for replacements in accordance with HUD requirements, and yet the reserve (and any other project funds available to fund the reserve) is insufficient to finance both the capital improvements for which assistance is being requested and other capital improvements that are reasonably expected to be required within the next 24 months. (See 24 CFR 219.305.)

3. Owner Contribution

a. *Limited dividend, profit-motivated, or cooperative.* These types of owners who seek Operating Assistance must make a minimum financial contribution of 25 percent of the amount needed to render the project financially sound. If seeking a Capital Improvement Loan, they must contribute 25 percent of the total estimated cost of the capital improvements involved. In addition, a profit-motivated owner or an owner of a limited-dividend project seeking Operating Assistance under the Flexible Subsidy Program must agree to waive its right to accrue and pay distributions while any portion of the Operating Assistance loan is outstanding.

b. *Non-profit.* The owner or sponsor of a non-profit project seeking Operating Assistance must make a contribution toward the total amount needed. However, if HUD determines that neither the owner (mortgagor) nor the sponsor has the financial capacity to make a cash contribution, HUD may permit the non-profit owner to contribute to the project in the form of services. If seeking a capital improvement loan, a non-profit owner is exempt from providing a contribution.

c. *Source of contribution.* This owner contribution may not be taken from project income but may be made from distributions of surplus cash as defined in and permitted under the Regulatory Agreement. Cash that already has been agreed to be contributed as a condition for approval of purchase of the project (TPA) may NOT be considered for this purpose. Cash contributions made by the owner within 24 months before the Flexible Subsidy application, from sources other than project income, may be considered. Other possible sources of funding, such as assistance from State or local governments, should be pursued aggressively, in order to attain or exceed the required owner contribution percentage.

4. Special Eligibility Limits

A project owner may request and receive Operating Assistance more than once during the term of the mortgage. However, § 219.205(a)(1) of the regulation permits a repair or replacement item to be eligible for Operating Assistance only if no previous payment of HUD-related assistance has been made (e.g., previous Operating Assistance, Housing Development Grant or Community Development Block Grant) for that particular repair or replacement item.

A repair or replacement included as an action item in the MIO Plan and made by the owner on an emergency basis before execution of the Flexible Subsidy contract may be funded with Operating Assistance only if the owner received advance approval from the HUD Field Office to proceed with the emergency repair.

D. Selection Criteria and Ranking Factors

Each application for Operating Assistance and/or a Capital Improvement Loan will be reviewed by the HUD Field Office having jurisdiction over the project in question. Field Offices will recommend applications for funding to HUD Headquarters.

To implement the priorities for funding specified in §§ 219.230 and 219.330 and to support efforts to preserve housing for low- and moderate-income use, in accordance with section 224 of the Housing and Community Development Act of 1987 and subtitle A of title VI of the Cranston-Gonzalez National Affordable Housing Act (104 Stat. 4249–4278), funding will be awarded within each project type (State Agency financed non-insured and other) and within each component of the Flexible Subsidy Program (Operating Assistance and Capital Improvement

Loans) to applications in the following category order:

Category 1

Projects designated as troubled by the HUD Field Office for which half or more of the MIO dollar amount (for Operating Assistance) or Capital Improvement amount is designated for emergency health and safety problems. This category applies to projects with insured, non-insured, or HUD-held mortgages that are current under the terms of the mortgage at the time of the application for assistance, but is limited to those projects with emergency problems that are of such a magnitude that:

(a) They could not be mitigated at a cost that could be in any way absorbed within the operating budget; and

(b) Their continuation could potentially result in tenant displacement.

Accounts payable included in the MIO Plan for Operating assistance may be considered "emergency" only to the extent that they directly relate to vital services provided to the project (e.g., utility payables). (Examples of emergency health and safety problems involving possible capital improvements that may be included in this category are broken heating systems, leaking gas stoves and falling balconies.)

Category 2

Insured, non-insured and HUD-held projects designated by the HUD Field Office as troubled that are current under the terms of the mortgage at the time of the application for assistance, with serious financial and physical problems, whose sponsors do not have the necessary funds available to cure the immediate problems and whose income stream cannot be sufficiently improved to meet the project's expenses without first correcting its physical problems.

Category 3

Projects designated by the HUD Field Office as troubled or potentially troubled that are delinquent under the terms of the HUD-insured or State Agency mortgage at the time of the application for assistance and State Agency-owned projects meeting programmatic eligibility requirements.

The above categories represent the initial ranking of applications received for the Operating Assistance and Captial Improvement Loan components of the Flexible Subsidy Program. A secondary ranking of projects within a funding category will be made by HUD Headquarters, as necessary, to determine projects selected for funding.

* * * * *

Example

Assume total available funds equals $90. Total of applications for categories equals:

Category 1 Projects: $60
Category 2 Projects: $40
Category 3 Projects: $45
Total All Categories $145

In this example, HUD will fund all projects in Category 1. Projects in Category 2 will be scored, ranked, and selected, to the extent funds are available (or $30 in this case) in descending order of funding score. Category 3 projects will not be funded.

* * * * *

The financial distress of a project will be assessed to determine which projects within each funding category are most in need. The severity of a project's financial condition and its ability to meet short-term operating needs and obligations, including debt service payments will be measured by HUD, using financial data contained in the project's audited balance sheet and statement of profit and loss for 1990, or the most recently submitted audited statements (only for those projects with fiscal year end dates later than December 31, 1990).

In assessing financial distress, HUD will use the following ratios, awarding a maximum of 15 points for each ratio, for a maximum score of 30 points per project. Projects with poor financial ratios (e.g., income/expense ratios with a negative value) will be assigned higher point scores than projects with breakeven or positive income/expense ratios from operations.

1. Income/Expense Ratio defined as follows:

$$\frac{\text{Net Income/Loss before depreciation LESS annual debt service and reserve payments}}{\text{Total annual cost of operating the project}}$$

2. Mortgage Coverage Payment Ratio defined as follows:

$$\frac{\text{Current Assets LESS Current Liabilities}}{\text{Total monthly mortgage payment}}$$

* * * * *

E. Other Capital Improvement Loan Terms and Conditions

Capital improvements include any major repair or replacement of building components, e.g., roof structures, ceilings, wall or floor structures, foundations, plumbing, heating, cooling, electrical systems and major equipment, as well as any major repair or replacement of any short-lived building equipment or component before the expiration of its useful life.

Capital improvements may also include limited supplements or enhancements to mechanical equipment to the extent they are needed for the health and safety of the residents (e.g., air conditioning, heating equipment, and building sprinkler systems) where they do not exist. They may also include improvements necessary to comply with HUD's standards in 24 CFR part 8 for accessibility to individuals with handicaps. Capital improvements do not include maintenance of any building components or equipment.

Capital Improvement assistance is provided in the form of an amortizing loan. The interest rate on the loan may not be less than 3 percent (unless HUD determines that a lower rate is necessary to maintain reasonable rental rates) nor more than 6 percent. HUD will determine the rate when considering the project's ability to absorb the rent increase and the percentage of the tenants receiving rental assistance. Interest on the Capital Improvement Loan starts to accrue and the loan amortization period begins when the loan proceeds have been disbursed.

If the requested loan amount is greater than the remaining unpaid balance of the present first mortgage, the loan may not exceed 80 percent of the appraised value of the property, as repaired, less the balance of the first mortgage. HUD or HUD contracted staff will conduct the appraisal.

II. Application Process

An owner must indicate in the application whether it is seeking Operating Assistance or a Capital Improvement Loan. An owner may apply for both simultaneously, but each application will be treated separately under the selection criteria and ranking factors cited in this Notice. In addition, if a limited-dividend project is selected for Operating Assistance, the owner must agree to waive its right to accrue and pay distributions so long as the Operating Assistance loan is outstanding.

The owner of any project eligible for Flexible Subsidy assistance msut apply for assistance by submitting an application (through the State Agency in the case of an uninsured State Agency project) to the Loan Management Branch in the HUD Field Office that has jurisdiction over the project for which assistance is requested, no later than the deadline date specified in this notice. The Field Office will be available to provide technical assistance on the preparation of applications during the application period.

Items must be physically received by the HUD Field Office Loan Management Branch by the due date; it is not enough for an application to bear a postmark date within the submission time period. The HUD Field Office will date-stamp incoming applications to evidence (timely or late) receipt, and, on request, provide the applicant with an acknowledgement of receipt.

Applications received after the due date will be considered for funding in Fiscal Year 1991 only if the Secretary determines that assistance is needed immediately in response to emergency circumstances and only to the extent that contract authority is available to satisfy the request for assistance.

Notification of a general funding award will be made through the HUD regional or area office after notification to the Congressional delegation. Disapproved applicants will be notified with a statement of the basis for disapproval.

After HUD receives the application, it will perform a physical inspection to assure that the Management Improvement and Operating (MIO) plan addresses in a comprehensive fashion all the financial and physical deficiencies. HUD also will conduct a comprehensive management review to assure that all management issues are addressed as part of the MIO plan.

III. Checklist of Application Submission Requirements

A. Operating Assistance under the Flexible Subsidy Program

1. Form HUD–9385, Management Improvement and Operating (MIO) plan. The MIO must include documentation of eligibility and fully address ALL financial and physical deficiencies of the project. To be included in every MIO are a detailed maintenance schedule; a schedule for correcting past deficiencies in maintenance, repairs, and replacements; a plan to upgrade the project to meet cost-effective energy efficiency standards approved by HUD; a plan to improve financial and management control systems; an updated annual operating budget if the last budget was submitted more than 90 days before; and a description of cost controls, procedures and savings.

Action Items on the MIO must be written in a manner which specifically describes the scope of the work and an estimate of the cost of the work to be performed. For example, if gutters and downspouts are to be replaced, the description of the Action Item must detail the number of linear feet, the type and quality of guttering and the cost per foot, including labor.

The MIO must clearly identify all emergency repair Action Items and provide a justification as to the reasons the repair should be considered "emergency" in nature.

2. All documentation required by Notice H 90–17, Combining Low-Income Housing Tax Credits (LIHTC) with HUD Programs.

3. All documentation required by Notice H 90–27, OMB's Guidance on new Government-wide Restrictions on Lobbying, and 24 CFR part 87.

4. Form HUD–2530, Previous Participation Certificate, for all principals requiring clearance under these procedures.

5. Evidence of compliance with the governmentwide rule implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), codified at 49 CFR part 24. (All persons displaced on or after April 2, 1989 as a direct result of privately undertaken rehabilitation, demolition or acquisition of a HUD-assisted project are entitled to relocation payments and other assistance under the URA.)

6. Disclosures of other government assistance and identity of interested parties, as required by 24 CFR 12.32, published on March 14, 1991 (56 FR 11046). See also, Administrative Guidelines published on April 9, 1991 (56 FR 14436).

B. Capital Improvement Loan Program

1. A work write-up and cost estimates listing the major project components that have failed, or are likely to fail or seriously deteriorate within the next 24 months; capital items that can be upgraded to meet cost-effective energy efficiency standards approved by HUD; supplements or enhancements to mechanical equipment and the extent they are needed for health or safety reasons; and amounts needed to comply with HUD's standards as set forth in 24 CFR part 8, dealing with accessibility to individuals with handicaps.

2. All documentation required by Notice H 90–17, Combining Low-Income Housing Tax Credits (LIHTC) with HUD Programs.

3. All documentation required by Notice 90–27, OMB's Guidance on New Government-wide Restrictions on Lobbying, and 24 CFR part 87.

4. A Comprehensive Technical Energy Audit, including an audit of all capital improvements for which assistance is requested, and related capital items whose improvement or upgrading will result in cost-effective energy efficiency improvements. The results of the audit will be a list of specified improvements, their costs and evidence of their cost effectiveness.

5. A MIO plan, if one is required pursuant to § 219.310(b).

6. A statement outlining the owner's contributions.

7. Form HUD–2530, Previous Participation Certificate, for all principals requiring clearance under these procedures.

8. Evidence of compliance with the governmentwide rule implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), codified at 49 CFR part 24. (All persons displaced on or after April 2, 1989 as a direct result of privately undertaken rehabilitation, demolition or acquisition for a HUD-assisted project are entitled to relocation payments and other assistance under the URA.)

9. Disclosures of other government assistance and identity of interested parties, as required by 24 CFR 12.32, published on March 14, 1991 (56 FR 11046). See also, Administrative Guidelines published on April 9, 1991 (56 FR 14436).

IV. Corrections to Deficient Applications

HUD will notify an applicant, in writing, shortly after the expiration of the NOFA response deadline of any technical deficiencies in the application. The applicant must submit corrections to the Loan Management Branch within 14 calendar days from the postmark date of HUD's letter notifying the applicant of any such deficiencies. Corrections to technical deficiencies will be accepted, but substantive changes or supplements to the application will not be accepted.

V. Other Matters

A. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations that implement section 101(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection during business hours in the Office of the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

B. Federalism Executive Order

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this Notice of Fund Availability will not have substantial, direct effects on States, on there

political subdivisions, or on their relationship with the Federal Government, or on the distribution of power and responsibilities between them and other levels of government.

C. Family Executive Order

The General Counsel, as the Designated Official under Executive Order 12606, *the Family,* has determined that this Notice of Fund Availability will not have a significant impact on family formation, maintenance or well being, and therefore, is not subject to review under the order. The NOFA, insofar as it funds emergency repairs to multifamily housing projects will assist in preserving decent housing stock for families residing there.

D. Catalog

The Catalog of Federal Domestic Assistance Program number is 14.164.

Authority: Sec. 201, Housing and Community Development Amendments of 1978 (12 U.S.C. 1715z-1a); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: April 25, 1991.

Arthur J. Hill,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 91–10703 Filed 5–6–91; 8:45 am]

BILLING CODE 4210–27–M

federal register

Tuesday
May 7, 1991

Part III

Department of State

22 CFR Part 40

Visas; Immigrant and Nonimmigrant Documentation: Ineligibility Grounds; Proposed Rule

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 40

[Public Notice 1389]

Visas: Regulations Pertaining to Both Nonimmigrants and Immigrants Under the Immigration and Nationality Act, as Amended

AGENCY: Bureau of Consular Affairs, (DOS).

ACTION: Notice of proposed rule.

SUMMARY: This proposed rule would amend the Department's visa regulations at part 40, title 22, Code of Federal Regulations, to implement the provisions of section 601 of the Immigration Act of 1990, Public Law 101–649. Section 601 revises the grounds of ineligibility under section 212(a) of the Immigration and Nationality Act (INA) applicable to all aliens applying for visas to enter the United States. This section restructures INA 212(a) by consolidating related grounds, repeals certain outmoded grounds, revises the grounds of ineligibility relating to health and security, and expands certain waiver provisions.

DATES: Written comments are invited and must be received in duplicate on or before May 22, 1991.

ADDRESSES: Comments may be submitted to: Chief, Division of Legislation and Regulations, Visa Office, Department of State, Washington, DC 20522–0113.

FOR FURTHER INFORMATION CONTACT: Stephen K. Fischel, Chief, Division of Legislation and Regulations, Visa Office, Department of State, 202–663–1204.

SUPPLEMENTARY INFORMATION:

Public Law 101–649 Background

Title VI of the Immigration Act of 1990, Public Law 101–649, revises all sections of the INA relating to exclusion and deportation. The first section in that title, section 601, revises the section 212(a) grounds of ineligibility which apply to aliens seeking visa issuance to the United States.

Section 601 reorganized the INA 212(a) grounds of ineligibility by consolidating certain grounds of exclusion. The provisions under present INA 212(a) (1)–(34) were reduced to nine paragraphs under the new INA 212(a). The chart below demonstrates how Public Law 101–649 consolidated the grounds of ineligibility

INA as amended	Present law
212(a)(1)	212(a) (1–6).
212(a)(2)	212(a) (9), (10), (12), (23), and (34).
212(a)(3)	212(a) (27), (28), (29), and (33).
212(a)(4)	212(a)(15).
212(a)(5)	212(a) (14) and (32).
212(a)(6)	212(a) (16), (17), (18), (19), and (31).
212(a)(7)	212(a) (20) and (26).
212(a)(8)	212(a)(22).
212(a)(9)	212(a) (11) and (30).

The consolidation of all the grounds of ineligibility into nine paragraphs resulted in the creation of many subparagraphs with an extensive layering of additional subunits. The statutory breakdown made it impossible for the Department to retain its current format in the Code of Federal Regulations. Consequently, it has become necessary to reorganize part 40 in order to accommodate the restructured INA 212(a) provisions. A redesignation table is herein provided as a guide to users of this part.

Proposed Changes

As many of the INA 212(a) grounds of ineligibility were only reorganized by Public Law 101–649 most of the Department's regulations remain essentially the same in substance. Even in the case of section 212(a)(1) in which all the medical grounds were not only consolidated, but significantly altered, the Department's regulations at 22 CFR 40.11 required only slight modification to reflect the amendment to the INA 212(g) waiver provisions.

The only changes in the regulations pertaining to criminal related grounds of ineligibility in subpart C (INA 212(a)(2)) involve amending the regulations at § 40.24 relating to prostitution to correspond with the statutory amendment to INA 212(a)(2)(D). The Department continues to reserve the authority to promulgate regulations at § 40.25 relating to certain aliens involved in serious criminal activity who have asserted immunity from prosecution.

The most extensive amendment to section 212(a) involves the security grounds, INA 212(a) (27), (28), (29) and (33), which were consolidated into INA 212(a)(3). While the Department is considering publication of regulations at § 40.31, § 40.32, § 40.33, and § 40.35, the text to these sections is being reserved at this time. If the Department decides to promulgate such regulations, they will be published as separate proposed rules. Additionally, although INA 212(a)(3)(D) only applies to immigrants, the regulations implementing its predecessor INA 212(a)(28)(C) are still applicable and are republished at § 40.34.

The proposed regulations at § 40.51 and § 40.52, INA 212(a)(5), are formulated to address the labor certification requirement as it applies to the present occupational preferences under INA 203(a) (3) and (6), as well as the new employment-based preference categories under INA 203(b) (2) or (3) which will become effective on October 1, 1991. Although the nonpreference immigrant classification—INA 203(a)(7)—remains in existence until October 1, 1991, immigrant visa numbers have been unavailable for nonpreference applicants since 1977. In addition, there is no operational possibility that immigrant visa numbers will become available for nonpreference immigrants during the remainder of this fiscal year. As a result, the Department proposes to take this occasion to eliminate from its regulations, which implement section 212(a)(5)(A), all references and all provisions applicable to nonpreference immigrants. Doing so at this time will have no operational effect, either beneficial or prejudicial, and will make it unnecessary to further amend the regulations within three months.

The regulation for INA 212(a)(6)(F) has been reserved, as this ground is new and sufficiently precise to obviate the immediate necessity of promulgating any regulations.

The regulation proposed for INA 212(a)(9)(C) at § 40.93 seeks to reflect the intent of this ground of ineligibility. It is the Department's understanding that this paragraph excludes an alien who withholds custody of a U.S. citizen child outside the United States from a person granted custody of that U.S. citizen by a U.S. court order. An exception arises when that U.S. citizen child is located in a foreign state which is party to the Hague Convention on the Civil Aspect of the International Child Abduction. In order to benefit from the provisions of the convention the child, regardless of nationality, must be located in a party state to the Hague Convention rather than in a signatory state.

It should, also, be noted that as INA 212(a) (7), (8), (13), and (25) were repealed by Public Law 101–649, the corresponding sections of 2 CFR part 40 are similarly repealed.

Proposed new § 40.111 replaces current § 40.8 relating to waivers of ineligibility for nonimmigrants under INA 212(d)(3)(A). Only one substantive change is proposed. Current § 40.8(b)(1) implements a delegation of authority from the Immigration and Naturalization

Service to consular officers to approve waivers of ineligibility under INA 212(a)(28)(C) for nonimmigrants in certain cases. INA 212(a)(3)(D), which replaces INA 212(a)(28)(C), is applicable only to immigrant aliens. For this reason, the department proposes to eliminate § 40.8(b) as obsolete.

The remaining grounds of ineligibility, INA 212(a)(4), (a)(7), and (a)(8), are essentially the same as under present law. Thus, the regulations have been retained in substance but have been correspondingly restructured to accommodate the new INA 212(a) format.

Finally, the Department wishes to point out a technical matter relating to INA 212(d)(3)(A) which these proposed regulations address. Under current law, INA 212(d)(3)(A) authorizes the granting of a waiver of ineligibility to a nonimmigrant unless the alien is ineligible under INA 212(a) (27), (29), or (33). In the restructuring of INA 212 by Public Law 101–649 paragraph (3)(A) replaces former paragraph (29), paragraph (3)(C) replaces former paragraph (27), and paragraph (3)(E) replaces former paragraph (33). Accordingly the conforming amendment in section 601(d)(2)(B)(i) of Public Law 101–649 should logically provide for the replacement of "(27), (29), and (33)" with (3)(A), (3)(C), and (3)(E)." Instead, section 601(d)(2)(B)(i) provides for their replacement with "(3)(A), (3)(C), and (3)(D)." This appears to the Department as a clear drafting or typographical error, especially since INA 212(a)(3)(D)—the successor to INA 212(a)(28)(C)—applies only to immigrants. Accordingly, the Department, finding this wording unclear on its face, proposes to interpret it to have meant, "(3)(E)" instead of "(3)(D)."

DERIVATION TABLE

New No.	Old No.	INA as amended
Sec.	Sec.	Sec.
40.1	40.1	No change.
40.2	40.2	No change.
40.3	40.3	No change.
40.4	40.4	No change.
40.5	None	Unassigned.
40.6	40.6	No change.
40.7	40.7	Unassigned.
40.8	40.8	Unassigned.
40.9	40.7	212(a).
40.11	40.7(a)(1–6)	212(a)(1).
40.21	40.7(a)(9) & (23)(A).	212(a)(2)(A).
40.22	40.7(a)(10)	212(a)(2)(B).
40.23	40.7(a)(23)(B)	212(a)(2)(C).
40.24	40.7(a)(12)	212(a)(2)(D).
40.25	40.7(a)(34)	212(a)(2)(E).
40.31	40.7(a)(27), (28), & (29).	212(a)(3)(A).
40.32	40.7(a)(28)	212(a)(3)(B).

DERIVATION TABLE—Continued

New No.	Old No.	INA as amended
Sec.	Sec.	Sec.
40.33	40.7(a)(27)	212(a)(3)(C).
40.34	40.7(a)(28)	212(a)(3)(D).
40.35	40.7(a)(33)	212(a)(3)(E).
40.41	40.7(a)(15)	212(a)(4).
40.51	40.7(a)(14)	212(a)(5)(A).
40.52	40.7(a)(32)	212(a)(5)(B).
40.61	40.7(a)(16)–(17)	212(a)(6)(A).
40.62	40.7(a)(16)–(17)	212(a)(6)(B).
40.63	40.7(a)(19)	212(a)(6)(C).
40.64	40.7(a)(18)	212(a)(6)(D).
40.65	40.7(a)(31)	212(a)(6)(E).
40.66	None	212(a)(6)(F).
40.71	40.7(a) (20) & (21).	212(a)(7)(A).
40.72	40.7(a)(26)	212(a)(7)(B).
40.81	40.7(a)(22)	212(a)(8)(A).
40.82	40.7(a)(22)	212(a)(8)(B).
40.91	40.7(a)(11)	212(a)(9)(A).
40.92	40.7(a)(30)	212(a)(9)(B).
40.93	None	212(a)(9)(C).
40.101	40.7(b)	No change.
40.102	40.7(c)	No change.
40.103	40.7(d)	No change.
40.111	40.8	212(d)(3)(A).

This rule is not considered to be a major rule for purposes of E.O. 12291 nor is it expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subject in 22 CFR Part 40

Aliens, Ineligible Classes, Nonimmigrants, Immigrants, Visas, Waivers of Grounds of Ineligibility.

Proposed Regulations

In view of the foregoing, title 22 of the Code of Federal Regulations, subchapter E—VISAS, part 40 is revised to read as follows:

SUBCHAPTER E—VISAS

PART 40—REGULATIONS PERTAINING TO BOTH NONIMMIGRANTS AND IMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED [AMENDED]

Subpart A—General Provisions

Subpart B—Medical Grounds of Ineligibility

Subpart C—Criminal and Related Grounds—Conviction of Certain Crimes

Subpart D—Security and Related Grounds

Subpart E—Public Charge

Subpart F—Labor Certification and Qualification for Certain Immigrants

Subpart G—Illegal Entrants and Immigration Violators

Subpart H—Documentation Requirements

Subpart I—Ineligible for Citizenship

Subpart J—Miscellaneous

Subpart K—Failure to Comply with INA; Certain Former Exchange Visitors; Alien Entitled to A, E, or G Nonimmigrant Classification

Subpart L—Waiver of Grounds of Ineligibility

Authority: Sec. 104, 66 Stat. 174, 8 U.S.C. 1104; Sec. 109(b)(1), 91 Stat. 847; Sec. 162(e) Stat. 5011, 8 U.S.C. 1153 note; Sec. 601, 104 Stat. 5067; 8 U.S.C. 1182.

Subpart A—General Provisions

§ 40.1 Definitions

The following definitions supplement definitions contained in the Immigration and Nationality Act (INA). As used in these regulations, the term:

(a) *Accompanying* or *accompanied by* means not only an alien in the physical company of a principal alien but also an alien who is issued an immigrant visa within 4 months of either the date of issuance of a visa to, or the date of adjustment of status in the United States of, the principal alien, or the date on which the principal alien personally appears and registers before a consular officer abroad to confer alternate foreign state chargeability or immigrant status upon a spouse or child. An "accompanying" relative may not precede the principal alien to the United States.

(b) *Act* means the Immigration and Nationality Act (or INA), as amended.

(c) *Competent officer,* as used in INA 101(a)(26), means a *consular officer* as defined in INA 101(a)(9).

(d) *Consular officer,* as defined in INA 101(a)(9), includes commissioned consular officers and the Director of the Visa Office of the Department and such other officers as the Director may designate for the purpose of issuing nonimmigrant visas only, but does not include a consular agent, an attaché or an assistant attaché. The assignment by the Department of any Foreign Service Officer to a diplomatic or consular office abroad in a position administratively designated as requiring, solely, partially, or principally, the performance of consular functions, and the initiation of a request for a consular commission, constitutes designation of the officer as a "consular officer" within the meaning of INA 101(a)(9).

(e) *Department* means the Department of State of the United States of America.

(f) *Dependent area* means a colony or other component or dependent area overseas from the governing foreign state, natives of which are subject to the limitation prescribed by INA 202(c).

(g) *Documentarily qualified* means that the alien has reported that all the documents specified by the consular officer as sufficient to meet the requirements of INA 222(b) have been obtained, and that necessary clearance procedures of the consular office have been completed. This term shall be used only with respect to the alien's qualification to apply formally for an immigrant visa; it bears no connotation that the alien is eligible to receive a visa.

(h) *Entitled to immigrant classification* means that the alien:

(1) Is the beneficiary of an approved petition granting immediate relative or preference status;

(2) Has satisfied the consular officer as to entitlement to special immigrant status under INA 101(a)(27); or

(3) Has obtained an individual labor certification, or is within one of the professional or occupational groups listed in Schedule A of the Department of Labor regulations, or is within one of the classes described in § 40.51(c) and is therefore not within the purview of INA 212(a)(5)(A).

(i) With respect to alternate chargeability pursuant to INA 202(b), the term "foreign state" is not restricted to those areas to which the numerical limitation prescribed by INA 202(a) applies but includes dependent areas, as defined in this section.

(j) *INA* means the Immigration and Nationality Act, as amended.

(k) *INS* means the Immigration and Naturalization Service.

(l) *Not subject to numerical limitation* means that the alien is entitled to immigrant status as an immediate relative within the meaning of INA 201(b) or INA 201(b)(2)(A)(i) after September 30, 1991, or as a special immigrant within the meaning of INA 101(a)(27) or INA 101(a)(27) (A) and (B) after September 30, 1991, unless specifically subject to a limitation other than under INA 201 (a), (b), or (c).

(m) *Parent, father,* and *mother,* as defined in INA 101(b)(2), are terms which are not changed in meaning if the child becomes 21 years of age or marries.

(n) *Port of entry* means a port or place designated by the Commissioner of Immigration and Naturalization at which an alien may apply to INS for admission into the United States.

(o) *Principal alien* means an alien from whom another alien derives a privilege or status under the law or regulations.

(p) *Regulation* means a rule which is established under the provisions of INA 104(a) and is duly published in the **Federal Register.**

(q) *Son* or *daughter* includes only a person who would have qualified as a *child* under INA 101(b)(1) if the person were under 21 and unmarried.

(r) *Western Hemisphere* means North America (including Central America), South America and the islands immediately adjacent thereto including the places named in INA 101(b)(5).

§ 40.2 Documentation of nationals.

(a) *Nationals of the United States.* A national of the United States shall not be issued a visa or other documentation as an alien for entry into the United States.

(b) *Former Nationals of the United States.* A former national of the United States who seeks to enter the United States must comply with the documentary requirements applicable to aliens under the INA.

§ 40.3 Entry into areas under U.S. administration

An immigrant or nonimmigrant seeking to enter an area which is under U.S. administration but which is not within the "United States", as defined in INA 101(a)(38), is not required by the INA to be documented with a visa unless the authority contained in INA 215 has been invoked.

§ 40.4 Furnishing records and information from visa files for court proceedings.

Upon receipt of a request for information from a visa file or record for use in court proceedings, as contemplated in INA 222(f), the consular officer must, prior to the release of the information, submit the request together with a full report to the Department.

§ 40.5 [Reserved]

§ 40.6 Basis for refusal.

A visa can be refused only upon a ground specifically set out in the law or implementing regulations. The term "reason to believe," as used in INA 221(g), shall be considered to require a determination based upon facts or circumstances which would lead a reasonable person to conclude that the applicant is ineligible to receive a visa as provided in INA and as implemented by the regulations. Consideration shall be given to any evidence submitted indicating that the ground for a prior refusal of a visa may no longer exist. The burden of proof is upon the applicant to establish eligibility to receive a visa under INA 212 or any other provision of law or regulation.

§§ 40.7–40.8 [Reserved]

§ 40.9 Classes of excludable aliens.

Subparts (B) through (K) describe classes of excludable aliens who are ineligible to receive visas and who shall be excluded from admission into the United States, except as otherwise provided in the Immigration and Nationality Act, as amended.

Subpart B—Medical Grounds of Ineligibility

§ 40.11 Medical grounds of ineligibility.

(a) *Decision on eligibility based on findings of medical doctor.* A finding of a panel physician designated by the post

in whose jurisdiction the examination is performed pursuant to INA 212(a)(1) shall be binding on the consular officer, except that the officer may refer a panel physician finding in an individual case to USPHS for review.

(b) *Waiver of ineligibility—INA 212(g).* If an immigrant visa applicant is ineligible under INA 212(a)(1)(A)(i) or (ii) but is qualified to seek the benefits of INA 212(g), the consular officer shall inform the alien of the procedure for applying to INS for relief under the provision of law. A visa may not be issued to the alien until the consular officer has received notification from INS of the approval of the alien's application under INA 212(g).

Subpart C—Criminal and Related Grounds—Conviction of Certain Crimes

§ 40.21 Crimes involving moral turpitude and controlled substance violators.

(a) *Crimes involving moral turpitude.*

(1) *Acts must constitute a crime under criminal law of jurisdiction where they occurred.* Before a finding of ineligibility under INA 212(a)(2)(A)(i)(I) may be made because of an admission of the commission of acts which constitute the essential elements of a crime involving moral turpitude, it must first be established that the acts constitute a crime under the criminal law of the jurisdiction where they occurred. A determination that a crime involves moral turpitude shall be based on the moral standards generally prevailing in the United States.

(2) *Conviction for crime committed when under age 18.* An alien shall be not ineligible to receive a visa under INA 212(a)(2)(A)(i)(I) by reason of any offense committed prior to the alien's fifteenth birthday. Nor shall an alien be ineligible to receive a visa under INA 212(a)(2)(A)(i)(I) by reason of any offense committed between the alien's fifteenth and eighteenth birthdays unless such alien was tried and convicted as an adult for a felony involving violence as defined in section 1(1) and section 16 of Title 18 of the United States Code. An alien tried and convicted as an adult for a violent felony offense, as so defined, committed after having attained the age of fifteen years, shall be subject to the provisions of INA 212(a)(2)(A)(i)(I) regardless of whether at that time juvenile courts existed within the jurisdiction of the convictions.

(3) *Two or more crimes committed while under age 18.* An alien convicted of a crime involving moral turpitude or admitting the commission of acts which constitute the essential elements of such a crime and who has committed an additional crime involving moral turpitude shall be ineligible under INA 212(a)(2)(A)(i)(I), even though the crime were committed while the alien was under the age of 18 years.

(4) *Conviction in absentia.* A conviction *in absentia* of a crime involving moral turpitude does not constitute a conviction within the meaning of INA 212(a)(2)(A)(i)(I).

(5) *Effect of pardon by appropriate U.S. authorities/foreign states.* An alien shall not be considered ineligible under INA 212(a)(2)(A)(i)(I) by reason of a conviction of a crime involving moral turpitude for which a full and unconditional pardon has been granted by the President of the United States, by the Governor of the United States, by the former High Commissioner for Germany acting pursuant to Executive Order 10062, or by the United States Ambassador to the Federal Republic of Germany acting pursuant to Executive Order 10608. A legislative pardon or a pardon, amnesty, expungement of penal record or any other act of clemency by a foreign state shall not serve to remove a ground of ineligibility under INA 212(a)(2)(A)(i)(I).

(6) *Political offenses.* The term "purely political offense", as used in INA 212(a)(2)(A)(i)(I), includes offenses that resulted in convictions obviously based on fabricated charges or predicated upon repressive measures against racial, religious, or political minorities.

(7) *Waiver of ineligibility—INA 212(h).* If an immigrant visa applicant is ineligible under INA 212(a)(2)(A)(i)(I) but is qualified to seek the benefits of INA 212(h), the consular officer shall inform the alien of the procedure for applying to INS for relief under that provision of law. A visa may not be issued to the alien until the consular officer has received notification from INS of the approval of the alien's application under INA 212(h).

(b) *Controlled substance violators—*

(1) *Date of conviction not pertinent.* An alien shall be ineligible under INA 212(a)(2)(A)(i)(II) irrespective of whether the conviction for a violation of or for conspiracy to violate any law or regulation relating to a controlled substance, as defined in the Controlled Substance Act (21 U.S.C. 802), occurred before, on, or after October 27, 1986.

(2) *Waiver of ineligibility—INA 212(h).* if an immigrant visa applicant is ineligible under INA 212(a)(2)(A)(i)(II) but is qualified to seek the benefits of INA 212(h), the consular officer shall inform the alien of the procedure for applying to INS for relief under that provision of law. A visa may not be issued to the alien until the consular officer has received notification from INS of the approval of the alien's application under INA 212(h).

§ 40.22 Multiple criminal convictions.

(a) *Conviction(s) for crime(s) committed under age 18.* An alien shall not be ineligible to receive a visa under INA 212(a)(2)(B) by reason of any offense committed prior to the alien's fifteenth birthday. Nor shall an alien be ineligible under INA 212(a)(2)(B) by reason of any offense committed between the alien's fifteenth and eighteenth birthdays unless such alien was tried and convicted as an adult for a felony involving violence as defined in section 1(1) and section 16 of title 18 of the United States Code. An alien, tried and convicted as an adult for a violent felony offense, as so defined, committed after having attained the age of fifteen years, and who has also been convicted of at least one other such offense or any other offense committed as an adult, shall be subject to the provisions of INA 212(a)(2)(B) regardless of whether at that time juvenile courts existed within the jurisdiction of the conviction.

(b) *Suspended sentence.* A sentence to confinement that has been suspended by a court of competent jurisdiction is not one which has been "actually imposed" within the meaning of INA 212(a)(2)(B).

(c) *Conviction in absentia.* A conviction *in absentia* shall not constitute a conviction within the meaning of INA 212(a)(2)(B).

(d) *Effect of pardon by appropriate U.S. authorities/foreign states.* An alien shall not be considered ineligible under INA 212(a)(2)(B) by reason in part of having been convicted of an offense for which a full and unconditional pardon has been granted by the President of the United States, by the Governor of a State of the United States, by the former High Commissioner for Germany acting pursuant to Executive Order 10062, or by the United States Ambassador to the Federal Republic of Germany acting pursuant to Executive Order 10608. A legislative pardon or a pardon, amnesty, expungement of penal record or any other act of clemency granted by a foreign state shall not serve to remove a ground of ineligibility under INA 212(a)(2)(B).

(e) *Political offense.* The term "purely political offense", as used in INA 212(a)(2)(B), included offenses that resulted in convictions obviously based on fabricated charges or predicated upon repressive measures against racial, religious, or political minorities.

(f) *Waiver of ineligibility—INA 212(h).* If an immigrant visa applicant is

ineligible under INA 212(a)(2)(B) but is qualified to seek the benefits of INA 212(h), the consular officer shall inform the alien of the procedure for applying to INS for relief under that provision of law. A visa may not be issued to the alien until the consular officer has received notification from INS of the approval of the alien's application under INA 212(h).

§ 40.23 Controlled substance traffickers. [Reserved]

§ 40.24 Prostitution and commercialized vice.

(a) *Activities within 10 years preceding visa application.* An alien shall be ineligible under INA 212(a)(2)(D) only if

(1) The alien is coming to the United States solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution, or the alien directly or indirectly procures or attempts to procure, or procured or attempted to procure or to import prostitutes or persons for the purposes of prostitution, or receives or received, in whole or in part, the proceeds of prostitution; and

(2) The alien has performed one of the activities listed in § 40.24(a)(1) within the last ten years.

(b) *Prostitution defined.* The term *prostitution* means engaging in promiscuous sexual intercourse for hire. A finding that an alien has "engaged" in prostitution must be based on elements of continuity and regularity, indicating a pattern of behavior or deliberate course of conduct entered into primarily for financial gain or for other considerations of material value as distinguished from the commission of casual or isolated acts.

(c) *Where prostitution not illegal.* An alien who is within one or more of the classes described in INA 212(a)(2)(D) is ineligible to receive a visa under that section even if the acts engaged in are not prohibited under the laws of the foreign country where the acts occurred.

(d) *Waiver of ineligibility—INA 212(h).* If an immigrant visa applicant is ineligible under INA 212(a)(2)(D) but is qualified to seek the benefits of INA 212(h), the consular officer shall inform the alien of the procedure for applying to INS for relief under that provision of law. A visa may not be issued to the alien until the consular officer has received notification from INS of the approval of the alien's application under INA 212(h).

§ 40.25 Certain aliens involved in serious criminal activity who have asserted immunity from prosecution. [Reserved]

Subpart D—Security and Related Grounds

§ 40.31 General. [Reserved]

§ 40.32 Terrorist activities. [Reserved]

§ 40.33 Foreign policy. [Reserved]

§ 40.34 Immigrant membership in totalitarian party.

(a) *Definition of affiliate.* The term *affiliate,* as used in INA 212(a)(3)(D), means an organization which is related to, or identified with, a proscribed association or party, including any section, subsidiary, branch, or subdivision thereof, in such close association as to evidence an adherence to or a furtherance of the purposes and objectives of such association or party, or as to indicate a working alliance to bring to fruition the purposes and objectives of the proscribed association or party. An organization which gives, loans, or promises support, money, or other thing of value for any purpose to any proscribed association or party is presumed to be an "affiliate" of such association or party, but nothing contained in this paragraph shall be construed as an exclusive definition of the term "affiliate".

(b) *Service in Armed Forces.* Service, whether voluntary or not, in the armed forces of any country shall not be regarded, of itself, as constituting or establishing an alien's membership in, or affiliation with, any proscribed party or organization, and shall not, of itself, constitute a ground of ineligibility to receive a visa.

(c) *Voluntary Service in a Political Capacity.* Voluntary service in a political capacity shall constitute affiliation with the political party or organization in power at the time of such service.

(d) *Voluntary Membership After Age 16.* If an alien continues or continued membership in or affiliation with a proscribed organization on or after reaching 16 years of age, only the alien's activities after reaching that age shall be pertinent to a determination of whether the continuation of membership or affiliation is or was voluntary.

(e) *"Operation of Law" Defined.* The term "operation of law", as used in INA 212(a)(3)(D), includes any case wherein the alien automatically, and without personal acquiescence, became a member of or affiliated with a proscribed party or organization by official act, proclamation, order, edict, or decree.

(f) *Membership in Organization Advocating Totalitarian Dictatorship in the United States.* In accordance with the definition of "totalitarian party" contained in INA 101(a)(37), a former or present voluntary member of, or an alien who was, or is, voluntarily affiliated with a noncommunist party, organization, or group, or of any section, subsidiary, branch, affiliate or subdivision thereof, which during the time of its existence did not or does not advocate the establishment in the United States of a totalitarian dictatorship, is not considered ineligible under INA 212(a)(3)(D) to receive a visa.

(g) *Waiver of ineligibility—212(a)(3)(D)(iv).* If an immigrant visa applicant is ineligible under INA 212(a)(3)(D) but is qualified to seek the benefits of INA 212(a)(3)(D)(iv), the consular officer shall inform the alien of the procedure for applying to INS for relief under that provision of law. A visa may not be issued to the alien until the consular officer has received notification from INS of the approval of the alien's application under INA 212(a)(3)(D)(iv).

§ 40.35 Participants in Nazi persecutions or genocide.

(a) *Participation in Nazi persecutions.* (Reserved)

(b) *Participation in genocide.* (Reserved)

Subpart E—Public Charge

§ 40.41 Public charge.

(a) *Basis for determination of ineligibility.* Any determination that an alien is ineligible under INA 212(a)(4) must be predicated upon circumstances indicating that the alien will probably become a public charge after admission.

(b) *Posting of bond.* A consular officer may issue a visa to an alien who is within the purview of INA 212(a)(4) upon receipt of notice from INS of the giving of a bond or undertaking in accordance with INA 213 and INA 221(g), provided the officer is satisfied that the giving of such bond or undertaking removes the likelihood that the alien might become a public charge within the meaning of this section of the law and that the alien is otherwise eligible in all respects.

(c) *Prearranged employment.* An immigrant visa applicant relying on an offer of prearranged employment to establish eligibility under INA 212(a)(4), other than an offer of employment certified by the Department of Labor pursuant to INA 212(a)(5)(A), must establish the offer of employment by a document that confirms the essential

elements of the employment offer. Any document presented to confirm the employment offer must be sworn and subscribed to before a notary public by the employer or an authorized employee or agent of the employer. The signer's printed name and position or other relationship with the employer must accompany the signature.

(d) *Significance of income poverty guidelines.* An immigrant visa applicant relying solely on personal income to establish eligibility under INA 212(a)(4), who does not demonstrate an annual income above the income poverty guidelines published by the Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, and who is without other adequate financial resources, shall be presumed ineligible under INA 212(a)(4).

Subpart F—Labor Certification and Qualification for Certain Immigrants

§ 40.51 Labor certification.

(a) *INA 212(a)(5) applicable only to certain immigrant aliens.* INA 212(a)(5)(A) applies

(1) Through September 30, 1991, only to immigrant aliens described in INA 203(a) (3) or (6) who are seeking to enter the United States for the purpose of engaging in gainful employment; or,

(2) On or after October 1, 1991, only to immigrant aliens described in INA 203(b)(2) or

(3) Who are seeking to enter the United States for the purpose of engaging in gainful employment.

(b) *Determination of need for alien's labor skills.* An alien within one of the classes to which INA 212(a)(5) applies as described in § 40.51(a) who seeks to enter the United States for the purpose of engaging in gainful employment, shall be ineligible under INA 212(a)(5)(A) to receive a visa unless the Secretary of Labor has certified to the Attorney General and the Secretary of State, that

(1) There are not sufficient workers in the United States who are able, willing, qualified, (or equally qualified in the case of aliens who are members of the teaching profession or who have exceptional ability in the sciences or the arts) and available at the time of application for a visa and at the place to which the alien is destined to perform such skilled or unskilled labor, and

(2) The employment of such alien will not adversely affect the wages and working conditions of the workers in the United States similarly employed.

(c) *Labor certification not required in certain cases.* A spouse or child accompanying or following to join an alien spouse or parent who prior to October 1, 1991 is or was a beneficiary of a petition approved pursuant to INA 203(a) (3) or (6) or an alien spouse or parent who on or after September 30, 1991 is a beneficiary of a petition approved pursuant to INA 203(b) (2) or (3) is not considered to be within the purview of INA 212(a)(5).

§ 40.52 Unqualified physicians.

INA 212(a)(5)(B) applies only to immigrant aliens described in INA 203(a) (3) or (6) through September 30, 1991 or to immigrant aliens described in INA 203(b) (2) or (3) on or after October 1, 1991.

Subpart G—Illegal Entrants and Immigration Violators

§ 40.61 Aliens previously deported under INA 212(a)(6)(A).

An alien who was excluded and deported from the United States under INA 212(a)(6)(A) shall not be issued a visa within one year from the date of deportation unless the alien has obtained permission from INS to reapply for admission.

§ 40.62 Certain aliens previously removed from the United States under INA 212(a)(6)(B).

An alien who was arrested and deported from the United States under INA 212(a)(6)(B) shall not be issued a visa unless the alien has remained outside the United States for at least five successive years (or twenty years in the case of an alien convicted of an aggravated felony) following the last deportation or removal, or has obtained permission from the Immigration and Naturalization Service to reapply for admission to the United States.

§ 40.63 Misrepresentation.

(a) *Fraud and misrepresentation and INA 212(a)(6)(C) applicability to certain refugees.* An alien who seeks to procure, or has sought to procure, or has procured a visa, other documentation, or entry into the United States or other benefit provided under the INA by fraud or by willfully misrepresenting a material fact at any time shall be ineligible under INA 212(a)(6)(C); *provided*, That the provisions of this paragraph are not applicable if the fraud or misrepresentation was committed by an alien at the time the alien sought entry into a country other than the United States or obtained travel documents as a bona fide refugee and the refugee was in fear of being repatriated to a former homeland if the facts were disclosed in connection with an application for a visa to enter the United States: *provided further*, That the fraud or misrepresentation was not committed by such refugee for the purpose of evading the quota or numerical restrictions of the U.S. immigration laws, or investigation of the alien's record at the place of former residence or elsewhere in connection with an application for a visa.

(b) *Misrepresentation in application under Displaced Persons Act or Refuge Relief Act.* Subject to the conditions stated in paragraph (a)(6)(C)(i) of this section an alien who is found by the consular officer to have made a willful misrepresentation within the meaning of section 10 of the Displaced Persons Act of 1948, as amended, for the purpose of gaining admission into the United States as an eligible displaced person, or to have made a material misrepresentation within the meaning of section 11(e) of the Refugee Relief Act of 1953, as amended, for the purpose of gaining admission into the United States as an alien eligible, hereunder, shall be considered ineligible under the provisions of INA 212(a)(6)(C).

(c) *Waiver of ineligibility—INA 212(i).* If an immigrant applicant is ineligible under INA 212(a)(6)(C) but is qualified to seek the benefits of INA 212(i), the consular officer shall inform the alien of the procedure for applying to INS for relief under that provision of law. A visa may not be issued to the alien until the consular officer has received notification from INS of the approval of the alien's application under INA 212(i).

§ 40.64 Stowaways.

INA 212(a)(6)(D) is not applicable at the time of visa application.

§ 40.65 Smugglers.

(a) *General.* A visa shall not be issued to an alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law.

(b) *Waiver of ineligibility—INA 212(d)(11).* If an immigrant applicant is ineligible under INA 212(a)(6)(E) but is qualified to seek the benefits of INA 212(d)(11), the consular officer shall inform the alien of the procedure for applying to INS for relief under the provision of law. A visa may not be issued to the alien until the consular officer has received notification from INS of the approval of the alien's application under INA 212(d)(11).

§ 40.66 Subject of civil penalty. [Reserved]

Subpart H—Documentation Requirements

§ 40.71 Documentation requirements for immigrants.

INA 212(a)(7)(A) is not applicable at the time of visa application. (For waiver of documentary requirements for immigrants see 22 CFR 42.1 and 42.2.)

§ 40.72 Documentary requirements for nonimmigrants.

A passport which is valid indefinitely for the return of the bearer to the country whose government issued such passport shall be deemed to have the required minimum period of validity as specified in INA 212(a)(7)(B)

Subpart I—Ineligible for Citizenship

§ 40.81 Ineligible for citizenship.

An alien shall be ineligible to receive an immigrant visa under INA 212(a)(8)(A) if the applicant is ineligible for citizenship.

§ 40.82 Alien who departed the United States to avoid service in the armed forces.

(a) *Applicability to Immigrants.* INA 212(a)(8)(A) applies to immigrant visa applicants who have departed from or remained outside the United States between September 8, 1939 and September 24, 1978, to avoid or evade training or service in the United States Armed Forces.

(b) *Applicability to nonimmigrants.* INA 212(a)(8)(B) applies to nonimmigtant visa applicants who have departed from or remained outside the United States between September 8, 1939 and September 24, 1978 to avoid or evade training or service in the U.S. Armed Forces except an alien who held nonimmigrant status at the time of such departure.

Subpart J—Miscellaneous

§ 40.91 Practicing polygamists.

An immigrant alien shall be ineligible under INA 212(a)(9)(A) only if the alien is coming to the United States to practice polygamy.

§ 40.92 Guardian required to accompany excluded alien.

INA 212(a)(9)(B) is not applicable at the time of visa application.

§ 40.93 International child abduction.

(a) *Foreign state signatory to the Hague Convention.* For purposes of INA 212(a)(9)(C) a foreign state shall not be deemed signatory unless it has become a party to such convention. A foreign state becomes a party to the Hague Convention on the Civil Aspects of International Child Abduction if it has both signed and has assumed full legal responsibility for its implementation.

(b) *Exception when child located in certain foreign state.* An alien who would otherwise be ineligible under INA 212(a)(9)(C)(i) shall not be ineligible under such paragraph if the U.S. citizen child in question is physically located in a foreign state which is party to the Hague Convention on the Civil Aspects of International Child Abduction.

Subpart K—Failure to Comply with INA; Certain Former Exchange Visitors; Alien entitled to A, E, or G Nonimmigrant Classification

§ 40.101 Failure of application to comply with INA.

(a) *Refusal under INA 221(g).* The consular officer shall refuse an alien's visa application under INA 221(g)(2) as failing to comply with the provisions of INA or the implementing regulations if:

(1) The applicant fails to furnish information as required by law or regulations;

(2) The application contains a false or incorrect statement other than one which would constitute a ground of ineligibility under INA 212(a)(6)(C);

(3) The application is not supported by the documents required by law or regulations;

(4) The applicant refuses to be fingerprinted as required by regulations;

(5) The necessary fee is not paid for the issuance of the visa or, in the case of an immigrant visa, for the application therefore;

(6) In the case of an immigrant visa application, the alien fails to swear to, or affirm, the application before the consular officer; or

(7) The application otherwise fails to meet specific requirements of law or regulations for reasons for which the alien is responsible.

(b) *Reconsideration of refusals.* A refusal of a visa application under paragraph (b)(1) of this section does not bar reconsideration of the application upon compliance by the applicant with the requirements of INA and the implementing regulations or consideration of a subsequent application submitted by the same applicant.

§40.102 Certain former exchange visitors.

An alien who was admitted into the United States as an exchange visitor, or who acquired such status after admission, and who is within the purview of INA 212(e) as amended by the Act of April 7, 1970, (84 Stat. 116) and by the Act of October 12, 1976, (90 Stat. 2301), is not eligible to apply for or receive an immigrant visa or a nonimmigrant visa under INA 101(a)(15)(H), (K), or (L), notwithstanding the approval of a petition on the alien's behalf, unless:

(a) It has been established that the alien has resided and has been physically present in the country of the alien's nationality or last residence for an aggregate of at least 2 years following the termination of the alien's exchange visitor status as required by INA 212(e), or

(b) The foreign residence requirement of INA 212(e) has been waived by the Attorney General in the alien's behalf.

§40.103 Alien Entitled to A, E, or G Nonimmigrant Classification.

An alien entitled to nonimmigrant classification under INA 101(a)(15) (A), (E), or (G) who is applying for an immigrant visa and who intends to continue the activities required for such nonimmigrant classification in the United States is not eligible to receive an immigrant visa until the alien executes a written waiver of all rights, privileges, exemptions and immunities which would accrue by reason of such occupational status.

Subpart L—Waiver of Ground of Ineligibility

§40.111 Waiver for ineligible nonimmigrants under INA 212(d)(3)(A).

(a) *Report or recommendation to Department.* Except as provided in paragraph (b) of this section, consular officers may, upon their own initiative, and shall, upon the request of the Secretary of State or upon the request of the alien, submit a report to the Department for possible transmission to the Attorney General pursuant to the provisions of INA 212(d)(3)(A) in the case of an alien who is classifiable as a nonimmigrant but who is known or believed by the consular officer to be ineligible to receive a nonimmigrant visa under the provisions of INA 212(a), other than INA 212(a) (3)(A), (3)(C) or (3)(E).

(b) *Recommendation to designated INS officer abroad.* A consular officer may, in certain categories defined by the Secretary of State, recommend directly to designated INS officers that the temporary admission of an alien ineligible to receive a visa be authorized under INA 212(d)(3)(A).

(c) *Attorney General may impose conditions.* When the Attorney General authorizes the temporary admission of an ineligible alien as a nonimmigrant and the consular officer is so informed, the consular officer may proceed with the issuance of a nonimmigrant visa to

the alien, subject to the conditions, if any, imposed by the Attorney General.

Dated: April 18, 1991.

James Ward,

Acting Assistant Secretary for Consular Affairs.

[FR Doc. 91–10874 Filed 5–6–91; 8:45 am]

BILLING CODE 4710–06–M

federal register

Tuesday
May 7, 1991

Part IV

Department of Transportation

Federal Railroad Administration

49 CFR Part 245

Railroad User Fees; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 245

[FRA Docket No. RSUF-1, Notice No. 1]

RIN 2130-AA62

Railroad User Fees

AGENCY: Federal Railroad Administration (FRA); DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: FRA proposes a rule to establish a schedule of fees to be assessed equitably to railroads subject to the Federal Railroad Safety Act of 1970 to cover the costs incurred by FRA in administering the Act. FRA has selected a definition of railroad which will exclude from the user fee program only those railroads whose operations are confined within an industrial installation. All other railroads are in some manner subject to FRA's regulatory oversight and will be subject to the user fee assessment program. FRA proposes that the user fees be assessed based on two criteria: One criterion, train miles will be a measure of volume; and the second criterion, miles of road, will be a measure of system size. FRA proposes to apply the train mile/miles of road user fee allocaton formula across the board to all railroads, large or small (with a minimum fee included to ensure that each railroad pays a fair share of the costs of the FRA safety and enforcement program).

DATES: (1) Written comments must be received not later than June 12, 1991. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

(2) FRA will hold a public hearing on this proposal on June 12, 1991 at the time and place set forth below. Any person who desires to make an oral statement at the hearing is requested to notify the Docket Clerk at least five working days prior to the date of the hearing, by phone or mail.

ADDRESSES: (1) Written comments should be submitted to the Docket Clerk (RCC-30), Office of Chief Counsel, FRA, 400 Seventh Street SW., Washington, DC 20590. Persons desiring to be notified that their written comments have been received by FRA should submit a stamped, self-addressed postcard with their comments. The Docket Clerk will indicate on the postcard the date on which the comments were received and will return the card to the addressee. Written comments will be available for examination, both before and after the closing date for comments, during regular business hours in Room 8201 of the Nassif Building at the above address.

(2) The public hearing will be held in Washington, DC on June 12, 1991 at 10 a.m. in the Nassif Building (DOT Headquarters), 400 Seventh Street SW., room 2230.

Persons desiring to make oral statements at the hearing should notify the Docket Clerk by telephone (202) 366-2257 or by writing to the Docket Clerk at the address above.

FOR FURTHER INFORMATION CONTACT: Gail L. Payne, Senior Program Analyst, Industry Operations and Safety Analysis Division, Office of Policy, (RRP-12), FRA, Washington, DC 20590 (Telephone: 202-366-4930); or William R. Fashouer, Attorney-Advisor, Office of the Chief Counsel, (RCC-10) FRA, Washington, DC 20590 (Telephone: 202-366-0616).

SUPPLEMENTARY INFORMATION:

Introduction

Background

Section 10501 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. No. 101-508, 104 Stat. 1388-399) (the "Reconciliation Act") amended the Federal Railroad Safety Act of 1970 (45 U.S.C. 421 *et seq.*) (the "Safety Act") by adding a new section 216 requiring the Secretary of Transportation to establish by regulation, after notice and comment, a schedule of fees to be assessed equitably to railroads, in reasonable relationship to an appropriate combination of criteria such as revenue ton-miles, track miles, passenger miles, or other relevant factors, but not based on the proportion of industry revenues attributable to a railroad or class of railroads. The fees to be collected are to be imposed on railroads subject to the Safety Act and are to be designed to cover the costs of administering the Safety Act, other than activities described in section 202(a)(2) thereof (45 U.S.C. 431(a)(2)). The Secretary's authority under the Safety Act, including the authority to implement new section 216, has been delegated to the Federal Railroad Administrator. (See 49 CFR 1.39(m)).

The Secretary is further directed in section 216 to assess and collect the applicable user fees with respect to each fiscal year before the end of the fiscal year. For the fiscal year ending September 30, 1991, the fees are to be assessed in an amount sufficient to cover the costs of administering the Safety Act beginning on March 1, 1991. Subsequent years will address the costs of administering the Safety Act for the entire year. The aggregate fees received for any fiscal year may not exceed 105 percent of the aggregate of appropriations made by the Congress for the fiscal year for activities covered by the fees.

The Secretary's authority to collect fees is to expire on September 30, 1995.

FRA Conclusion and Proposals (With Section-by-Section Analysis)

FRA faced four principal challenges in developing regulations implementing section 216: First, identifying those activities carried out by FRA under the Safety Act for which the costs are to be covered by user fees; second, defining the entities covered by the user fees; third, developing an allocation formula that fairly distributes the user fee burden across the railroad industry; and fourth, completing the process in an expeditious and timely manner in order to meet the Congressional mandate that user fees covering the fiscal year ending September 30, 1991 be collected prior to that date.

Covered Activities

In defining the scope of the covered activities, FRA naturally has focused on the language employed by Congress in the statute. Section 216 provides: "fees established under this section shall be assessed to railroads subject to this Act and shall cover the costs of administering this Act, other than activities described in section 202(a)(2)." Section 216(a)(3). Since section 216 is an amendment to the Safety Act, the reference to "this Act" means the user fee provision covers only the costs of administering the Safety Act. FRA administers as part of its safety program certain statutes other than the Safety Act and certain regulations not issued under the Safety Act. These include the Hazardous Materials Transportation Act, the Hours of Service Act, the Safety Appliance Act, the Locomotive Inspection Act, the Signal Inspection Act, the Accident Reports Act, the Noise Control Act, and the Sanitary Food Transportation Act of 1990. In addition, FRA has issued implementing regulations jointly under the Safety Act and one of the older safety statutes.

FRA intends to include within the calculation of the cost of administering the Safety Act all activities carried out pursuant to the Safety Act itself, and all regulations issued under the Safety Act, including regulations that have been or may be issued jointly under the Safety Act and one or more of the older safety statutes. FRA will not include within the calculation of the cost of administering the Safety Act costs associated with

administering those regulations not issued under the authority of the Safety Act. These primarily involve regulations implementing the Noise Control Act, the Hazardous Materials Transportation Act, and activities associated with implementing the Hours of Service Act, except for 49 CFR part 228.

One final issue on the scope of coverage of FRA's activities under the Safety Act is worth noting. The statute specifically exempts from the user fee program activities undertaken by FRA under authority of section 202(a)(2) of the Safety Act (45 U.S.C. 431(a)(2)). Section 202(a)(2) authorizes the Secretary to "conduct, as necessary, research, development, testing, evaluation, and training for all areas of railroad safety." Clearly, this means that safety research and development costs and related testing and evaluation are outside the scope of the user fee provision. FRA has also made a careful review of the legislative history of the 1970 Safety Act and concluded that the reference to training in section 202(a)(2) is directed towards the training of railroad industry employees and does not address training carried out by FRA of FRA or state inspection personnel. Accordingly, FRA intends to exclude from the user fee program training costs incurred in training railroad industry personnel but to include within the user fee program training costs incurred by FRA in training its own inspector personnel and inspectors employed by the individual states.

Covered Railroads

As noted in the previous discussion, section 216(a) requires the Secretary to assess user fees on "railroads subject to this Act." Under section 202(e) of the Safety Act (45 U.S.C. 431(e)), "railroad" is defined as follows:

> The term railroad as used in this subchapter means all forms of non-highway ground transportation that run on rails or electro-magnetic guideways, including (1) commuter or other short-haul rail passenger service in a metropolitan or suburban area, as well as any commuter rail service which was operated by the Consolidated Rail Corporation as of January 1, 1979, and (2) high speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads. Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

Under this definition, every railroad in the nation is "subject to" the Safety Act. However, as FRA has noted in its statement of enforcement policy at 49 CFR part 209, appendix A, FRA does not exercise jurisdiction under all of its regulations to the full extent permitted by statute. Since FRA believes that the user fees should be applied to all railroads subject to the FRA's regulatory program, FRA has selected a definition of railroad for these regulations which parallels that employed in the regulations with the broadest reach, part 225—Railroad Accidents/Incidents: Reports, Classification, and Investigations. Accordingly, consistent with part 225 the only railroads that will be excluded from the user fee regulations as a class are railroads whose entire operations are confined within an industrial installation. Since FRA does not exercise jurisdiction over these so-called "plant railroads" under current regulatory policy, it is appropriate that they be excluded from the user fee assessment program. All other railroads are in some manner subject to FRA's regulatory oversight and will be subject to the user fee assessment program.

Allocation Formula

The development of an appropriate basis upon which to allocate the mandated user fees represents the most significant challenge presented by section 216. The statute requires "a schedule of fees to be assessed equitably to railroads, in reasonable relationship to an appropriate combination of criteria such as revenue ton-miles, track miles, passenger miles, or other relevant factors, but shall not be based on the proportion of industry revenues attributable to a railroad or class of railroads." Section 216(a)(1). FRA has made a careful analysis of a number of criteria which might be employed as a basis for allocating user fees among the covered railroads. FRA's goal in conducting this analysis was the selection of a combination of factors that will not only equitably allocate the fees among the various railroads but which will also be relatively simple to calculate and administer.

In addition to the guidance included in the authorizing legislation, FRA considered the following factors in evaluating the most appropriate criteria upon which to base the user fees:

—the reporting burden that the criteria would impose on the industry;
—the degree to which the agency would be able to verify the data;
—the degree to which the data were compatible with the administration of an efficient billing and collection system; and
—the degree to which the criteria could be defined in a clear, unambiguous manner.

The authorizing legislation specifically excluded revenue as a basis for assessing fees on either an individual railroad or a class of railroads.

FRA proposes that the user fees be assessed based on two criteria: one criterion, train miles, will be a measure of volume; and the second criterion, miles of road, will be a measure of system size. A combination of two criteria, train miles and miles of road, was selected rather than reliance on a single criterion. Train and road miles are measures that are well known throughout the industry and are currently used in regulatory oversight. They represent the kind of criteria (volume and size) that were identified in the legislation and that work well together because in combination they compensate for disparities between railroad sizes and densities. The new reporting burden is minimal because all railroads report train miles to FRA monthly on the Illness and Injury Summary Report and road miles (by method of train control) to FRA annually on the Systems Signal Report.

The measures that FRA examined, but did not select, included: Revenue ton miles, gross ton miles, car miles, fuel consumption, locomotive unit miles, passenger miles, and revenue vehicle miles. Included below is a brief discussion addressing the key reasons these other measures were rejected by FRA.

Revenue ton-miles, which are a measure of a railroad's traffic volume, were found wanting in several respects. First, the data are reported by only the 16 Class I railroads. Therefore, selection of revenue ton-miles as a criterion would impose a new reporting burden on the more than 500 non-Class I railroads. Second, revenue ton-miles are not meaningful to terminal railroads because the switching service those railroads provide cannot be measured meaningfully by a composite measure of volume times distance.

Track miles include parallel main line tracks, sidings, passing tracks, yard tracks, and industrial track. There are several concerns FRA had about using track miles as a criterion. First, track miles are all-encompassing. As a result, verification of the miles of sidings and yard tracks could result in a substantial administrative burden. Second, FRA believes that a double section of road should not result in a user fee twice that of a single track section of road. Third, yard tracks and sidings are sufficiently different from first main tracks along the right of way that grouping them together into the single measure, track miles,

would not be an appropriate method for assessing user fees.

Gross ton miles has many of the same shortcomings as revenue ton miles. Gross ton miles are reported by only Class I railroads, and, because it is a composite figure, a short, high density section of railroad could have the same gross ton miles as a more extensive section of road with low density.

Car miles, fuel consumption, and locomotive unit miles are not reported by the non-Class I railroads. FRA's principal concern with these measures is that the Interstate Commerce Commission has exempted non-class I carriers from reporting such data. Utilizing criteria not now the subject of a reporting requirement would mean the imposition of a new reporting requirement on the non-Class I railroads and would require FRA to develop new data bases. In addition, relying on one of these sources for assessing the user fees would mean that FRA would be unable to perform impact analyses prior to an initial data collection. This would delay calculation of an assessment rate for the first year and the potential exists that FRA would be unable to collect the fees by the end of the fiscal year ending September 30, 1991. The measures selected as criteria for assessment, train miles and miles of road, are generally available for most railroads from existing FRA reporting requirements.

FRA also considered several separate criteria for allocating user fee costs to passenger railroads before deciding that the fairest allocation method was to apply the same criteria to passenger and freight operations. Passenger miles were considered as a criterion for apportioning fees among both commuter and passenger railroads. A shortcoming with passenger miles is that the reliability of the measure may be questionable because it is based on an estimate of the average distance traveled per passenger. This estimate is derived from a survey of passengers. The number of passengers is then multiplied by the estimated average distance traveled per passenger to arrive at an estimate of passenger miles. In essence, passenger miles are statistically derived estimates, as opposed to data that are measured directly. Revenue vehicle miles are also a measure of passenger activity. Although revenue vehicle mile data are of better quality than passenger mile data, FRA has been unable to identify a strong rationale supporting the need for separate passenger and freight criteria. Accordingly, the train miles and miles of road criteria will apply to all railroad operations.

In this notice FRA has applied the train mile/miles of road user fee formula across the board to all railroads, large or small (with a minimum fee included to ensure that each railroad pays a share of the cost of the FRA safety and enforcement program). FRA has carefully considered and rejected the concept of an exemption from the user fee assessment program for certain types of railroads. FRA is of the opinion that all railroads that potentially participate in or benefit from FRA's safety program should participate in funding the costs of that program. Congress did not include an exemption for small railroads in the enabling legislation, and FRA believes that none is appropriate.

FRA is interested in receiving comments on the subject of the impact of the train mile/miles of road criteria on light density railroads. Applying the standard train mile/road miles criteria may result in a disproportionately high user fee compared to the limited scope of operations on these railroads. FRA is considering treating those railroads with less than 900 train-miles per mile of road as light density railroads.

In order to address this potential problem, FRA is considering an alternative under which the assessment rate per mile of road for light density railroads would be adjusted according to a sliding scale. The sliding scale would be as follows:

Train miles per road mile	Scaling factor
up to 100	.10
101 to 200	.20
201 to 300	.30
301 to 400	.40
401 to 500	.50
501 to 600	.60
601 to 700	.70
701 to 800	.80
801 to 900	.90
901 and above	1.00

The scaling factor would be multiplied by the assessment rate per mile of road. The result would be that light density railroads would be subject to an adjusted assessment rate per mile of road. The adjustment would vary with the density, such that railroads with the lowest density would benefit from the greatest adjustment. For example, a railroad that had a density of 150 train-miles per miles of road would be able to apply the scaling factor. .20 to the standard assessment rate per mile of road, resulting in an adjusted assessment rate per mile of road that is 20 percent of the rate in the standard fee schedule. A railroad with a density of 850 train miles per mile of road would apply a scaling factor of .90, and pay 90 percent of the standard assessment rate per mile of road. The effect is to give a proportionately smaller adjustment to those railroads whose density approaches 900 train-miles per mile of road. Naturally, application of the scaling factor to certain railroads will reduce the aggregate fees collected from this group and increase the fees to be collected from other railroads.

Regulatory Schedule

The fourth principal challenge facing FRA in developing regulations implementing section 216 is completing the regulatory process in sufficient time to ensure that the collection requirements established in the statute are satisfied. The statute requires user fees to be assessed in an amount sufficient to cover FRA's safety oversight activities under the Safety Act beginning on March 1, 1991. In addition, the Secretary is required to assess and collect the fees with respect to each fiscal year before the end of the fiscal year. FRA has interpreted this statutory requirement as mandating that assessments be sent to covered railroads with a due date occurring prior to the end of the fiscal year. FRA expects the railroads to meet their responsibilities in a timely fashion. However, FRA will pursue collection into the new fiscal year in the event payment is not made in a timely fashion. In order to assure that assessments are received and collection is completed prior to September 30, 1991, FRA has adopted an expedited schedule for these proceedings.

Section-by-Section Analysis

Section 245.1 describes the purpose and scope of the user fee regulations. The purpose is the adoption of a program of railroad user fees to implement section 216 of the Safety Act as added by section 10501 of the Reconciliation Act. The user fees are to be assessed beginning in the fiscal year ending September 30, 1991 and these regulations are to expire by law on September 30, 1995.

Section 245.3 defines the applicability of these regulations. As noted above, we propose that they apply to all railroads except those railroads whose entire operations are confined within an industrial installation. The term "railroad" is otherwise intended to have the full breadth encompassed in the statutory definition found in section 202(e) of the Safety Act (45 U.S.C. 431(e)).

Section 245.5 includes a series of definitions of important terms employed

in the user fee regulation. Defined terms include main track, miles of road operated, railroad, and train mile. For the most part, FRA has developed these definitions to reflect traditional railroad industry practice. The inclusion of definitions for these terms should help clarify the reporting requirements for individual railroads and assure that the user fee assessments are based on common understandings.

Section 245.7 identifies the penalties FRA may impose upon any individual or entity that violates any requirement of this part. These penalties are authorized by section 209 of the Safety Act and parallel penalty provisions included in numerous other regulations issued by FRA under authority of the Safety Act. Essentially, any person who violates any requirement of this part or causes the violation of any such requirement will be subject to a civil penalty of at least $250 and not more than $10,000 per violation. Civil penalties may be assessed against individuals only for willful violations. In addition, each day a violation continues will constitute a separate offense. Finally, a person may be subject to criminal penalties for knowingly and willfully falsifying records or reports required by these regulations. FRA believes that the inclusion of penalty provisions for failure to comply with the regulations is important in insuring that compliance is achieved not only in terms of the payment of the relevant user fee but also in the development of accurate data on train miles and miles of road so as to insure that each railroad pays its fair share of the cost of the FRA safety program.

Section 245.101 establishes a new reporting requirement. In order to assure that FRA has adequate data upon which to make its calculation of user fees for each individual railroad, FRA is requiring each railroad subject to this part to submit a report to FRA; not later than March 1 of each year (June 15th for the fiscal year ending September 30, 1991), identifying the railroad's total train miles for the previous calendar year and the total number of miles of road owned, leased or controlled (but not including trackage rights) by the railroad as of December 31 of the previous calendar year. Provisions have been included to assist each covered railroad in calculating train miles and miles of road. Each covered railroad shall make its report to FRA on FRA Form 6180.89—Annual Report of Railroad's Subject to User Fees. In addition to identifying its train miles and miles of road, each railroad will be required to include on Form 6180.89 a corporate billing address for the user fee, whether it is a subsidiary of another corporation, an explanation if zero is entered for either train miles or road miles and the name, title, telephone number, date, and notarized signature of the person submitting the form to FRA.

In order to facilitate the process, FRA anticipates mailing blank copies of the FRA Form 6180.89—Annual Report of Railroads Subject to User Fees to each railroad during the month of January of each year. For the fiscal year ending September 30, 1991, FRA will mail the blank copy of the form during the month of May, 1991. FRA wishes to highlight that this action is for the convenince of the railroads only and in no way affects the obligation of railroads subject to this Part to obtain and submit FRA Form 6180.89 to FRA in a timely fashion in the event a blank form is not received from FRA. Blank forms may be obtained from the FRA Office of Safety. It is FRA's intention to follow the reporting requirements mandated by existing FRA regulations; however, in instances of conflict, the provisions contained in the user fee regulations will govern user fee reporting requirements. Since a significant percentage of the information to be reported is already gathered by the railroads, FRA does not anticipate that the new reporting requirement will impose a significant burden on the industry. Correspondingly, FRA believes the new reporting requirement is necessary to allow for the information to be assembled and reported at one time and in one calculation for the year.

Provisions included in § 245.101 are also designed to clarify which entity is responsible for satisfying the reporting requirements (and paying the user fee) when several railroads have an interest in a particular track or facility. As a basic principle, FRA intends for each railroad subject to this part to report its own train miles for the freight and passenger services it operates without regard to track or facility ownership. As a result, Amtrak and the commuter railroads that own track and operate their own equipment with their own employees would report their own train miles even if the services operated over track owned by one of the freight railroads (or commuter operations over track owned by Amtrak). Since Amtrak owns track primarily in the Northeast Corridor, its share of the user fee will be calculated on both a train mile and road mile basis for its Northeast Corridor operations and solely on a train mile basis for the bulk of its off-corridor operations.

Provisions included in section 245.101 also clarify which entity is responsible for reporting miles of road. Miles of road to be reported is to include all track owned, operated, or controlled by the railroad but does not include track used under trackage rights agreements. Miles of road consisting of leased track is to be reported by the lessee railroad. In the case of trackage rights agreements, FRA intends for the railroad that owns the track to report the road miles. Trackage rights agreements allow one railroad (Railroad A) to operate over tracks controlled by a second railroad (Railroad B). Under this arrangement, train miles accrued by Railroad A over tracks controlled by Railroad B would be reported as train miles by Railroad A, and Railroad A would be assessed its user fee based on these train miles. The user fee related to miles of road would be assessed to Railroad B, the railroad with operational control over the track segment. Similarly, in the case of a haulage agreement where Railroad B operates a regularly scheduled train for Railroad A over road under the operational control of Railroad B, then Railroad B would report and be assessed the user fee on both the train miles and the miles of road.

Each railroad also has a continuing obligation to assure that the information it has provided to FRA is true and accurate. If a railroad should learn that the information it has supplied is incorrect, it is required to resubmit the data to FRA along with an explanation of the discrepancy.

Section 245.103 requires each railroad subject to this part to maintain adequate records supporting the information submitted to FRA regarding the railroad's train miles and miles of road calculations. This section also indicates that the FRA Administrator or the Administrator's designee is to have a right of access to such records during normal business hours for the purposes of inspection and copying. FRA invites interested parties to comment on the types of records that each railroad would maintain in order to support the information to be supplied to FRA and how FRA might be afforded access to such records.

Section 245.105 identifies the period of time during which records required under section 245.103 must be maintained. Such records must be maintained for three years.

Section 245.201 describes the method FRA has selected for calculating the user fee to be paid by each railroad subject to these regulations. Following receipt of FRA Form 6180.89 from each railroad identifying its cumulative train miles for the previous calendar year and its miles of road as of December 31 of

the previous year, FRA will calculate the total train miles and total miles of road for railroads subject to the user fee regulations for the current fiscal year. This information is due from the covered railroads by March 1 of each year (June 15th for the fiscal year ending September 30, 1991). At the same time, FRA will calculate the total cost of administering the Safety Act for the current fiscal year. Employing these totals, FRA will calculate a railroad user fee rate per train mile and railroad user fee rate per mile of road. The user fee rate per train mile (the volume component) will be calculated by multiplying the total amount to be collected by 0.5 and then dividing this amount by the total number of train miles reported to the FRA for the prior calendar year. The assessment rate per mile of road (the system size component) will be calculated by multiplying the total amount to be collected by 0.5 and then dividing this amount by the total miles of road reported to the FRA for the prior calendar year. The user fee to be paid by each covered railroad will be based on the sum of: the railroad's train miles times the rate per train mile plus the railroad's miles of road times the rate per mile of road. FRA has decided to set a minimum railroad user fee of $500 ($250 for the fiscal year ending September 30, 1991). FRA believes a minimum user fee is appropriate because all of the railroads subject to this part are subject to the Safety Act, and, therefore, benefit from the existence of the program.

Section 245.301 outlines the procedures that will be employed by FRA in collecting the user fees. Each year FRA will provide each covered railroad with a Preliminary Assessment Notice and a Final Assessment Notice. The Preliminary Assessment Notice will be mailed to the subject railroad after March 1 of each year (June 15th for the fiscal year ending September 30, 1991) and will contain FRA's estimate of the total user fee to be collected from all the railroads, the assessment rate per train mile, the assessment rate per mile of road, the train miles and road miles for the subject railroad for the prior calendar year, and the user fee to be paid by the subject railroad. The Preliminary Assessment Notice is designed to provide the individual railroads with information that can be used in making necessary plans and budget adjustments. Following issuance of the Preliminary Assessment Notice, FRA will continue to refine its calculations. FRA will then mail to each covered railroad a Final Assessment Notice which will contain FRA's final determination of the relevant calculations and an indication of the user fee that is due from the railroad.

Section 245.303 indicates that each railroad subject to this part has an obligation to pay to FRA an annual railroad user fee. Payment will be due not later than September 15th of each year. FRA expects to receive prompt payment. In the event payment is not received in a timely manner, applicable interest charges, penalties, and administrative charges will be applied and actions designed to assure collection will be employed as necessary.

Regulatory Impact

E.O. 12291 and DOT Regulatory Policies and Procedures

These proposed regulations have been evaluated in accordance with existing regulatory policies and are considered to be non-major under Executive Order 12291. The proposed regulations are considered to be significant under section 5(a)(2)(f) of DOT's Regulatory Policies and Procedures ("the Procedures") (44 FR 11034; February 26, 1979) because they implement a substantial regulatory program or change in policy. In accordance with section 10(a) of the Procedures, FRA has determined that a draft Regulatory Analysis is not required because the proposed regulations do not meet any of the criteria mandating the preparation of such an analysis. As a result, in accordance with section 10(e), FRA has prepared a draft Regulatory Evaluation which includes a brief analysis of the economic consequences of the proposed regulation and an analysis of its anticipated benefits and impacts.

Regulatory Evaluation

Prepared in accordance with section 10(e) of the Department of Transportation's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

The imposition of the railroad user fee program was mandated by section 10501 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. No. 101–508, 104 Stat. 1388). The purpose of the regulation is to implement the authorizing legislation in an equitable manner and to assess the fees according to a formula that maintains a reasonable relationship to a combination of system miles and traffic volume.

The economic consequence of the regulation is to shift the cost of the Federal Railroad Administration's railroad safety program, which heretofore had been borne by the general public, to the railroad industry which directly benefits from uniform, nationwide safety standards. The cost to the rail industry in fiscal year 1991 will be $20 million and approximately $40 million each year in fiscal years 1992 through 1995. These costs represent about one-tenth of one percent of Class I railroad revenues, which were $28 billion in 1989. It is estimated that revenues for the entire rail industry in 1989 were $31.7 billion. In addition to the user fees, there will be a minor cost burden on the industry associated with necessary record keeping and the actual payment of the user fees. However, since the user fees are based on criteria that is well known and already reported to the FRA to a large extent for other purposes, any additional burden should be minimal.

The costs to the rail industry will directly offset the public funding through general revenues, which had previously supported the costs of the FRA safety program.

The costs on each individual railroad are proportional to its system size and volume of traffic. The largest railroad pays the greatest amount in user fees and the smaller railroads pay proportionally lesser amounts. For example, the Burlington Northern Railroad's fee would be about 0.0012 percent of their revenues and the Florida East Coast Railroad's fee would be about 0.0011 percent of their revenues.

The impact on consumers will be minimal. In theory, the railroads could pass along the user fees to its customers as increased rates as they could do with any increase in costs. However, since the fees are only 0.0012 percent of Class I revenues, the impact would be minimal even if the full costs were passed on. It is more likely that competitive factors will prevent the railroads from passing on the full cost of the fees. To the extent the fees may result in slightly higher freight charges, these charges represent a shift of the cost burden from the general public to those who use rail transportation and benefit by increased safety on the railroads. Since the regulations will apply only to the railroad industry, there will be no impact on state and local governments. The Agency requests comments on the impact of the rule on railroads, consumers, and State and local governments.

Since the railroad user fee program was statutorily mandated by Congress in the Reconciliation Act, FRA is of the opinion that Congress has determined

that the benefits exceed the costs by deciding to adopt the legislation. The statute specifically mandates that the user fees are to be assessed to railroads subject to the Federal Railroad Safety Act of 1970 and are to be collected in an amount sufficient to cover the costs incurred by FRA in administering the Safety Act (excluding certain training and research and development costs). As a result, FRA has little discretion in the regulatory process to make adjustments in the scope of the covered entities or in the amount of money to be collected. The use of assessment criteria that are for the most part based on data kept by the railroads and submitted for other reporting requirements (most notably 49 CFR parts 225 and 233) will minimize the additional costs associated with the administrative costs of implementing the user fee program.

Regulatory Flexibility Act

FRA certifies that this proposal will not have a significant economic impact on a substantial number of small entities. The proposed rule will apply only to railroads, and accordingly will have no direct impact on small units of government, businesses and other organizations. Although a substantial number of small railroads would be subject to these regulations, if adopted, FRA is of the opinion that the economic impact of the proposed rule should not be significant.

FRA specifically requests comment on the impact of this rule on small entities.

The regulations proposed herein would not have substantial effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

Paperwork Reduction Act

The proposed rule contains information collection requirements. FRA will submit these information collection requirements to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). FRA has endeavored to keep the burden associated with this proposal as simple and minimal as possible. The proposed sections that contain information collection requirements and the estimated time to fulfill each requirement are as follows:

Proposed section	Brief description	Estimated average time
245.101	Annual report of railroads subject to user fees.	1 to 8 hours depending on size of railroad.
245.101	Revised annual report.	45 minutes.
245.103	Recordkeeping.....	5 minutes.

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. FRA solicits comments on the accuracy of the estimates, the practical utility of the information, and alternative methods that might be less burdensome to obtain this information. Persons desiring to comment on this topic should submit their views in writing to Gloria D. Swanson, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590; and to Desk Officer, Regulatory Policy Branch (OMB No. 2130-New), Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., Washington, DC 20530. Copies of any comments should also be submitted to the docket of this rulemaking at the address provided above.

Environmental Impact

FRA has evaluated these proposed regulations in accordance with its procedures for ensuring full consideration of the environmental impacts of FRA actions as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, executive orders, and DOT Order 5610.1c. These proposed regulations meet the criteria that establish this as a non-major action for environmental purposes.

List of Subjects in 49 CFR Part 245

Railroad user fee, Reporting and recordkeeping requirements.

Request for Public Comment

FRA proposes to add a new part 245 to title 49, Code of Federal Regulations, as set forth below. FRA solicits comments on all aspects of the proposed rule and the analysis advanced in the explanation of the proposed rule, whether through written submissions or participation at the public hearing, or both. FRA may make changes in the final rule based on comments received in response to this notice.

In consideration of the foregoing, chapter II, subtitle B, of title 49, Code of Federal Regulations is amended as follows:

1. A new part 245 is added to read as follows:

PART 245—RAILROAD USER FEES

Subpart A—General

Subpart B—Reporting and Recordkeeping

Subpart C—User Fee Calculation

Subpart D—Collection Procedures and Duty to Pay

Authority: 45 U.S.C. 431, 437, 438, 446 as amended; Pub. L. 101–508, 104 Stat. 1388; and 49 CFR 1.49(m)

Subpart A—General

§ 245.1 Purpose and scope.

(a) The purpose of this part is to implement section 216 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 446) (the "Safety Act") (as added by section 10501 of the Omnibus Budget Reconciliation Act of 1990, Public Law No. 101–508, 104 Stat. 1388–399) which requires the Secretary of Transportation to establish a schedule of fees to be assessed equitably to railroads to cover the costs incurred by the Federal Railroad Administration ("FRA") in administering the Safety Act (not including activities described in section 202(a)(2) thereof).

(b) Beginning in the fiscal year ending September 30, 1991, each railroad subject to this part shall pay an annual user fee to the FRA to be calculated by the FRA in accordance with § 245.101. The provisions of this part shall expire on September 30, 1995, as provided for in section 216(f) of the Safety Act.

§ 245.3 Application.

This part applies to all railroads except those railroads whose entire operations are confined within an industrial installation.

§ 245.5 Definitions.

As used in this part—

(a) *FRA* means the Federal Railroad Administration.

(b) *Main Track* means a track, other than an auxiliary track, extending through yards or between stations, upon which trains are operated by timetable or train order or both, or the use of which is governed by a signal system.

(c) *Miles of road operated* means the length in miles of the single or first main track, measured by the distance

between terminals or stations, or both. Miles of road operated does not include industrial and yard tracks, sidings, and all other tracks not regularly used by road trains operated in such specific service, and lines operated under a trackage rights agreement.

(d) *Passenger service* means both intercity rail passenger service and commuter rail passenger service.

(e) *Railroad* means all forms of non-highway ground transportation that run on rails or electro-magnetic guideways, including (1) commuter or other short-haul rail passenger service in a metropolitan or suburban area, as well as any commuter rail service which was operated by the Consolidated Rail Corporation as of January 1, 1979, and (2) high speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads. Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

(f) *Safety Act* means the Federal Railroad Safety Act of 1970 (45 U.S.C. 421 *et seq.*)

(g) *Trackage rights agreement* means an agreement through which a railroad obtains access and provides service over tracks owned by another railroad where the owning railroad retains the responsibility for operating and maintaining the tracks.

(h) *Train* means a unit of equipment, or a combination of units of equipment (including light locomotives) in condition for movement over tracks by self-contained motor equipment.

(i) *Train mile* means the movement of a freight or passenger train a distance of one mile measured by the distance between terminals and/or stations.

§ 245.7 Penalties.

Any person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $250 and not more than $10,000 per violation. Civil penalties may be assessed against individuals only for willful violations. Each day a violation continues shall constitute a separate offense. A person may also be subject to the criminal penalties provided for in 45 U.S.C. 438(e) for knowingly and willfully falsifying records or reports required by this part.

Subpart B—Reporting and Recordkeeping

§ 245.101 Reporting requirements.

(a) Each railroad subject to this part shall submit to FRA, not later than March 1 of each year (June 15 for the fiscal year ending September 30, 1991), a report identifying the railroad's total train miles for the prior calendar year and the total miles of road owned, leased, or controlled (but not including trackage rights) by the railroad as of December 31 of the previous calendar year. This report shall be made on FRA Form 6180.89—Annual Report of Railroads subject to User Fees. The report must include an explanation for an entry of zero for either train miles or miles of road. Each railroad must also identify all subsidiary railroads and provide a breakdown of train miles and miles of road for each subsidiary. Finally, each railroad must enter its corporate billing address for the user fees, and the name, title, telephone number, date, and a notarized signature of the person submitting the form to FRA.

(b) FRA anticipates mailing blank copies of FRA Form 6180.89—Annual Report of Railroads Subject to User Fees to each railroad of record during the month of January (the month of May for the fiscal year ending September 30, 1991) for the railroad's use in preparing the report. This action by FRA is for the convenience of the railroads only and in no way affects the obligation of railroads subject to this Part to obtain and submit FRA Form 6180.89 to FRA in a timely fashion in the event a blank form is not received from FRA. Blank copies of FRA Form 6180.89 may be obtained from the Office of Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590.

(c) Train miles shall be calculated by the railroad in accordance with the following considerations:

(1) Each railroad subject to this part is to report the train miles for the freight and passenger service it operates without regard to track or facility ownership.

(2) Freight train miles to be reported shall include miles run between terminals or stations, or both, to transport revenue and company freight, miles run by trains consisting of empty freight cars or without cars, locomotive train miles run, motor train miles run, and yard-switching miles run.

(3) Passenger train miles to be reported shall include miles run between terminals or stations, or both, to transport passengers, baggage, mail, express, or any combination of these, and miles run by trains consisting of deadhead passenger equipment.

(d) Miles of road shall be calculated by the railroad in accordance with the following considerations:

(1) Miles of road to be reported shall include all track owned, operated, or controlled by the railroad but shall not include track used under trackage rights agreements. Miles of road consisting of leased track is to be reported by the lessee railroad.

(2) Miles of road to be reported shall not include industrial and yard tracks, sidings, and other tracks not regularly used by road trains operated in such specific service.

(e) In computing both train miles and miles of road, fractions representing less than one-half mile shall be disregarded and other fractions considered as one mile.

(f) Each railroad subject to this part has a continuing obligation to assure that the information provided to FRA on Form 6180.89 is accurate. Should a railroad learn at a later date that the information provided was not correct, it shall submit a revised Form 6180.89 along with a detailed letter explaining the discrepancy.

(g) The information collection and reporting requirements contained in this part have been referred to the Office of Management and Budget for approval in accordance with the provision of the Paperwork Reduction Act of 1980.

§ 245.103 Recordkeeping.

Each railroad subject to this part is responsible for maintaining adeaquate records supporting its calculation of the railroad's total train miles for the prior calendar year and the total miles of road owned, leased, or controlled (but not including trackage rights) by the railroad as of December 31 of the previous calendar year. Such records shall be sufficient to enable the FRA to verify the information provided by the railroad on FRA Form 6180.89—Annual Report of Railroads Subject to User Fees. Such records shall also be available for inspection and copying by the Administrator or the Administrator's designee during normal business hours.

§ 245.105 Retention of Records.

Each railroad subject to this part shall retain records required by section 245.103 for at least three years after the end of the calendar year to which they relate.

Subpart C—User Fee Calculation

§ 245.201 User fee calculation.

(a) The fee to be paid by each railroad shall be determined as follows:

(1) After March 1 of each year (June 15th for the fiscal year ending September 30, 1991), FRA will tabulate the total train miles and total miles of road for railroads subject to this part for the preceding calendar year. FRA's calculations will be based on the information supplied by covered railroads under section 245.101 hereof, and other reports and submissions which railroads are required to make to FRA under applicable regulations. At the same time, FRA will calculate the total cost of administering the Safety Act for the current fiscal year (other than activities described in section 202(a)(2) thereof) which will represent the total amount of user fees to be collected.

(2) On the basis of its tabulations of total train miles, total miles of road, and the total cost of administering the Safety Act, FRA will calculate a railroad user fee rate per train mile and a railroad user fee rate per mile of road. These rates will be calculated as follows:

(i) The assessment rate per train mile will be calculated by multiplying the total amount to be collected by 0.5 and then dividing this amount (i.e., fifty percent of the total amount to be collected) by the total number of train miles reported to the FRA for the prior calendar year. The result will be the railroad user fee rate per train mile for that year.

(ii) The assessment rate per mile of road will be calculated by multiplying the total amount to be collected by 0.5 and then dividing this amount (i.e., fifty percent of the total amount to be collected) by the total miles of road reported to the FRA for the prior calendar year. The result will be the railroad user fee rate per mile of road for that year.

(b) FRA will publish a summary of its calculations in the **Federal Register.**

(c) The user fee to be paid by each covered railroad is based on the greater of $500.00 ($250.00 for the fiscal year ending September 30, 1991) or a two-part formula involving the sum of

(1) The railroad's train miles times the rate per train mile and

(2) The railroad's miles of road times the rate per mile of road.

The formula is as follows: (train miles × rate per train mile)+(miles of road × rate per mile of road)=User Fee Due.

Subpart D—Collection Procedures and Duty to Pay

§ 245.301 Collection procedures.

(a) After March 1 of each year (June 15th for the fiscal year ending September 30, 1991), FRA will provide to each covered railroad a notice (the "Preliminary Assessment Notice") containing FRA's preliminary estimates of the total user fee to be collected, the assessment rate per train mile, the assessment rate per mile of road, the train miles and road miles for the railroad for the prior calendar year, and the user fee to be paid by the railroad. The Preliminary Assessment Notice is designed to be purely informational and will enable covered railroads to make necessary plans and budget adjustments in preparation of receipt of the final notice and user fee assessment.

(b) FRA will refine its calculations as necessary and each year will provide to each covered railroad a notice (the "Final Assessment Notice") containing FRA's final calculations of the total user fee to be collected, the assessment rate per train mile, the assessment rate per mile of road, the train miles and road miles for the railroad for the prior calendar year, the user fee to be paid by the railroad, and a payment voucher. FRA will mail the Final Assessment Notice sufficiently in advance of the end of the fiscal year in order to allow all collections to be completed prior to the end of the fiscal year. For the fiscal year ending September 30, 1991, the Final Assessment Notice will be provided on or about August 15, 1991.

§ 245.303 Duty to pay.

(a) Beginning in the fiscal year ending September 30, 1991, each railroad subject to this part shall pay an annual railroad user fee to the FRA. Payment in full must be received by FRA no later than September 15th of each year. Each railroad shall pay by certified check or money order payable to the Federal Railroad Administration. The payment will be identified as the railroad's user fee by marking it with the railroad's User Fee Account Number as assigned by FRA and by returning the payment voucher form received with the Final Assessment Notice. Payment shall be sent to the address stated in the assessment notice.

(b) Payments not received by the due date will be subject to allowable interest charges, penalties, and administrative charges (31 U.S.C. 3717). Follow-up demands for payment and other actions intended to assure timely collection, including referral to local collection agencies or court action, will be conducted in accordance with Federal Claims Collection Standards (4 CFR chapter II) and Departmental procedures.

Issued in Washington, DC, on May 1, 1991.

Gilbert E. Carmichael,

Federal Railroad Administrator.

[FR Doc. 91–10704 Filed 5–6–91; 8:45 am]

BILLING CODE 4910–06–M

Federal Register

Tuesday
May 7, 1991

Part V

Department of Education

Grants and Cooperative Agreements; Availability, etc.: Research in Education of Individuals With Disabilities Program; Notices

DEPARTMENT OF EDUCATION

Research in Education of Individuals With Disabilities Program

AGENCY: Department of Education.

ACTION: Notice of final priorities for fiscal year 1991.

SUMMARY: The Secretary announces final funding priorities for fiscal year 1991 for the Research in Education of Individuals with Disabilities Program. This program is administered by the Office of Special Education Programs. The Secretary announces these priorities to ensure effective use of program funds and to direct funds to areas of identified need during fiscal year 1991.

EFFECTIVE DATES: These priorities take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these priorities call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Linda Glidewell, Division of Innovation and Development, Office of Special Education Programs, Department of Education, 400 Maryland Avenue SW. (Switzer Building, room 3095—M/S 2313–2640), Washington, DC 20202. Telephone (202) 732–1099. (TDD (202) 732–6153.)

SUPPLEMENTARY INFORMATION: The Research in Education of Individuals with Disabilities Program, authorized by part E of the Individuals with Disabilities Education Act (20 U.S.C. 1441–1443), provides support to advance and improve the knowledge base and improve the practice of professionals, parents, and others providing early intervention, special education, and related services, including professionals in regular education environments, to provide children with disabilities effective instruction and enable them to successfully learn; and research and related purposes, surveys or demonstrations relating to physical education or recreation, including therapeutic recreation, for infants, toddlers, children, and youth with disabilities.

Anaylsis of Comments and Changes

In response to the Secretary's invitation to comment in the Notice of Proposed Priorities, published on September 25, 1990 (55 FR 39244), twelve comments were received. An analysis of the comments and of the changes in the proposed priorities follows.

General

Comment: One commenter recommended that the title of the program be changed to "Research in Education of Children with Disabilities" to be consistent with the change to "children with disabilities."

Discussion: The Education of the Handicapped Act Amendments of 1990 (Pub. L. 101–476) retitled the Act to read "Individuals with Disabilities Education Act" (IDEA), and retitled the research program to read "Research in Education of Individuals with Disabilities Program."

Changes: The new titles for both the act and the program have been used throughout this document.

Comment: One commenter was concerned that the field-initiated research competition was not included in this list of priorities.

Discussion: Both the field-initiated and the student-initiated research projects priority areas are included in the program regulations. The regulations, and the priorities therein, were subject to public comment in their proposed form, and were announced as final on August 26, 1985. Because those two priorities are contained in the program regulations, they do not need to be republished annually in proposed form. For fiscal year 1991, both the field-initiated and the student-initiated research projects competitions were announced on August 1, 1990 at 55 FR 31340.

Changes: None.

Comment: One commenter stated that the topics of the proposed priorities, although important, did not address the breadth of issues (e.g., social integration, recreation, transition. etc.) that need scientific investigation at this time.

Discussion: The Secretary acknowledges that, in addition to the priorities announced here, there are numerous and equally important areas of inquiry deserving of attention. However, due to the limited amount of resources available for new projects in any given fiscal year it is necessary to target funds in a select number of areas. Applicants wishing to submit research proposals for projects that address different topic areas are encouraged to submit to either the field-initiated research projects competition, or the small grants program competition.

Changes: None.

Comment: One commenter recommended that the small grants program, and the initial career awards priorities should be institutionalized and offered every year.

Discussion: The Secretary agrees that both the small grants program and the initial career awards should be offered every year if sufficient funds are available. He is presently considering proposing the addition of the small grants program and the initial career awards to the list of priorities included in the program regulations.

Changes: None.

Small Grants Program (Priority 1)

Comment: One commenter urged the addition of a focus on racial/ethnic minority groups for the Small Grants Program. The commenter noted the increase in minority populations, differences in prevalence and manifestations of disabilities among children from minority groups, and the possibility that optimal practices might differ for children from different cultural backgrounds.

Discussion: The Secretary agrees that the issues and concerns facing children with disabilities from racial/ethnic minority groups are critical, and should be encouraged under this priority.

Changes: A sentence has been added to this priority encouraging studies that focus on infants, toddlers, children and youth with disabilities from racial/ethnic minority groups.

Comment: One commenter recommended that priorities 1 and 3 be expanded to specifically include studies concerning adopted and foster children experiencing problems in school.

Discussion: As written, priorities 1 and 3 do not preclude applications for studies concerning adopted and foster children with disabilities.

Changes: None

Initial Career Awards (Priority 2)

Comment: One commenter suggested that special consideration be given to candidates who are members of "federally-designated" minority groups since these groups are underrepresented among individuals who are engaged in research.

Discussion: The Secretary agrees that encouraging members of minority groups to apply for Initial Career Awards will benefit the field in a number of ways: By providing role models and mentors, by expanding research about minority populations in some cases, and ultimately by improving services to these populations.

Changes: A sentence has been added to the priority encouraging racial/ethnic minority group applicants to apply for these awards.

Improving Learning Through Home/School Collaboration (Priority 3)

Comment: On commenter raised the issue of the scope implied by this

priority. Specifically, the commenter questioned whether all disabilities where to be systematically included in the studies; and whether an applicant could address either performance assessment or homework.

*Discussion:*As written, the sample requirements in the priority detail that a contrast group of children without disabilities must be included. Consequently, this implies that the sample of children with disabilities should be participating in regular education academic classes with the contrast group children. The priority intended that the sample of children with disabilities be selected with specific attention given to demographic/cultural/socio-economic considerations thought to be related to performance assessment and homework. In addition, the broadest inclusion of children with differing disabilities that meet the above criteria must be included. Therefore, the Secretary agrees that the priority should be clarified regarding the composition of the sample required. The Secretary also believes the priority should address both performance assessment and homework. It is the opinion of the Secretary that these two topic areas are related. Homework is, in part, another mechanism by which teachers can assess a student's understanding and skills through performance. In addition, homework provides a tool for addressing many other learning objectives.

Changes: The language of the priority has been clarified regarding the composition of the sample required.

Comment: One commenter raised the issue of whether the priority is focused on home-school collaboration or instruction. The concern was that the potential broadening of the scope of the research would exceed projected resources and timeframe.

Discussion: The priority refers to the "hidden instruction" associated with assigned homework and school projects. This reference to instruction is not meant to broaden the focus beyond the instructional objectives underlying the assignment. Rather, parents may provide the collaborative instructional assistance needed to clarify assignments and support the students in their efforts to complete class requirements. However, for many students this additional "instructional" assistance is provided by siblings or friends. The Secretary believes that it is important to identify differences in access to differing levels and sources of out-of-school "instructional" assistance.

Changes: None.

Comment: One commenter raised the issue that the priority should distinguish the preferred methodology for addressing the research questions in light of project timeframe. Specifically, the clarification requested was whether the intent was for experimental or descriptive inquiry.

Discussion: Given the lack of current knowledge related to the psycho/social and academic impacts of increased performance assessment and homework practices, these studies are intended to be predominately descriptive, not experimental, studies.

Changes: The purpose section of the priority has been changed to clarify the methodological intent.

Comment: One commenter raised the issue of whether it is feasible to establish cause and effect relationships given project scope, resources and timeframe

Discussion: The Secretary believes that the studies should be designed to provide descriptive information about current practices and their relationship to student psycho-social and academic status, however a "pre-post" evaluation of the impact of educational reform was not intended.

Changes: The priority has been changed to clarify the intent for these projects to be descriptive studies. Further, the priority was clarified to eliminate any suggestion that a "pre-post" evaluation of the impact of educational reforms was intended.

Comment: One commenter requested that the priority be rewritten so that projects focusing on children below kindergarten age are not excluded.

Discussion: The Secretary agrees that home/school collaboration at the preschool level is important for establishing and supporting lifelong learning. The Department has supported projects that focused on this issue, and undoubtedly will do so again in the future. However, giving the limited resources at this time, it is not feasible to expand the scope of this priority.

Changes: None.

Improving the Retention of Special Education Teachers (Priority 4)

Comment: A number of commenters felt that the priority should also address the retention of teachers in rural areas.

Discussion: The Secretary recognizes that there are retention problems in areas other than urban sites. However, the Secretary believes that it is most important at this time to focus on projects in urban sites. However, the Department previously has funded a number of activities in rural sites, and will do so again in the future. The severity of the problem as well as the concentration of students in urban districts supports the urban focus of this priority at the present time.

Changes: None.

Comment: Several commenters suggested that the priority should also address recruitment of teachers since this is also a critical problem.

Discussion: The Secretary acknowledges that recruitment has been a problem. This is true, in part, because attrition of special education teachers is so acute. However, the Secretary believes that it is most important at this time to focus on problems of retention. Work related to recruitment issues will be given full consideration in future competitions.

Changes: None.

Comment: One commenter perceived that the proposed priority stressed traditional quantitative methods, and recommended adding qualitative methods.

Discussion: While the Secretary expected that quantitive measures will be used, it is also anticipated that qualitative techniques will be utilized. The Secretary believes the priority, as written, provides applicants with the flexibility to determine the appropriate methodologies.

Changes: None.

Comment: Two commenters indicated that five years of funding, rather than three years of funding should be considered so a longitudinal perspective could be obtained.

Discussion: The Secretary agrees that longitudinal issues are critical to research regarding teacher retention. However, time series issues can be examined in a cost effective manner either retrospectively or cross-sectionally since teachers with different years of service naturally exist in the districts.

Changes: None.

Comment: One commenter identified a need for the priority to require projects to define what makes a teacher qualified.

Discussion: While there could be merit in focusing a priority on that issue, the Secretary believes that it would be beyond the scope of this particular priority.

Changes: None.

Comment: One commenter recommended that the priority stress collaboration between the university and the school districts.

Discussion: The Secretary agrees that such collaboration would be very productive, and notes that as written the priority requires participation of multiple stakeholders including teacher educators and local school district staff.

Changes: None.

Comment: One commenter recommended either opening the competition to all issues of teacher retention or segmenting the competition further and funding a grant for each segment.

Discussion: Opening the competition to all issues related to retention would reduce the resources available to study any one issue, and it is possible that projects addressing urban issues might not be funded at all. The Secretary believes that it is most important at this time to focus on projects in urban sites.

Changes: None.

Comment: One commenter recommended adding the perceived degree of administrative support to the measurement section of the priority, because it appears to be highly related to job satisfaction and retention.

Discussion: The Secretary agrees that the perceived degree of administrative support is an important variable.

Changes: The perceived degree of administrative support has been added as a variable to the measurement section of the priority.

Comment: One Commenter indicated that the six month planning period was unnecessary.

Discussion: The experience of the Department suggests that complex projects involving large, administratively complex sites benefit from a planning phase. However, projects that do not require a planning phase will not be compelled to have one.

Changes: None.

Comment: One commenter asked if the strategic plans developed in the project were to be pilot-tested or implemented as a part of the project.

Discussion: The 3-year projects will not include an implementation period. During the final phase of the projects, the Department, in consultation with the staff of the projects, will discuss implications for pilot-testing and evaluating the plans.

Changes: None.

Comment: One commenter suggested considering applications that were designed to identify factors related to retention.

Discussion: This is an expected outcome of the priority and is addressed under the "Dissemination" section.

Changes: None.

Examining High School Curricula and the Demands on Personnel Educating Students With Disabilities (Priority 5)

Comment: One commenter proposed that this priority "develop high quality *training curricula* (underlining in original) for teachers, administrators, and support personnel." The commenter went on to propose that the "research should not only identify problems in providng better service, but also solutions to those problems."

Discussion: The Secretary agrees with the comment that the ultimate goal of examining high school curricula and the demands on personnel will be to develop a range of solutions to problems encountered in educating children with disabilities in high schools. This priority should lay the groundwork for development and intervention activities by providing a base of knowledge about current curricula and implications for teacher expertise. In the future, priorities that focus on development activities will be better informed about the nature of proposed interventions with the knowledge base that this priority will provide.

Changes: None.

Comments Relating to Both Priorities 4 and 5

Comment: Two commenters suggested alternative approaches to these priorities should be considered. One commenter specifically suggested that these priorities were too prescriptive, leaving "little room for attacking the research problems in unique ways, for approaching a problem in ways that build on previous work in either of these areas, for writing a creative proposal." However, another commenter noted the need for greater specificity in these two priorities, stating that "it would be most helpful if * * * the focus of the competition is clear and the relationship between these different components is addressed (how much weight should be placed on each component, how they should be integrated into the content, plan of operation and evaluation plan, how evaluators will consider them, etc.)."

Discussion: It is certainly not the intent of the Department to discourage creative approaches to research. The priorities were developed in a manner to encourage investigator initiated approaches to broadly stated study parameters. The study specifications included in the priority are meant to communicate the desired impact and expectations for the contribution of the projects to be funded to advancing professional practice and achieving better outcomes for children with disabilities. By stating the expectations and impact for these projects, the development of specific methodologies and approaches for these studies is left to the creativity of the applicant. However, the Secretary acknowledges that these two priorities could be clarified so that investigators know that they may submit proposals that add additional analysis or other variables to conceptual frameworks, sampling, measurement, or project design than those described in the priorities.

Changes: Language has been added to both priorities 4 and 5 to clarify that some of the activities listed under the various components are not all inclusive (e.g., conceptual frameworks, dissemination, measurement, or project analysis). Applicants are not necessarily limited to only the stated variables, but may add additional ones where appropriate.

Priorities

The Secretary establishes the following funding priorities for the Research in Education of Individuals with Disabilities Program, CFDA No. 84.023. In accordance with the Education Department General Administrative Regulations (EDGAR, 34 CFR 75.105(C)(3)), the Secretary will give an absolute preference under this program to applications that respond to the following priorities; that is, the Secretary will select for funding only those applications proposing projects that meet one of these priorities.

Priority 1: Small Grants Program CFDA 84.023A)

This priority provides support for a broad range of research and related projects that can be completed within a 12–18 month time period, and that are budgeted at $75,000 or less for the entire project period. The projects supported by this priority must focus on early intervention services for infants and toddlers and special education for children and youth with disabilities, consistent with the purpose of the program as stated in 34 CFR 324.1. The purpose of this priority is not to fund product development but, rather, to advance knowledge and practice. This priority is for pilot studies, projects that employ new methodologies, descriptive studies, advances in assessment, projects that synthesize state-of-the-art research and practice, projects for research dissemination and utilization, and projects that analyze extant data bases. Studies that use these approaches to address the needs of infants, toddlers, children and youth with disabilities from racial/ethnic minority groups are encouraged. Projects must demonstrate the potential contribution and benefits to be derived from the research or related activities.

Pilot studies are initial inquiries designed to develop and determine the feasibility of sampling, measurement, data collection or analysis procedures. These pilot studies must be conducted in a manner that actually results in initial

findings as well as provides evidence of feasibility of procedures.

Advances in assessment refer to studies designed to identify new constructs, improved scaling, new approaches, improved criteria for scoring, and improved methods of the administration of assessments.

Given the diversity of research and related activities that could be supported under this priority, projects must be rigorously designed. Projects that increase the access and use of a research knowledge base must demonstrate effective design principles for providing access, formatting information, and, providing knowledge support that utilizes a professional knowledge base for improving programs and practice. Evaluation activities must consider design effectiveness, implementation requirements, and advance understanding of administrative and teacher needs. A follow-up evaluation to their dissemination or utilization activity is required.

Project procedures, findings, and conclusions must be prepared in a manner that is informative for other interested researchers and that can be submitted to ERIC by the U.S. Department of Education. As appropriate, projects must include activities to prepare findings in formats useful for advancing professional practice or improving programs and services to infants, toddlers, children, and youth with disabilities and their families. Project findings must be disseminated to appropriate research institutes, clearinghouses, and technical assistance.

Priority 2: Initial Career Awards (CFDA 84.023N)

This priority supports awards to eligible applicants for the support of individuals who have completed a doctoral program and graduated no earlier than the 1986–87 academic year. Researchers who are members of racial/ethnic minority groups are encouraged to develop proposals for these grants. This priority supports projects to conduct research and related activities focusing on early intervention services for infants and toddlers, and special education for children and youth with disabilities consistent with the purpose of the program as stated in 34 CFR 324.1. This support is intended to allow individuals in the initial phases of their careers to initiate and develop promising lines of research that will improve early intervention services for infants and toddlers, and special education for children and youth with disabilities. A line of research refers to a programmatic strand of research emanating either from theory or a conceptual framework. The line of research must be evidenced by a series of related questions that establish parameters for designing future studies extending beyond the support of this award. However, the projects supported under this priority are not intended to comprise an entire line of inquiry. Rather, they are expected to initiate a new line or advance an existing one.

The project must demonstrate promise that the potential contribution and benefits of the line of inquiry will substantially improve early intervention services for infants and toddlers, and special education for children and youth with disabilities. The project must include sustained involvement with nationally recognized experts having substantive or methodological knowledge and techniques critical to the conduct of the proposed research. These experts do not have to be at the same institution or agency as the applicant. The nature of this interaction must be of sufficient frequency and duration for the researcher to develop the capacity to effectively pursue the research into mid-career activities. However, the experts' involvement must not usurp the project leadership role of the initial career researcher. An applicant may apply for up to three years of funding. At least 50 percent of the researcher's time must be devoted exclusively to the project.

Project procedures, findings, and conclusions must be prepared in a manner which is informative for other interested researchers, and which can be submitted to ERIC by the U.S. Department of Education. As appropriate, projects must include activities to prepare findings in formats useful for advancing professional practice or improving programs and services to infants, toddlers, children, and youth with disabilities and their families. Project findings must be disseminated to appropriate research institutes, clearinghouses, and technical assistance providers.

Priority 3: Improving Learning Through Home/School Collaboration (CFDA 84.023L)

The purpose of this priority is to support studies that focus on home and school collaboration related to children with disabilities psycho-social status (i.e. self-perception, mental health, motivation, social relationships, social perceptions) and learning. Project findings must provide guidance suitable for use by school administrators, teachers, and parents related to the considerations, and alternative approaches for grading performance, and assigning/assessing homework for children with disabilities. The topic focuses on two dimensions of educational reform that may differentially affect children with disabilities—homework and performance assessment.

Issue

Special education has a long history of recognizing the importance of the parent role and involvement in their child's development and learning. The school excellence and teacher effectiveness reforms have increasingly focused attention on the reality that schools alone can not provide the educational experiences, support, and motivation critical to student learning. Parents place value on learning and education and they provide recognition, motivation and support for their child's development. Parents set expectations for their child's engagement in school, level of effort, and performance.

The education summit involving our Nation's Governors and the President of the United States focused attention on the critical need for home and school collaboration. In contrast to other public trusts in government and professional services, education requires unique and complex partnerships. Community, business, family, and school must collaborate to create attitudes, resources, and opportunities that develop and achieve educational excellance for all children. Parents are the earliest, and can be the most consistent, and proximal influence in establishing and supporting lifelong learning.

Learning does not begin when children enter school and stop when children exit our formal education system. Nevertheless, schools provide the predominant setting for formal learning and thus, significantly affect children's disposition towards learning, their motivation, achievement, and success. The importance of parental influence on the psychosocial development of children and their motivation towards school and learning has been an underlying premise of educators. Schools have increasingly relied on parents to assist in improving school attendance, student discipline, and student performance.

An essential component of the educational reform movement is the focus on increased performance expectations and accountability. These initiatives have emphasized greater accountability related grades, report cards, and performance assessment of students and teachers. In addition, excellence initiatives have often been

accompanied by changes in the amount and nature of homework assignments. Each of these educational actions represent a potentially significant event affecting the nature and climate of the learning environment at home and in school.

Little is known as to how these reforms affect children with disabilities, their families, and the home/school learning climate. It is not known whether performance assessment has resulted in teachers providing students increased successful learning experiences, teaching to the test, or greater negative feedback to the student. Further, it is unknown whether increased performance assessment has resulted in more frequent and focused home/school communication and cooperation or parent anxiety, frustration, and tensions with either their child or teachers. The relationship of that assessment to course grades and failure is unknown. Similarly, little is known about the impact of increased and sometimes graded homework and school projects. Have these reforms provided increased time for practice, and expanded opportunities for applications of learning? Have these reforms resulted in a strategy for increasing the amount and rate of subject matter covered in class by relying on the home for guided and self-directed practice? Has the increased reliance on homework created a bridge between home and school or resulted in increased parent/child friction and need for tutorial services? Finally, the impact of these educational reform initiatives on special education teachers assigned to resource or self-contained classrooms, and their instruction and assignment practices is unknown.

Purpose

The purpose of this priority is to support studies that focus on home and school collaboration related to psycho-social and learning status of children with disabilities; and to develop guidance suitable for use by school administrators, teachers, and parents related to the considerations, and alternatives approaches for grading and homework for children with disabilities. The topic focuses on two dimensions of educational reform that may differentially affect children with disabilities—homework and student performance assessment (e.g., standardized tests, competency tests, quizzes, take-home tests, etc.). Studies must consider current policy and practices related to grading student assignments, performance assessments, report cards, and their relationship to home and school collaboration. In addition, studies supported by this priority must consider practices related to assigning homework, its completion, and feedback about homework. Projects funded by this priority must describe the extent to which current practices related to performance assessment and homework affect home-school and student interactions. In addition, projects must identify unintended side effects of these practices for children with disabilities and their families. In particular, these projects must determine whether these elements of educational reform place greater demands on home and the school relationship and whether schools have devised additional or different methods of home and school collaboration to meet these demands. These projects must develop guidance suitable for use by school administrators, teachers, and parents related to the considerations, and alternative approaches for grading and homework for children with disabilities.

Activities

Sampling: Each project must include school age children experiencing disabling conditions (i.e. cognitive, sensory, physical and emotional). Projects must include a representative sample of children without disabilities for contrast purposes. These samples must be children participating in regular education academic course work (including differing levels of special education services). Projects must select children, families, and schools in a manner reflecting consideration of: Disability; age level and type of school; parent education; family income; ethnic, cultural, and linguistic differences; and geography. School building and teacher participation must be obtained, as well as parent and student consent to participate.

Measurement: Projects must select or develop measurement approaches and instrumentation to describe the premises, context, understanding, meaning, emotions, and interactions among schools, parents, and children with disabilities related to homework and performance assessment. Measurement of homework, school and teacher assigned projects must include, but not be limited by, dimensions such as: Purpose of assignment; nature and extent of formative feedback to be provided by teachers and parents; peer assistance or collaboration; and teacher, parent, and student emotional response to, and understanding of, assignment and product expectation.

Measurement of performance assessment related to grading assignments, class tests, report card grading, and achievement tests (e.g., standardized, curriculum based, or competency) must, at a minimum, consider such dimensions as: purpose; scale meaning; expectations of student, parent, and teacher for assessment of performance levels; student time and reactions to studying for tests; family tensions and involvement in preparations for the tests; and premises, understanding, and meaning attributed to grading policy and practices by teachers, parents, and students.

Measurement approaches and instrumentation must be piloted for content, understanding, and administrative feasibility with teachers, parents, and children with disabilities. In addition, each respondent group should be interviewed to determine if there was information that should be collected that is not in the pilot instrument.

Project Design: The projects must include ongoing input from teachers, parents and, where appropriate, children with disabilities. Their input must be sought in relationship to project's conceptual framework, hypotheses, variable, and instrument selection or development. Further, this participation must be evidenced in their involvement in interpreting results. Projects must consider the "hidden instruction" provided by peers and family outside of school. Hidden instruction refers to the nature and sources of "instructional" assistance children receive in clarifying assignments and obtaining support for their completion. These projects must identify critical features for achieving effective home/school collaboration in order to fulfill these expectations. Projects supported under this priority must develop the knowledge necessary, as well as the issues to be addressed, if homework assignments and performance assessment are to be positive contributors to students with disabilities' learning.

Collaboration: Projects supported under this priority must collaborate with one another in order to achieve a cumulative advancement in knowledge and practice potentially greater than that achieved by any single project. Projects must collaborate to determine a common core of descriptive marker variables (e.g. grade level, age). In addition, the feasibility of determining a common core of constructs and instrumentation must be explored. The intention of this collaboration is not to compare or aggregate data across projects. The purpose of this collaboration is to strengthen the confidence in the strength and

generalizability of hypothesized relationships where possible; establish robustness of relationships; identify critical features for achieving effective home/school collaboration related to homework and performance assessment; and determine critical policy and practice issues requiring attention.

Before the end of the project, the Department will determine whether or not to fund an optional six-month period. The purpose of the optional period would be to permit project personnel supported under this competition to collaboratively document their findings, and the implications those findings have for advancing knowledge and improving practice and programs. This period will also be used to disseminate findings through methods that capitalize on the existence of professional, advocacy and parent networks and communication systems for the exchange of project information. As appropriate, this period could be used to modify findings based on input and feedback from researchers and representatives of target audiences.

Dissemination: Project procedures, findings, and conclusions must be prepared in a manner that is informative for other interested researchers, and that can be submitted to ERIC by the U.S. Department of Education. Projects must also prepare findings in a manner useful to school administrators, teachers and parents, and if appropriate, students, related to improving current policies and practices associated with homework and performance assessment. Project findings must be disseminated to appropriate research institutes, clearinghouses, and technical assistance providers.

Priority 4: Improving the Retention of Special Education Teachers (CFDA 84.023Q)

The purpose of this priority is to describe and understand the broad range of forces, including factors related to personnel preparation, that are contributing to the attrition rate of special education teachers in urban schools, and to develop a strategic action plan for implementation by participating urban schools.

Issue

The need for qualified special education personnel is significant and continues to increase. Critical special education teacher shortages are exacerbated by high rates of teacher attrition which are reported to be as great as 30 percent in some areas. Simultaneously, enrollments in personnel preparation programs are declining and the number of graduates from these programs has declined by 35 percent over the past decade. The decline in recruitment, growth in reported personnel shortages, projections for teacher retirements, expansion of services, and increases in numbers of children requiring special education make retention of the current work force critical. Retention problems are most acute in major urban areas where special education teacher shortages are considered to be the most severe.

Although these shortages signal an impending crisis in the provision of educational services to children with disabilities, they underrepresent the true magnitude of the problem. A host of State certification and waiver policies reduce the apparent special education teacher shortage by allowing personnel with various types of emergency or restricted certification to fill special education positions. By definition these personnel are not fully qualified special educators as they do not meet State standards for teaching in special education. The extent of those certification practices is not currently known, but it is estimated to be as high as 30 percent.

Concerns about both the quality and the diminishing supply of special education teachers have led to the rapid development of alternative programs for preparing special education teachers. Unlike emergency certification policies, these alternative programs involve sequences of professional preparation training experiences designed to prepare highly qualified personnel to meet State certification requirements. Program designs reflect different notions of what characterizes highly qualified instructional personnel and vary greatly in terms of the nature and amount of academic and fieldwork experiences required. The range of programs includes those that limit professional studies and stress the essential content knowledge to be derived from academic majors as well as programs that include traditional professional studies content and standards but employ alternative designs or target candidates who differ from those who have traditionally entered the field.

These programs provide broad parameters for characterizing different training/certification patterns or entry paths through which personnel first enter employment as special education teachers in urban schools. These paths include, but are not limited to: (1) Traditional preservice education leading to standard State certification, (2) emergency certification or waivers for individuals who have not completed and may have little exposure to a structured preparation program, (3) alternatively designed preparation programs stressing traditional content and standards, and (4) alternative certification based on standards that deviate from traditional State and professional standards and limit professional studies. The stratification of specific entry paths is further complicated by variations in States policies regarding prerequisite preparation and experience in general education teaching or in specific categorical areas of special education.

Increasing numbers of personnel are entering special education teaching through alternative paths. Urban IHEs with teacher preparation programs indicate that enrollments in traditional preservice special education teacher training programs is plummeting while enrollments of special education teachers holding limited or emergency certification is escalating. Depending upon the nature of State requirements, an undetermined number of personnel may continue to renew emergency certification or earn permanent certification, while never participating in a preparation program with a prescribed curriculum sequence, and possibly never participating in a supervised practicum with a master teacher and faculty supervisor. An implicit assumption underlying personnel preparation programs is that the nature and extent of special education teacher preparation interacts with the other factors that influence teaching effectiveness and teacher retention. Yet the relationship of teacher preparation, teaching effectiveness, and teacher retention has not been determined.

Issues of recruitment and information about supply and demand have been receiving increased attention, but little attention has been focused on the quality of the supply of special education teachers or on reasons for special education teacher attrition. We do not know whether we are losing qualified personnel who meet State certification standards, or unqualified instructional personnel. We do not know the differential rates of attrition associated with such factors as work conditions, nature of undergraduate and preservice teacher education, teaching assignment, case load or class size, and geographic location. While anecdotal and single case studies provide insights into issues related to burnout, second careers, and changing assignments to general education, inadequate information exists for designing efforts to reverse the trend.

Purpose

The purpose of this priority is to describe and understand the broad range of forces, including factors related to personnel preparation, that are contributing to the attrition rate of special education teachers in urban schools, and to develop a strategic action plan for implementation by the participating urban schools. Under this priority ubran schools are defined as any local political jurisdiction (city) with a population of 300,000 or more people and a school enrollment of 25,000 or more. A major intent of this priority is to identify from the perspective of special education teachers the reasons for their decisions to continue or terminate their careers as teachers of children with disabilities. The projects to be supported must be designed to secure information representative of teachers sampled in a specified urban area or areas and consider, but not be limited to, variables such as: School demographics, types of credentials, nature and extent of preservice and inservice preparation, type of teaching assignment. These studies must focus on who is leaving and why they are leaving as well as who is remaining and why they are remaining in the special education teaching force in urban schools.

Activities

Conceptual Framework: The projects must articulate a conceptual framework for describing and understanding the complex of variables that are associated with teacher retention in urban areas. This conceptual framework must be developed utilizing, where appropriate, the empirical knowledge base relevant to this priority. The framework must be sufficient to encompass the many constructs and variables that help to describe and may influence teacher retention and attrition including, but not necessarily limited to, demographic, organizational, and professional and personal characteristics. Hypotheses as to the reasons for teacher retention, as well as attrition, must be derived from this conceptual framework. Further, the identification and definition of salient marker variables and descriptions of their relationships to other variables must also be derived consistent with this conceptual framework. The conceptual framework must be continually reviewed and refined, if necessary, as other activities are implemented and completed, and various stakeholders have the opportunity to review and respond to the results. Variable selection for the projects must be consistent with this conceptual framework.

Sampling: Projects must sample teachers on the basis of the number of years of experience and certification/training path. The projects must develop a scheme for classifying the various routes that teachers use for training and certification that must then be used as a stratifying variable in the sample selection. The projects must ensure that the sample includes personnel who teach students with the full range of disabilities and levels of severity. Sample selection must consider ethnic and cultural issues. The projects must obtain agreement to participate from the teachers selected. Sample size must be sufficient to yield adequate levels of precision for each of the alternative entry paths representative of the range of preparation and certification patterns that characterize the existing special education teaching force in urban schools.

Measurement: The projects must develop a practical method of measuring teacher retention and attrition. Measurement must consider, but not necessarily be limited to, teachers' demographic characteristics, professional expectations, salary and other incentives received, and training thought to be significant in teacher retention. Measures of working conditions must also be developed that include, but are not necessarily limited to, the nature of assignment, class size, decision making opportunities, planning time, the perceived degree of administrative support, and other important variables. All measurement techniques and instruments must be piloted before their full scale use.

Project Design: The projects must include ongoing input from teachers (including those who are currently practicing as well as those who have left teaching), school administrators, and faculty from IHEs. Their input must be sought in relationship to the conceptual framework, hypotheses, and variable and instrument selection of development. Furthermore, this participation must be evidenced in their involvement in reviewing project findings and interpretations. It is anticipated, that during the first six months projects will finalize the conceptual framework, project design, instrumentation, and sampling plan. During the first six months of this award, projects must be prepared to finalize the sample, obtain teacher consent for participation, and begin data collection. In September of 1992 and 1993, projects must determine teacher attrition over the preceding year.

Strategic Planning: Each project supported under this priority must develop a strategic action plan, based on the project findings and their interpretations, for implementation by the participating urban schools and other stakeholders (e.g., interested parties) to support and retain qualified special education teachers. This activity must provide examples of principles and designs for implementing teacher retention initatives. Projects must involve the multiple stakeholders concerned with this issue in a strategic planning process. Projects must involve the multiple stakeholders concerned with this issue in a strategic planning process. Projects must be characterized by the participation of district administrators and teacher educators as well as representatives of State educational agencies, and the collective bargaining unit. That involvement must provide for minority participation and address multicultural issues related to teacher preparation and retention.

Collaboration: Projects supported under this priority must collaborate with one another in order to achieve a cumulative advancement in knowledge and practice potentially greater than possible for any single project. Projects must jointly determine at the beginning a common core of marker variables and explore the feasibility of determining a common core of constructs and instrumentation. The intention of this collaboration is not to compare or aggregate data across projects. The purpose of this collaboration is to, where possible, substantiate hypothesized relationships; establish robustness of relationships; identify critical features for improving teacher retention; and determine critical policy and practice issues requiring address.

Before the end of the project, the Department will determine whether or not to fund an additional six-month period. The purpose of the additional period would be to permit project personnel supported under this competition to collaboratively document their findings, and the implications those findings have for advancing knowledge and improving practice and programs.

Dissemination: Projects must prepare findings in a manner useful to school administrators, teachers, teacher educators, and State and Federal administrators and policymakers. Projects must consider the National Clearinghouse on Careers and Employment in Special Education, professional, advocacy and parent networks and communication systems for the exchange of project information. The projects must produce and disseminate materials addressing, but

not necessarily limited to, the following areas:

1. Initial data collection and analyses; describe the demographics of the current special education teacher workforce; analyze the various entry patterns, or paths, by which personnel become employed as special education teachers in the urban schools; and analyze retention attrition rates according to the reason for staying and leaving.

2. Analyze and describe the relationship of special education teacher retention and attrition, and alternative entry paths, demographic variables, and organizational variables.

3. A strategic and operational plan detailing the goals, objectives, opportunities and actions that the school district and other stakeholders will design and implement to support and retain special education teachers.

4. Describe the relationship of alternative entry paths to special education teachers' retention and career advancement.

5. For each of the designated alternative entry paths described the types of support and opportunities needed for teachers to (a) obtain satisfactory performance evaluations, and (b) earn appropriate State certification as a special education teacher.

Phasing

Year 1: The first six months of the project will focus on developing and piloting project methodology and measurement, and developing cooperation among projects. It is expected that key personnel from the successful projects will meet twice at a central location during the first year to facilitate these cooperative efforts. Projects must schedule activities to permit productive use of the information generated and exchanged at these meetings. Initial study of the teacher workforce will occur in the second half of the first year.

Years 2–3: The primary activities during this period will be further study of the teacher workforce, analysis, and completion of project findings for dissemination. Strategic planning activities are expected during year 3.

Priority 5: Examining High School Curricula and the Demands on Personnel Educating Students With Disabilities (CFDA 84.023U)

The purpose of projects supported under this priority is to study the curricula provided in high schools for students with disabilities as a foundation upon which to consider needed school, and teacher education reforms

Issue

The restructuring of American high schools occurring as a result of educational reform initiatives continues to be premised on a basic concept of faculty subject matter specializations (i.e., English, mathematics, science). While curricular reform, teacher standards, and course requirements have received significant attention they have all been designed consistent with the concept of faculty specializations. This is evidenced in the departmental and program organizational structures of high schools.

Reform initiatives for addressing the diversity of ability, skills, interests, linguistic, and cultural differences of a student body are generally occurring independent of subject matter considerations. While curricula and teacher reforms have focused on content and teacher preparation they have not examined the implications for aligning specialized programs or services (e.g., vocational education, special education) with subject matter requirements.

Restructuring of the American high school consistent with encouraging school based management practices must address the needs of children with disabilities. Curricula, teacher reforms, accountability, and school restructuring initiatives must be designed to effectively provide an appropriate education for all children with disabilities. Achieving this objective is a complex, multi-dimensional challenge. The magnitude and depth of educational reform requires sustained and planned initiatives.

A starting point for designing and developing needed improvements or changes requires a representative mapping of the range of current curricula practices. While a wide array of snapshots have provided a collage depicting course offerings, student access and participation, graduation requirements, and outcomes, insufficient detail exists to substantiate or provide direction for reforms. In determining the need for reforms and designing improvement and change in secondary education for students with disabilities it is essential to examine the nature of student and program outcomes related to subject matter (e.g., history, science, math), instructional (e.g., bilingual, remedial) and program (e.g., vocational, special education) specializations.

Purpose

The purpose of projects supported under this priority is to map the curricula provided in secondary high schools for students with disabilities as a foundation upon which to consider needed school and teacher education reforms. Curriculum outcomes are considered the primary building blocks for designing appropriate educational programs for children with disabilities. The mapping of curricula in relationship to desired student and program outcomes will provide direction for developing programs that effectively integrate the expertise of regular, vocational, and special education personnel. In addition, curricula descriptions and analysis of their requirements for teacher expertise provide a useful template for State agency review of certification requirements for secondary credentials and for institutions of higher education in designing personnel preparation programs.

Projects supported under this priority may focus the study of educational programs on any meaningful classification of student or program characteristics. Those classifications might consider the students' disability, severity of disability, student or program outcomes, intensity of services required, or program type (e.g., college preparation, vocational). The projects must be directed toward improving the effectiveness of high school programs and curricula by achieving better outcomes for students with disabilities. The projects must examine educational programs, curricula and desired outcomes, and determine the requirements and demands they place on special education personnel expertise.

Activities

Conceptual Framework and Approach. Projects supported under this priority must develop and refine a conceptual framework and approach that will focus and provide direction for the required analytic and other activities. The conceptualization must consider the multiple dimensions used in constructing secondary curricula, as well as those used by personnel preparation program accreditation and teacher credentialling bodies. The conceptual framework must be developed with input from administrators, regular, vocational, special education, and related service personnel, and other relevant parties.

Sampling. The unit of analysis to be studied is the educational programs of students with disabilities enrolled in high school programs. The target population to be sampled must be justified and defined relevant to the project's selection of a classification scheme. The selection of a sample should recognize and address potential

threats to the external validity of the study resulting from such factors as idiosyncratic building characteristics, non-representativeness of the educational programs sampled, and other relevant variables. The project must select a representative array of curricula scope and sequence, course syllabi, and experiences that fulfill a student's entire secondary school program requirements for graduation or program completion. The educational programs sampled should be targeted to allow generalizations to the knowledge, processes, skills, and attitudes teachers and other school personnel are expected to impart to a specified population of students with disabilities.

Project Analysis. The projects supported under this priority must analyze, but are not limited to: The curriculum scope and sequences; course syllabi; basic skills; processes and strategies that comprise the content of regular, vocational, and special education courses; and training opportunities for students with disabilities. Projects must examine the appropriateness of the educational program objectives and designs that can be identified through these curricular analyses. Projects must conduct rigorous and thorough analyses to map the content comprising the educational programs being provided students with disabilities. The projects must also obtain access to existing documentation describing teacher and administrator professional preparation achieved with professional and State accrediting bodies. The projects must draw implications for effectively integrating the specialized expertise of regular, special, and vocational education personnel in the delivery of educational programs for high school students with disabilities. Additionally, projects must analyze findings and derive implications for considering professional preparation programs, and for State and professional accreditation of teacher education programs.

Dissemination. The projects supported under this priority must be conducted in a manner that will facilitate the utility and use of project findings. Projects must work with existing networks, develop networks or collaborate with professional associations in conducting and affecting the use of project activities and results. The projects supported under this priority must develop strategies for communication among themselves that will facilitate in year 3 their collaborative effort to order and map their collective findings. This collaborative initiative must be designed to enhance the collective impact of the individual projects in focusing attention and stimulating reforms to improve secondary educational programs and school related outcomes for children with disabilities.

Phasing

The projects supported under this priority have two phases. The first phase encompasses years 1 and 2, and the second phase year 3 activities. Phase 1 must involve the refinement of the conceptual framework and approach, selection of sample, development and piloting of measurement and documentation procedures, data collection and analysis of educational program curricula, State and professional acceditation standards, and teacher certification requirements.

In the second phase each project must focus on its individual dissemination strategies. In order to fulfill this objective projects will need to collaboratively order and map their collective findings in a format able to be exchanged with relevant professional associations and other national organizations relevant to improving secondary education programs and curricula for students with disabilities.

(Catalog of Federal Domestic Assistance Number 84.023, Research in Education of Individuals with Disabilities Program)

Program Authority: 20 U.S.C. 1441–1443.

Dated: May 1, 1991.

Lamar Alexander,

Secretary of Education.

[FR Doc. 91–10781 Filed 5–6–91; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.023]

Notice Inviting Applications for New Awards Under the Research in Education of Individuals With Disabilities Program for Fiscal Year 1991

Purpose: To assist research and related activities, and to conduct research, surveys, or demonstrations, relating to the education of, and early intervention services for infants, toddlers, children and youth with disabilities.

Eligible Applicants: Eligible applicants are State and local educational agencies, institutions of higher education, and other public agencies and nonprofit private organizations.

Applications Available: 5/17/91.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 85, and 86; and (b) the regulations for this program in 34 CFR part 324; and (c) the final funding priorities published in this issue of the **Federal Register.**

Priorities: In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary gives an absolute preference under the Research in Education of Individuals with Disabilities Program for Fiscal Year 1991 to applications that respond to the following priorities; that is, the Secretary will select for funding only those applications proposing projects that meet one of these priorities.

RESEARCH PRIORITIES FOR FISCAL YEAR 1991

Title and CFDA No.	Deadline for transmittal of applications	Available funds	Estimated size of awards	Estimated number of awards	Project period in months
Small Grants Program (CFDA No. 84.023A)	6/19/91	$825,000	$75,000 for 18 months	11	Up to 18.
Initial Career Awards (CFDA No. 84.023N)	6/26/91	300,000 per year	$75,000	4	Up to 36.
Improving Learning Through Home/School Collaboration (CFDA No. 84.023L).	7/3/91	880,000	$220,000 per year	4	Up to 36.
Improving the Retention of Special Education Teachers (CFDA No. 84.023Q).	7/3/91	1,200,000	$300,000 per year	4	Up to 36.
Examining High School Curricula and the Demands on Personnel Educating Students with Disabilities (CFDA No. 84.023U).	7/3/91	880,000	$220,000 per year	4	Up to 36.

For Applications or Information Contact: Linda Glidewell, Division of Innovation and Development, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW., (Switzer Building, room 3524 —M/S 2640), Washington, DC 20202. Telephone (202) 732–1099. (TDD (202) 732–6153.)

Program Authority: 20 U.S.C. 1441–1443.

Dated: May 1, 1991.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 91–10782 Filed 5–6–91; 8:45 am]

BILLING CODE 4000–01—M

federal register

Tuesday
May 7, 1991

Part VI

Department of Health and Human Services

Family Support Administration

45 CFR Part 402

State Legalization Impact Assistance Grants (SLIAG); Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

45 CFR Part 402

RIN 0970-8A79

State Legalization Impact Assistance Grants (SLIAG)

AGENCY: Family Support Administration, HHS.

ACTION: Final rule.

SUMMARY: This rule amends regulations implementing the State Legalization Impact Assistance Grant (SLIAG) program, 45 CFR part 402. This amendment implements changes made to section 204 of the Immigration Reform and Control Act of 1986 (IRCA) by the Immigration Nursing Relief Act of 1989, Public Law 101-238. This law allows, but does not require, limited amounts of SLIAG funds to be used for two new purposes—Phase II outreach and employment discrimination education and outreach. The amendment also simplifies administrative requirements by reducing the amount of information that States must submit in their SLIAG applications. Finally, the amendment makes technical and conforming changes.

DATES: The rule is effective May 7, 1991.

FOR FURTHER INFORMATION CONTACT: David B. Smith, Director, Division of State Legalization Assistance, Office of Refugee Resettlement, U.S. Department of Health and Human Services, at 202-401-9255 (FTS 401-9255).

SUPPLEMENTARY INFORMATION: Section 204 of the Immigration Reform and Control Act of 1986 (IRCA) (Pub. L. 99-603), as amended, establishes State Legalization Impact Assistance Grants (SLIAG) for States, the District of Columbia, Puerto Rico, the Virgin Islands, and Guam for fiscal years 1988 through 1992. (The term "State" is used hereinafter to include all eligible SLIAG grantees.) States may use (obligate) SLIAG grant funds through September 30, 1994. The purpose of SLIAG is to lessen the financial impact on State and local governments that may result from the legalization of aliens under the Immigration Reform and Control Act of 1986 (IRCA).

On March 10, 1988, the Department published a final rule, 45 CFR part 402, implementing section 204 of IRCA. This regulation was amended at 54 FR 23983 (June 5, 1989), and 55 FR 26206 (June 27, 1990).

The Department published a Notice of Proposed Rulemaking for the present amendments on December 11, 1990 (55 FR 51082ff.). We received comments from nine organizations. Some of the commenters' suggestions have been adopted in the final rule, while others have not. Comments and our responses are discussed below at the end of each section to which the comments apply.

PHASE II OUTREACH

Background.

IRCA provided for the legalization of three categories of aliens. For these aliens, achieving lawful permanent resident status—the ability to remain indefinitely in this country on a legal basis—is a two-step process. The initial step—obtaining lawful temporary resident status—is commonly called Phase I of the legalization program. The subsequent adjustment to lawful permanent resident status is commonly called Phase II. The process is somewhat different for each of these three groups of aliens.

Aliens who had been in the U.S. illegally prior to January 1, 1982 were given the opportunity to apply for lawful temporary resident status under section 245A of the Immigration and Nationality Act (INA) between May 5, 1987 and May 4, 1988. After being in lawful temporary resident status for 18 months, aliens granted lawful temporary resident status under this section must apply a second time to INS in order to obtain permanent resident status. This process is commonly called Phase II of the legalization process. If aliens granted lawful temporary resident status under section 245A do not apply for permanent resident status within 42 months of the date they were granted temporary resident status, they will lose their lawful resident status. (IRCA provided for 30 months, with a 12 month extension added by the Immigration Act of 1990, Pub. L. 101-649.)

In order to become lawful permanent residents, these aliens must meet certain requirements imposed by IRCA. These requirements include demonstration of minimal understanding of ordinary English and knowledge of the history and Government of the U.S., or satisfactory progress toward that goal in courses recognized by the Attorney General.

Aliens who had performed seasonal agricultural services for certain minimum periods could apply for lawful temporary resident status between June 1, 1987 and November 30, 1988 under section 210 of the INA. These "special agricultural workers" or "SAWs" automatically become lawful permanent residents either one or two years after the effective date of lawful temporary resident status. (The length of time between temporary and permanent status depends upon which of two subsections of the INA an alien qualified under.) SAWs are not required to demonstrate a minimal understanding English or knowledge of the history and Government of the U.S. in order to obtain lawful permanent resident status.

Section 210A of the INA provides for admission of replenishment agricultural workers (RAWs), beginning in FY 1990, if the Secretaries of the U.S. Departments of Agriculture and Labor jointly determine that a shortage of agricultural labor exists. To date, no such certification has occurred, so there are no lawful temporary residents under section 210A of the INA. If a shortage is declared and aliens are granted lawful temporary resident status under section 210A, these "replenishment agricultural workers" or "RAWS" will have to demonstrate that they worked in agriculture a specified number of days for each of three consecutive years to remain in lawful temporary resident status and to qualify for lawful permanent residence. Like SAWs, RAWs do not have to demonstrate proficiency in the English language or knowledge of the history and Government of the U.S. in order to obtain lawful permanent resident status.

In order to ensure that RAWs could be made available soon after the determination of a shortage, INS allowed aliens to register for the RAW program in late 1989. Over 600,000 aliens have registered. These aliens have no legal status as a result of that registration. In particular, they are not lawful temporary residents for purposes of determining the allowability of SLIAG-related costs. If a shortage number is announced, an appropriate number of registrants randomly selected by priority category will be allowed to petition for admission as RAWs. Those aliens whose petitions are granted by INS will be lawful temporary residents.

Outreach Activities Authorized

New section 204(c)(1)(D) of IRCA authorizes States to use SLIAG funds for certain kinds of outreach to lawful temporary residents. Specifically, new section 204(c)(1)(D) of IRCA allows States to use SLIAG funds to make payments for public education and outreach (including the provision of information to individual applicants) to inform temporary resident aliens regarding:

(1) The requirements of sections 210, 210A, and 245A of the Immigration and Nationality Act regarding the adjustment of resident status;

(2) Sources of assistance for such aliens' obtaining the adjustment of status described in clause (1), including educational, informational, referral services, and the rights and responsibilities of such aliens and aliens lawfully admitted for permanent residence;

(3) The identification of health, employment, and social services; and,

(4) The importance of identifying oneself as a temporary resident alien to service providers.

This amendment to the regulation defines "Phase II outreach" in § 402.2 using language that closely parallels the statute.

Certain Activities Not Allowable

The statute explicitly prohibits use of SLIAG funds for "client counseling or any other service which would assume responsibility for the alien's application for the adjustment of status * * *." New paragraph (i) of § 402.11 adds this limitation to the regulation. This paragraph reflects our interpretation that this prohibition also precludes the use of SLIAG funds to assist aliens in appealing INS decisions or to represent aliens before any administrative or judicial body.

Use Limited to Temporary Residents

New IRCA section 204(c)(1)(D) authorizes the use of SLIAG funds for public education and outreach only for lawful temporary residents. The statute also explicitly permits the provision of information to "individual applicants." We interpret this to mean that SLIAG funds may be used to provide information to aliens who have been granted lawful temporary resident status, as well as aliens who have applied for such status and whose applications are pending with INS at the time the information was provided.

The amended regulation stipulates that the cost of public education and outreach activities directed to specific individuals may not be charged to SLIAG if the individuals are lawful permanent residents or aliens with any other status except that of lawful temporary resident granted under sections 245A, 210, or 210A of the INA, or applicants under those sections. SLIAG funds may not be used for outreach directed to lawful permanent residents, even if they still are "eligible legalized aliens (ELAs)."

States would have to document that services were provided to lawful temporary residents (or applicants) in order to charge costs associated with those services to their SLIAG grants. For public education or outreach activities that are not directed to specific individuals, e.g., posters or brochures, this statutory provision means that the material must be targeted to or intended primarily for lawful temporary residents.

Relationship to Other Activities

Public Law 101–238 allows the use of SLIAG funds to "identify" health, employment, and social service programs to lawful temporary residents. This authority does not allow States to use SLIAG funds to provide such services to aliens, merely to inform temporary residents of the availability of such services.

Public Law 101–238 does not affect the allowability under the current regulations of States' charging a portion of the costs of public assistance and public health assistance program general outreach activities (i.e., outreach activities not directed to ELAs) to SLIAG. Under current regulations, the cost of such outreach is allowable if it (1) is part of a program of public assistance or public health assistance that is included in a State's approved application, and (2) is "generally available," i.e., not intended solely or primarily for ELAs. Such costs generally are considered "program administrative costs" and may be apportioned to SLIAG in accordance with § 402.22(b), which this rule revises and redesignates as § 402.21(c)(6)(i). Such costs are not counted in computing the maximum amount of SLIAG funds that may be expended for Phase II outreach.

Outreach designed to inform ELAs (not just temporary residents) of the availability of SLIAG-funded educational services is an allowable activity under the current regulation and is not affected by Public Law 101–238. The costs of such educational services outreach activities, performed by educational service providers under their educational service contracts with State education agencies, do not have to be counted toward the statutory ceiling on Phase II outreach activities. However, such educational services outreach activities continue to be subject to the funding limitations that IRCA and the regulation at 45 CFR 402.11(e) impose on spending for educational services.

Activities beyond those intended to make ELAs aware of the availability of SLIAG-funded classes are not allowable under the current regulation, but may be allowable under the new authority of Public Law 101–238 if those activities are targeted to temporary residents. Such activities are subject to the spending limitation in § 402.11(k).

Use of Other Organizations

Public Law 101–238 is silent on such issues as which State agency will be responsible for conducting Phase II outreach activities and what, if any, other organizations must or may be involved, consulted with, or receive funding. We are not issuing regulations in these areas, as such decisions, in the absence of statutory guidance, are appropriately left to the State, subject to section 204(d)(1)(B)(ii) of IRCA and 45 CFR 402.41(a)(2) which require that the State provide a fair method, as determined by the State, to allocate SLIAG funds among State and local agencies, and Federal grant management regulations at 45 CFR part 92.

Comments. Several commenters requested that the final rule clairfy that SLIAG-funded Phase II outreach messages may include information on such subjects as the Temorary Protected Status provision of the Immigration Act of 1990 and the INS Family Fairness program, as well as any programs benefitting temporary residents in the future, as long as such messages are directed to temporary residents.

Response. The Division of State Legalization Assistance (DSLA) has issued policy guidance to States regarding the Phase II Outreach provisions of Public Law 101–238 in its SLIAG Information Transmittals (ITs). IT 90–011, issued on January 16, 1990, indicates that temporary resident outreach may provide information on a variety of legal and programmatic subjects of interest to temporary resident aliens, as long as the target audience consists of temporary residents, not potential beneficiaries of the programs or policies themselves, unless temporary residents are the beneficiaries. IT 91–005, issued on December 4, 1990, states, "Education and outreach activities designed to inform temporary residents of the requirements for applying for permanent resident status, and of their rights and responsibilities as temporary residents, are allowable under this program. Activities designed to inform temporary residents about the requirements and procedures connected with the INS Family Fairness policy, which applies to legalization-ineligible spouses and children of legalized aliens, are among the allowable activities." DSLA will continue to issue policy guidance to grantees in response to new initiatives and legislation, but does not consider it necessary to address specific initiatives in regulation as long as the general

guidelines of allowable activities are clearly delineated.

Comments. Several commenters noted that the one-year extension of the Phase II legalization deadline by the Immigration Act of 1990 increased the period during which temporary residents may apply for permanent resident status from 30 months, as stated in the Preamble to the NPRM, to 42 months, and requested that the final rule clarify that SLIAG-funded Phase II information can be used for the extended period.

Response. We have changed the reference to 30 months to 42 months in the last sentence of the second paragraph of the Background portion of this section of the Preamble. The definition of Phase II Outreach in the regulation clarifies that public education and outreach may be provided to temporary resident aliens for as long as those individuals remain in temporary resident status as well as to aliens whose applications for such status are pending with INS.

Employment Discrimination Education and Outreach

Background

IRCA established sanctions against employers who knowingly hire aliens not authorized to work in this country. IRCA requires that employers verify the identity and work authorization of all new employees. During debate on IRCA, Congress foresaw the possibility that employers, fearful of sanctions, would refuse employment to individuals who looked or sounded foreign. Responding to that concern, Congress created section 102 of IRCA. Section 102 made it unlawful, with specified exceptions, for employers to discriminate in hiring, firing, or recruiting and referring labor for a fee because of a person's national origin and, in the case of a citizen or intending citizen, citizenship status.

Congress also created the Office of the Special Counsel for Immigration Related Unfair Employment Practices (hereafter "Office of the Special Counsel") to enforce IRCA's antidiscrimination provision. The Office of the Special Counsel is responsible for investigating discrimination charges and, when appropriate, filing complaints with a specially designated administrative tribunal.

The Office of the Special Counsel, located in the U.S. Department of Justice, has established a record of vigorous enforcement. However, studies by the U.S. General Accounting Office and local authorities have raised serious concerns about the general lack of knowledge and misunderstanding of IRCA's requirements. Enforcement of the anti-discrimination provision will serve little purpose if workers are not aware of their rights. Moreover, discrimination will not be eradicated as long as employers are unaware of their duty not to discriminate.

Anti-Discrimination Effort Authorized

Congress addressed these problems by enacting section 6 of Public Law 101–238. This statute adds new section 204(c)(1)(E)(i) to IRCA which allows, but does not require, States to use SLIAG funds

> * * * to make payments for education and outreach efforts by State agencies regarding unfair discrimination in employment practices based on national origin or citizenship status.

The legislative history states that this provision is intended to fund education and outreach efforts to inform workers of their rights under the anti-discrimination provision of IRCA and to inform employers of how to comply with their anti-discrimination responsibilities under IRCA. (Congressional Record, S 16442, November 20, 1989)

This regulation adopts the statutory language of new section 204(c)(1)(E)(i) of IRCA in defining "employment discrimination education and outreach" in § 402.2. The statute and regulation permit a broad range of activities, including but not limited to: the development, production and distribution of informational literature; production and publication of advertisements in the electronic or print media; conducting meetings, seminars or other public functions; awarding grants, contracts or cooperative agreements, as appropriate, to local government agencies (including local education agencies), employee and employer groups, or other public or private organizations, including community-based organizations or for-profit concerns; and, providing referral services regarding employment discrimination prohibited by IRCA.

Use of Other Organizations

The statute states that SLIAG funds may be used for "education and outreach efforts by State agencies * * *" (new section 204(c)(1)(E)(i) of IRCA, emphasis added). We interpret this to mean that employment discrimination education and outreach activities in which SLIAG-related costs may be incurred must be under the direction of or coordinated by State agencies.

The statute does not specify which State agency or agencies may conduct employment discrimination education and outreach activities. We are not regulating in this area, as this decision is appropriately left to each State. However, we encourage States to confer with appropriate agencies and organizations and to create or enhance ongoing contacts with local public and private entities already conducting such activities. By using existing community networks, States will be able to develop "bottom up" outreach strategies, thereby extending the scope and range of the educational campaign. Also, the use of existing community networks will facilitate audience targeting and may enhance the access and credibility of the message.

The statute is silent regarding State agencies' conducting employment discrimination education and outreach activities through other organizations. (However, section 204(d)(1)(B)(ii) of IRCA and 45 CFR 402.41(a)(2) require that the State assure that it will provide a fair method, as determined by the State, of allocating SLIAG funds among State and local agencies.) We have not promulgated regulations in this area. Within the confines of Federal and State procurement principles and the assurance noted above, States have discretion in deciding what, if any, other organizations to use in implementing SLIAG-funded employment discrimination education and outreach efforts. (Federal grants management regulations at 45 CFR part 92 apply to this use, as well as other uses, of SLIAG funds.) If otherwise permissible, States may implement their SLIAG-funded employment discrimination education and outreach through grants, contracts or cooperative agreements with other units of government, other public agencies, non-profit, or for-profit organizations.

Activities That Are Not Allowable.

Although the statute permits a wide range of allowable uses of SLIAG funds for employment discrimination education and outreach, there are several limitations inherent in the statutory language and legislative history. For example, we believe that Public Law 101–238 does not allow the use of SLIAG funds to investigate or prosecute discrimination complaints beyond initial intake and referral. Nor does it allow for the payment of legal fees or other expenses incurred to provide legal counsel to a party alleging discrimination or to represent parties before any administrative or judicial body. The final regulation makes these exclusions explicit in new §402.11(j).

Not limited to "eligible legalized aliens." New section 204(c)(1)(E) of IRCA does not limit the use of SLIAG funds for employment discrimination

education and outreach to aliens legalized by IRCA. (Other uses of SLIAG funds generally are limited to services provided to "eligible legalized aliens," as that term is defined in the Act and 45 CFR 402.2) SLIAG funds may be used for employment discrimination education and outreach efforts targeted to ELAs, permanent residents, asylees, refugees, U.S. citizens, and all others protected under IRCA's antidiscrimination provision. These efforts may also be directed to employers and to persons or other entities that recruit or refer labor for a fee.

Prior Consultation Required

New section 204(c)(1)(E)(ii) of IRCA stipulates that States

> * * * shall not initiate such efforts until after such consultation with the Office of the Special Counsel for Immigration Related [Unfair] Employment Practices as is appropriate to ensure, to the maximum extent feasible, a uniform program.

We believe the most straightforward reading of this language is that States may not use SLIAG funds to reimburse the costs of activities that occurred prior to consultation with the Office of the Special Counsel. Under the final rule, new activities to be funded with a State's SLIAG allotment may not be started until after consultation has occurred. For activities begun prior to consultation (i.e., those funded with State or local funds), SLIAG reimbursement would be available only for costs associated with activities that occur after consultation.

Consultation Process

This regulation combines the statutorily required consultation with the Office of the Special Counsel and the process of States' submitting applications for SLIAG funds (or amendments to approved applications). This combined process involves the following steps:

(1) A State submits to the Department an application, or amendment to an approved application, including as detailed a description as possible of the employment discrimination education and outreach efforts the State plans to undertake, including, if available, copies or drafts of the text of public information materials it intends to use in those efforts. (See "Content of required submission," below.)

(2) The Department transmits a copy of the State's submission to the Office of the Special Counsel for review.

(3) The Office of the Special Counsel reviews the State's submission to ascertain whether it meets certain criteria, discussed below. (The Office of the Special Counsel has indicated that it anticipates its review will take no longer than 15 working days, unless discussions or correspondence with a State extend this time.) Simultaneously, the Department reviews the submission to ascertain the allowability of costs and the reasonableness of cost estimates. (See "Review criteria," below.)

(4) Upon completion of its review, the Office of the Special Counsel certifies to the Department whether the State's submission meets the specified criteria. The Department then notifies the State that the section(s) of the State's application or amendment related to employment discrimination education and outreach have been approved or notifies the State of the reasons for disapproval. This notification will include additional comments, if any, provided by the Office of the Special Counsel.

HHS' notification informs the State that the statutory requirement for prior consultation with the Office of the Special Counsel has been met. Upon receiving notification from the Department that its application is approved, a State may initiate the SLIAG-funded employment discrimination education and outreach activities described in its approved application. We have included in the regulation new § 402.11(n) which prohibits the use of SLIAG funds to reimburse the costs of employment discrimination education and outreach activities that occur prior to this notification. We believe that we could not allow reimbursement of such costs without contravening the clear intent of the statute. (However, see "Prior consultation waived for dissemination of certified materials," below.)

Unlike other programs or activities where prior approval of applications or amendments by the Department is not required, this process requires States to submit and receive approval for planned employment discrimination education and outreach activities before initiating those activities, or before beginning to reimburse the costs of ongoing activities. However, we believe that this consolidated approach will be simpler to administer at both the State and Federal level than separate consultation and application processes.

We have separated the formal consultation process from ongoing information exchange and technical assistance activities with the Office of the Special Counsel, as well as other Federal agencies (e.g., the INS Office of Employer and Labor Relations, the Department of Labor, the Equal Employment Opportunity Commission, and the Small Business Administration). We expect that States will have ongoing contacts with these Federal agencies and other States to enhance and coordinate their employment discrimination education and outreach activities. We strongly encourage this informal exchange of information, ideas, and technical assistance, but have not included it in the formal consultation process in the interest of expediting States' implementation of employment discrimination education and outreach efforts.

Content of Required Submission

New § 402.41(d)(1)(ii) of the regulation specifies the information regarding planned employment discrimination education and outreach efforts that States must include in their applications or amendments to approved applications. States' applications must contain a description of the planned education and outreach activities, including:

—Descriptions of the kinds of State or local government agencies, or other entities, to be involved in each activity;

—Brief descriptions of the targeted audience(s) for each activity; and,

—Pre-production copies or text of any material to be disseminated to the public, if available at the time the application is submitted. (See "Certification of material for public distribution," below.)

These requirements reflect: (1) The level of information the Office of the Special Counsel has informed us it needs to carry out its statutory consultation requirement; and, (2) the information needed by the Department to determine the allowability of the activities and reasonableness of the estimated costs. Because of the statutory requirement for prior consultation and a strong Federal interest in ensuring that Federal funds are used efficiently to provide the public with accurate information, the application requirements concerning employment discrimination education and outreach activities are more detailed than those for other uses of SLIAG funds.

We urge States to be as specific as possible in describing their activities, including the kinds of organizations they intend to use, the audience to be targeted, the media mix to be used, and the nature and content of the information to be disseminated. This will assist the Office of the Special Counsel in serving as a clearinghouse for information, by sharing with other States innovative education and outreach ideas. However, we do not

envision States submitting highly detailed operational plans. Further, we recognize that States may not have complete plans developed for their SLIAG-funded education and outreach activities. We recommend that States submit their application in whatever level of detail is possible, and thereby satisfy the prior consultation requirement, as soon as they have at least a preliminary idea of the activities they want to undertake, the audience, and the types of organizations they will use. This will allow the State to begin to spend SLIAG funds for employment discrimination education and outreach. As States more fully develop their plans, applications can be amended. (If a State plans to undertake activities beyond those described in its approved application, the final rule requires the application to be amended prior to its initiating those new activities.)

As with other uses of SLIAG funds, the application must also contain an estimate of the SLIAG-related costs the State expects to incur in its employment discrimination education and outreach efforts and describe the methodology used to make that estimate.

Review Criteria

HHS will review States' applications and amendments to determine the allowability of costs and the reasonableness of cost estimates. This review will be conducted in the same manner and employ the same criteria as the Department's review of other activities included in States' applications. While States are required by statute to consult with the Office of the Special Counsel, accountability for SLIAG funds, including determination of the allowability of costs, rests with the Department.

By statute, the purpose of consultation with the Office of the Special Counsel is to "ensure, to the maximum extent feasible, a uniform program." Accordingly, under the final rule, the Office of the Special Counsel will review States' submissions to determine that SLIAG-funded, State-administered efforts do not conflict with or unnecessarily duplicate other education and outreach efforts. (The Office of the Special Counsel will also review public information material submitted with a State's application or amendment. See "Certification of material for public distribution," below.)

When the Office of the Special Counsel determines that the activities described in a State's submission do not conflict with or unnecessarily duplicate other anti-discrimination efforts, it will certify to the Department that consultation has taken place. Any conflicts with other anti-discrimination efforts identified by the Office of the Special Counsel will have to be resolved prior to completion of consultation. Resolution of such conflicts would likely require that a State amend the application or amendment submitted to the Department to remove the conflict.

The Office of the Special Counsel will also provide any additional comments and suggestions it has regarding a State's planned employment discrimination education and outreach activities. The Office of the Special Counsel will transmit those comments to HHS. HHS in turn will forward those comments to the State for consideration.

Certification of Material for Public Distribution

The regulation at new § 402.11(o) provides that SLIAG funds may be used to reimburse costs associated with material intended for public dissemination only if that material is certified by the Office of the Special Counsel. Certification of public information material involves the Office of the Special Counsel's determining that:

—The information to be produced and disseminated to the public with Federal funds is legally accurate; and,
—Such information identifies the Office of the Special Counsel as a source of information and referral for complaints of discrimination based on citizenship status or national origin and includes that Office's address and telephone numbers, including toll-free and TDD numbers for the hearing impaired.

Material which a State wishes to have certified may be transmitted to the Office of the Special Counsel in either of two ways.

1. If such material (e.g., drafts or pre-production copy) is available when a State prepares its application or amendment, that material must be included in its submission. HHS will transmit that material to the Office of the Special Counsel.

2. Material developed after approval of a State's application or amendment should be submitted directly to the Office of the Special Counsel. (The Department does not require that such materials be submitted to it for review. However, if a State submits public information directly to the Office of the Special Counsel for review and use of that material is not described in its approved application, then the final rule requires the State to amend its application prior to producing and disseminating that material.)

We strongly encourage States to submit material for review by the Office of the Special Counsel before incurring significant production and distribution costs in order to avoid potential disallowances.

Prior Consultation Waived for Dissemination of Certified Materials

The Federal government has a strong interest in expediting States' SLIAG-funded employment discrimination education and outreach efforts. States may want to get started by reproducing and distributing already available public information material that has been certified by the Office of the Special Counsel.

States that elected to use SLIAG funds for this limited purpose would not need first to submit an application or amendment to HHS or the Office of the Special Counsel. We would deem consultation to have taken place for this limited use. However, States would be required to reproduce the text of certified material verbatim (but could add the name of the State agency or other appropriate entity, its address and telephone number). Only the costs of such activities undertaken after December 18, 1989, the date of enactment of Public Law 101–238, could be reimbursed with SLIAG funds.

Although States would not be required to submit an application or amendment to HHS before distributing certified public information material, States would have to include descriptions and cost estimates of such activities when they did submit their applications or amendments. Prior consultation, and prior approval of a State's application or amendment, would be required for any other employment discrimination education and outreach activity.

Subsequent Amendments

The current regulation at § 402.45(a) requires that, if a State adds a program or activity for which it intends to claim SLIAG reimbursement or make payment with SLIAG funds, it must amend its application. For employment discrimination education and outreach activities, this means that States will have to amend their applications *before* they initiate or seek SLIAG reimbursement for activities beyond those described in their approved applications. The process for consulting with the Office of the Special Counsel described above would be followed for each amendment.

Amendments to Prior Years' Applications

Public Law 101–238 is effective with allotments made for FY 1989. Because of this effective date and the statutory requirement for prior consultation with the Office of the Special Counsel, there will be no costs incurred in either FY 1988 or FY 1989 for such activities which can be reimbursed with SLIAG grants. Thus, States will have no need to amend their FY 1988 or FY 1989 applications for this purpose.

However, as noted in "Limitations on Use of SLIAG Funds," below, subject to statutory limits, States may use funds from their FY 1989 SLIAG allotments for the costs of activities which occur after consultation (e.g., in FY 1990 or subsequent fiscal years). This is in accordance with the general provision in IRCA and the SLIAG regulation that funds allotted for a fiscal year remaining unobligated at the end of that fiscal year continue to be available for use until September 30, 1994.

States which elect to use SLIAG funds for employment discrimination education and outreach activities that occur in FY 1990 must amend their FY 1990 applications. Except as noted above, under the final rule, our prior approval of such amendments is required before States may initiate SLIAG-funded employment discrimination education and outreach efforts or begin to reimburse the costs of ongoing activities.

Comments. Some commenters opposed a mandatory or formal process of certification of materials by the Office of the Special Counsel, while other commenters opposed the Department's requirement of approval of an application amendment in order to spend funds for this activity.

Response. The process of the Office of the Special Counsel review and certification of States' proposed employment discrimination education and outreach materials is consistent with Congressional intent, as discussed above. The requirement for an application amendment is necessary in order for the Department to be able to determine the allowability of costs expended on this activity. This requirement was promulgated in SLIAG program regulations on March 10, 1988, and is a standard requirement for all SLIAG activities (see 45 CFR 402.41(d)). For employment discrimination education and outreach amendments, current practice has been that Departmental approval of application amendments and Office of the Special Counsel certification of materials has been accomplished within timeframes that have not imposed hardships on States. We do not anticipate a change in this approach.

Comments. Two commenters suggested that the Office of the Special Counsel review of literature may cause unnecessary delays, and proposed time deadlines for responses.

Response. After examining the process of review, we determined that, with few exceptions, evaluation and review of literature by the Office of the Special Counsel has been completed well in advance of suggested guidelines. We therefore concluded that there is no need for regulatorily-imposed deadlines for responses.

Comments. Two commenters suggested that costs for antidiscrimination education and outreach activities be allowable from the date of Office of the Special Counsel certification rather than the date of the Department's notice of approval.

Response. Amendments to SLIAG applications are not approved until the States submitting the amendments receive notice of approval from the Department. The difference in the time from Office of the Special Counsel certification and the Department's notification to the States has been sufficiently short during the year that materials have been certified and the pertinent amendments have been processed by the Department that it does not seem necessary to impose a different timeframe by regulation for these amendments only. If circumstances dictate that this is no longer the case, the timeframes can be changed outside the regulatory process.

Comment. One commenter suggested that we permit the Office of the Special Counsel to waive its requirement that all literature and announcements reference their address and telephone number. This could be important, for example, in a 30 second radio announcement.

Response. We agree that the requirement of the inclusion of this information could certainly be waived by the Office of the Special Counsel without any intercession by the Department outside the regulatory process. We have added this provision to the regulatory language at § 402.11(o)(2). States seeking this consideration can make their wishes known to the Office of the Special Counsel at the time of submission of the material for certification.

Limitations on Use of SLIAG Funds

New sections 204(c)(2)(D) (i) and (ii) of IRCA, established by Public Law 101–238, limit the amount of their SLIAG allotments that States may use for Phase II outreach and employment discrimination education and outreach activities. New paragraphs (k) and (l) of § 402.11 of this regulation include these restrictions. For each of these two new activities, a State may make payments, i.e., for contracts, interagency agreements, etc., totalling no more than an amount equal to the greater of 1 percent of its allotment for each fiscal year beginning with FY 1989, or $100,000. Costs associated with the administration of these payments by the State single point of contact are considered SLIAG administrative costs, as that term is defined in this Part.

For example, assume that a State's FY 1989 SLIAG allotment was $15 million and its FY 1990 allotment is $9 million. That State could use up to $150,000 of its FY 1989 allotment (1 percent of $15 million) and $100,000 of its FY 1990 allotment (because 1 percent of its allotment—$90,000— is less than $100,000) for Phase II outreach and up to the same amount for employment discrimination education and outreach.

Those funds, if unobligated by the State at the end of the fiscal year, would remain available for use through FY 1994, as is the case with SLIAG funds generally. For example, States will not have any FY 1989 costs for employment discrimination education and outreach that can be reimbursed with SLIAG funds. This is because the required prior consultation with the Office of the Special Counsel could not have been accomplished in FY 1989. However, 1 percent of the State's allotment for FY 1989 (or $100,000, if greater), if not otherwise obligated, remains available to reimburse costs incurred in subsequent fiscal years.

States' use of SLIAG funds for either Phase II outreach or employment discrimination education and outreach is optional. There is no minimum amount of SLIAG funds which States are required to use for these activities. This regulation amends § 402.11(d) to clarify application of the statutory requirement that States use at least 10% of their SLIAG allotments for public assistance, public health assistance, and educational services.

The statutory provisions authorizing use of SLIAG funds for these purposes are effective with States' FY 1989 allotments. Costs incurred prior to October 1, 1988 may not be reimbursed with SLIAG funds. (FY 1988 allotments may not be used for Phase II outreach or for employment discrimination education and outreach. FY 1988 allotments are the only funds available to reimburse costs incurred in FY 1988.) States' FY 1988 allotments are not included in computing the maximum

amount of SLIAG funds that may be used for these purposes.

As noted above, States may use SLIAG funds to pay otherwise allowable costs incurred through FY 1994. New paragraphs (i) through (1), (n), and (o) of § 402.11 of this regulation include additional restrictions that apply to these new uses of SLIAG funds. These were described previously under "Phase II Outreach" and "Employment Discrimination Education and Outreach." Sections 402.11(a), 402.11(c) and 402.21(b) describe which funds are permitted for costs associated with SLIAG-reimbursable activities.

Comments. A few commenters expressed the opinion that funds for Phase II information should be able to be used for as long as there are persons in temporary resident status.

Response. Information Transmittal 91–005, sent to States in December, 1990, addresses the issue of the continuation of outreach costs as the number of temporary residents declines. It clearly states, "Outreach activities can legitimately continue as long as there are temporary residents to be served." A table showing Phase II applications for section 245A ELAs by month of filing for status was sent to each State along with IT 91–005. The guidance indicates that we do not intend to adopt a pro rata approach to the amount of allocable costs for outreach as the number of temporary residents declines. It does indicate, however, that States should exercise reason and prudence in deciding what level of activity should be undertaken, and for how long, in conducting this activity. In light of our issuance of this guidance and the State-specific data which accompanied it, DSLA considers that States have been given the latitude to expend SLIAG funds for Phase II outreach messages to temporary residents for as long as there is a perceived need.

Simplification of Application Requirements

This regulation simplifies States' preparation of SLIAG applications by deleting the requirement that applications contain both cost estimates for the upcoming fiscal year and updated estimates for the prior fiscal year. A key element is our changing the due date for applications in § 402.43 from July 15 preceding the fiscal year for which application is made to October 1 of that fiscal year. (See 55 FR 26206, which changed the due date for FY 1991 applications from July 15, 1990 to October 1, 1990. This regulation also changed the date by which applications must be rendered approvable by the Secretary from October 1 to December 15.) This final rule adopts those dates for all applications.

This change allows us to simplify States' SLIAG applications. Under the current regulation, State applications must contain estimates of SLIAG-related costs for the year for which funds are sought, plus updated estimates for the prior fiscal year. For example, under the current regulations, States' applications for FY 1991 must include cost estimates for FY 1991 and updated estimates for FY 1990.

Under the new time schedule, we will complete our review and approval of States' applications, including the cost estimates they contain, by the end of the calendar year. This is the same time that States must submit end-of-year reports containing actual cost data for the prior fiscal year. (Subpart F of the regulation requires States to submit to the Department a report with actual cost data for FY 1990 no later than 90 days after the end of the fiscal year.) Thus, we will have actual cost data for the prior year available to us when we compute States' allocations. Therefore, there is no need for updated cost estimates for the prior year in States' applications. We therefore are eliminating the requirements at 45 CFR 402.31(b) (1) through (6) that State applications contain updated cost estimates for the prior fiscal year.

The current regulation calls for the Department to hold 25% of the FY 1991 appropriation (the final year for which funds were appropriated at the time the regulation was published) for allocation in late FY 1991, after we receive States' end-of-year reports for FY 1990. (These reports were due by December 29, 1990 and, under the schedule in the current regulation, would not have been available in time to be included in computing States' FY 1991 allocations.)

We included provision for a final adjustment to States' allocations late in FY 1991 so that final allocations would be based as much as possible on actual, rather than estimated, costs. With the October 1 application deadline, this final adjustment will not be necessary. Actual cost data for FY 1990 will be available when we compute States' FY 1991 allocations for the first time. Therefore, there is no need for a second allocation in FY 1991. We will allocate all FY 1991 funds as soon as cost data are received from States and reviewed by the Department.

Comments. With reference to the proposal to use actual cost data rather than updated estimates for the prior year in computing States' FY 1991 allocations, one commenter expressed concern that the Department would have no data to use in the allocation formula for costs that are in dispute. Another commenter stated that the Department should acknowledge to Congress and the Federal administration that costs reported by States to date are expected to constitute only a fraction of all of the costs which will ultimately be documented, claimed, and adjudicated as SLIAG reimbursement.

Response. Costs that are in dispute cannot be used in the allocation formula whether they are estimates or actual costs. Actual SLIAG-related costs used for allocation or any other purpose are subject to revision through the statutory close of the SLIAG program. States are aware that actual cost reports may be amended at any time prior to the end of FY 1994.

Comments. Two commenters suggested that we provide two allocations in FY 1992, as was originally provided for in the SLIAG regulation for FY 1991. The same commenters opposed the proposed change in the application deadline because it would delay the allocation of FY 1992 funds until well after the start of the fiscal year.

Response. There is no certainty at this time that there will be an allocation in FY 1992. The number of allocations to be made in a fiscal year are at the discretion of the Department subject to circumstances at the time. If it is determined that there is a need for more than one allocation in FY 1992, should funds be available, the Department will consider that option at that time.

Comment. Three commenters stated in their remarks that FY 1992 funds should be able to used for costs incurred "on or after October 1, 1989" to be consistent with the provisions of IRCA.

Response. We agree that if there are SLIAG funds available for States in FY 1992, they should be subject to the requirements of IRCA, and have therefore amended the final rule by adding the phrase, "except funds for FY 1992 may be used for costs incurred on or after October 1, 1989" to § 402.45(b).

Technical and Conforming Changes

In referring to activities for which SLIAG funds may be used, § 402.10(a) lists the three categories of programs/activities for which SLIAG funds could be used prior to enactment of Public Law 101–238: Public assistance, public health assistance, and educational services. Two other allowable uses—SLIAG administrative costs and program administrative costs—were provided for in §§ 402.10(c) and 402.22. In addition, categories of activities for which SLIAG funds may be used are listed in numerous other places in the regulation, including § 402.11.

With the addition of two new categories of activities for which SLIAG funds may be used—employment discrimination education and outreach and Phase II outreach—listing all seven of the allowable uses of SLIAG funds at each reference is unwieldy. Therefore, this amendment defines "SLIAG-reimbursable activity" to include all allowable uses of SLIAG funds:

—Public assistance;
—Public health assistance;
—Educational services;
—Employment discrimination education and outreach;
—Phase II outreach;
—SLIAG administrative costs; and,
—Program administrative costs.

The terms "SLIAG administrative costs" and "program administrative costs" are defined in paragraphs (a) and (b) of § 402.22, respectively, and § 402.10(c) of the current regulation. Because these are "SLIAG-reimbursable activities," defined by this amendment, we have moved the definitions of "SLIAG administrative costs" and program administrative costs" to § 402.2, "Definitions." We believe that it is clearer and more consistent to define all allowable uses of SLIAG funds in that section.

The definition of "SLIAG administrative costs" in § 402.2 does not differ substantively from that in the current regulation at § 402.22(a). This amendment substitutes the term "conferring" for "consultation" (i.e., with local officials) to prevent confusion between this reference and the consultation with the Office of the Special Counsel required as a prerequisite for initiating employment discrimination education and outreach activities.

The definition of "program administrative costs" included in § 402.2 does not differ substantively from the current definition in §§ 402.10(c) and 402.22(b). It is modified only to clarify that program administrative costs are those costs associated with administering any of the five categories of programs or activities for which SLIAG funds may be used.

This amendment moves the description of the methodologies States may employ to determine program administrative costs from § 402.22(b) to § 402.21(c)(6)(i). This locates all cost documentation requirements and guidance in the same section of the regulation.

The current regulation limits SLIAG-related costs for educational services to the amount that can be paid with SLIAG funds. The amended definition of "SLIAG-related costs" in § 402.2 of this final rule applies the same restriction to SLIAG-related costs for Phase II outreach and employment discrimination education and outreach. The effect of this would be to prevent the inclusion of costs that could not be reimbursed with SLIAG funds in the computation of States' allocations.

The final rule removes and reserves § 402.10(c) of the current regulation. That paragraph permits SLIAG funds to be used for program and SLIAG administrative costs. Because the regulation now defines these uses in § 402.2 and includes them in the list of SLIAG-reimbursable activities in §§ 402.2 and 402.10(a), § 402.10(c) would be superfluous.

The current SLIAG regulation addresses State allocations and application requirements for each year from FY 1988 through FY 1991. The change in application requirements, due date, and allocation schedule for FY 1991 (discussed above), eliminates the need to list rquirements and procedures separately for each year. Therefore, this regulation eliminates unnecessary references to specific fiscal years.

INS regulations require that physical examinations for applicants for adjustment of status under sections 210, 210A, and 245A of the INA be at no expense to the government. The current SLIAG regulation prohibits use of SLIAG funds to pay the cost of physical examinations only for applicants under section 245A and 210. Section 402.11(h) of this regulation corrects this oversight and prohibits use of SLIAG funds to pay cost of physical examinations required of petitioners for status under section 210A (replenishment agricultural workers), should any aliens become eligible to petition for adjustment of status under that section.

The proposed rule would have added a provision to § 402.45(a) to require a State to submit amendments to its approved application for a fiscal year by the due date for that fiscal year's cost report under § 402.51. This change would have codified current policy.

Comments. Several commenters expressed the idea that States should be able to amend their applications for as long as there is authority to expend funds; that is, until the end of FY 1994, even though current policy requires States to amend applications before the close of the fiscal year for which the amendment would be applicable.

Response. We believe that States have ample opportunity under these final rules to determine those programs and activities they wish to qualify as SLIAG related. For purposes of program allowability and cost claiming, the latest approved application and amendments govern from the date of approval until such time as superseded. For purposes of funds allocation, applications and amendments approved for the subject fiscal year by the designated deadline for submissions for the allocation process are applicable.

Required Consultations with State and Local Officials

Section 204(i) of IRCA requires the Secretary to consult with representatives of State and local governments in establishing regulations and guidelines for SLIAG. On January 16, 1990 we transmitted information regarding Public Law 101–238 to SLIAG contacts and other interested parties. In that transmittal, we requested comments and suggestions for regulations regarding temporary resident education and outreach and employment discrimination education and outreach activities. We received comments from four States and one national organization. Those comments were considered in developing this final rule.

Required Consultation with States and the Comptroller General

Section 204(e) of IRCA requires that the Secretary consult with States and the Comptroller General in developing reporting requirements for SLIAG. As this final rule does not establish new reporting requirements, but merely eliminates now unnecessary reporting, we determined that prior consultation was not necessary. However, copies of the proposed rule were transmitted to State SLIAG single points of contact and the Comptroller General for comment.

Regulatory Procedures

In accordance with 5 U.S.C. 605(b), the Secretary certifies that this rule does not have a significant adverse economic impact on small business entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291.

Paperwork Reduction Act

This rule imposes no new reporting or recordkeeping requirements subject to Office of Management and Budget clearance.

List of Subjects in 45 CFR Part 402

Administrative cost, Allocation formula, Aliens, Allotment, Education, Grant programs, Immigration, Immigration Report and Control Act, Public assistance, Public health assistance, Reporting and recordkeeping requirements, State Legalization Impact Assistance Grants.

(Catalog of Federal Domestic Assistance Program No. 93.025, State Legalization Impact Assistance Grants)

Dated: March 28, 1991.

Jo Anne B. Barnhart,

Assistant Secretary, Family Support Administration.

Approved: April 12, 1991.

Louis W. Sullivan,

Secretary.

For the reasons set forth in the preamble, 45 CFR part 402 is amended as follows:

PART 402—STATE LEGALIZATION IMPACT ASSISTANCE GRANTS

1. The authority citation for part 402 continues to read as follows:

Authority: 8 U.S.C. 1255a note, as amended.

2. Section 402.1 is revised to read as follows:

§ 402.1 General.

(a) These regulations implement section 204 of Pub. L. 99–603, the Immigration Reform and Control Act of 1986 (IRCA), as amended. This act establishes a temporary program of State Legalization Impact Assistance Grants (SLIAG) for States. The purpose of SLIAG is to lessen the financial impact on State and local governments resulting from the adjustment of immigration status under the Act of certain groups of aliens residing in the States, the District of Columbia, Puerto Rico, the Virgin Islands, and Guam.

(b) Funds appropriated by section 204 may be applied by States with approved applications to certain State and local government costs incurred:

(1) In providing public assistance and public health assistance to eligible legalized aliens,

(2) For making payments to State educational agencies for the purpose of assisting local educational agencies in providing certain educational services to eligible legalized aliens,

(3) To provide public education and outreach to lawful temporary resident aliens concerning the adjustment to lawful permanent resident status and other matters,

(4) To make payments for education and outreach efforts by State agencies regarding unfair discrimination in employment practices based on national origin or citizenship status, and

(5) To administer the funds provided under this Part.

3. Section 402.2 is amended by revising the first two sentences of and adding a sentence to the definition of *SLIAG-related costs,* and by adding definitions of *Employment discrimination education and outreach, Phase II outreach, Program administrative costs, SLIAG administrative costs,* and *SLIAG-reimbursable activity,* to read as follows:

§ 402.2 Definitions.

* * * * *

Employment discrimination education and outreach means education and outreach efforts by State agencies regarding unfair discrimination in employment practices based on national origin or citizenship status.

* * * * *

Phase II outreach means public education and outreach (including the provision of information to individuals) to inform temporary resident aliens under section 210, 210A, 245A of the INA and aliens whose applications for such status are pending with the Immigration and Naturalization Service regarding:

(1) The requirements of sections 210, 210A, and 245A of the INA regarding the adjustment of resident status;

(2) Sources of assistance for such aliens obtaining the adjustment of status described in paragraph (1) of this definition, including educational, informational, and referral services, and the rights and responsibilities of such aliens and aliens lawfully admitted for permanent residence;

(3) The identification of health, employment, and social services; and,

(4) The importance of identifying oneself as a temporary resident alien to service providers.

Program administrative costs means those costs associated with administering public assistance, public health assistance, educational services, Phase II outreach, and employment discrimination education and outreach activities.

* * * * *

SLIAG administrative costs means the direct and indirect costs related to administration of funds provided under this part, including: planning and conferring with local officials, preparing the application, audits, allocation of funds, tracking and recordkeeping, monitoring use of funds, and reporting.

SLIAG-reimbursable activity means programs of public assistance, programs of public health assistance, educational services, employment discrimination education and outreach, Phase II outreach, program administrative costs, and SLIAG administrative costs, as those terms are defined in this part, that are included in a State's application approved pursuant to subpart E of this part.

SLIAG-related costs means expenditures made: To provide public assistance, public health assistance, or educational services, as defined in this part, to eligible legalized aliens; to provide public health assistance to aliens applying on a timely basis to become lawful temporary residents under sections 210, 210A, or 245A of the INA during such time as that alien's application with INS is pending approval; to provide employment discrimination education and outreach, as defined in this part; to provide Phase II outreach, as defined in this part; and for SLIAG administrative costs, as defined in this part. SLIAG-related costs include all allowable expenditures, including program administrative costs determined in accordance with § 402.21(c), regardless of whether those expenditures actually are reimbursed or paid for with funds allotted to the State under this part. SLIAG-related costs for educational services, Phase II outreach, and employment discrimination education and outreach are limited to the amount of payment that can be made under the Act for those activities, as described in § 402.11 (e), (k) and (l), respectively. * * *

* * * * *

4. Section 402.10 is amended by revising paragraphs (a) and (d) and removing and reserving paragraph (c) to read as follows:

§ 402.10 Allowable Use of Funds.

(a) Funds provided under this part for a fiscal year may be used only with respect to SLIAG-related costs incurred in that fiscal year or succeeding fiscal years, subject to § § 402.11 and 402.26(a), for the following activities, as defined in this part:

(1) Public assistance;

(2) Public health assistance;

(3) Educational services;

(4) Employment discrimination education and outreach;

(5) Phase II outreach;

(6) SLIAG administrative costs; and,

(7) Program administrative costs;

* * * * *

(c) [Removed and Reserved]

(d) Except as provided for in § 402.11(n), funds awarded under this part may be used to reimburse or pay SLIAG-related costs incurred prior to the approval of a State's application or amendment to its application, pursuant to subpart E of this part, provided that such reimbursement or payment is consistent with the Act and this part.

5. Section 402.11 is amended by revising paragraphs (a) and (c), revising the last sentence of paragraph (d), revising paragraph (h), adding paragraphs (i), (j), (k), (l), adding and reserving paragraph (m), and adding

paragraphs (n) and (o), to read as follows:

§ 402.11 Limitations on Use of SLIAG Funds.

(a) Funds provided under this part may be used only for SLIAG-reimbursable activities that—

(1) Meet the definitions of § 402.2 of this part; and

(2) Are otherwise consistent with the rules and procedures governing such activities.

* * * * *

(c) The amount of reimbursement or payment may not exceed 100% of SLIAG-related costs, as defined in this part, associated with SLIAG-reimbursable activites.

(d) * * * In the event that a State does not require use of a full 10% in one of the above categories, it must allocate the unused portion equally among the remaining categories listed in this paragraph.

* * * * *

(h) Funds provided under this part shall not be used to reimburse or pay costs inurred by any public or private entity or any individual, in the conduct of a medical examination as required for application for adjustment to lawful temporary resident status under 8 CFR 245a.2(i), 8 CFR 210.2(d), or 8 CFR 210a.6(f).

(i) Funds provided under this part shall not be used for client counselling or any other service which would assume responsibility for the adjustment of status of aliens to that of lawful temporary or permanent residence. This prohibition includes assisting an alien to appeal INS decisions or representation of an alien before any administrative or judicial body.

(j) Funds under this part shall not be used to investigate or prosecute discrimination complaints beyond initial intake and referral, to pay legal fees or other expenses incurred to provide legal counsel to a party alleging discrimination, or to represent such parties before any administrative or judicial body.

(k) A State may use funds to make payments for Phase II outreach activities, including related program administration, from allotments made to it under this part for FY 1989 and succeeding fiscal years. The maximum amount that a State may use for this purpose from a fiscal year's allotment is the greater of 1% of its allotment for that fiscal year or $100,000.

(l) A State may use funds to make payments for employment discrimination education and outreach activities, including related program administration, from allotments made to it under this part for FY 1989 and succeeding fiscal years. The maximum amount that a State may use from a fiscal year's allotment for this purpose is the greater of 1% of the State's allotment for that fiscal year or $100,000.

(m) [Reserved]

(n)(1) Except as provided for in paragraph (n)(2) of this section, a State may use SLIAG funds alloted to it for a fiscal year to reimburse or pay only those SLIAG-related costs for employment discrimination education and outreach activities which occurred after approval by the Department of an application or amendment describing those activities, as required by § 402.41(d).

(2) Costs incurred in FY 1990 prior to approval by the Department of an application or amendment containing the information required by § 402.41(d), but after December 18, 1989, for reproduction and dissemination of public information material certified by the Office of the Special Counsel for Immigration-Related Unfair Employment Practices, Department of Justice (hereafter, "Office of the Special Counsel"), pursuant to paragraph (o) of this section may be reimbursed with funds allotted under this part.

(o)(1) With respect to employment discrimination education and outreach, a State shall not use SLIAG funds to pay for the cost of producing or distributing materials prepared for public dissemination unless the Office of the Special Counsel has certified that those materials meet the criteria in paragraph (o)(2) of this section.

(2) Certification of materials described in paragraph (o)(1) of this section shall consist of a finding by the Office of the Special Counsel that information contained in such materials relating to the discrimination provision of the Act is legally accurate and that those materials include reference to the Office of the Special Counsel as a source of information and referral for complaints of discrimination based on citizenship status or national origin. Information regarding the Office of the Special Counsel shall include its address and telephone number, including the toll-free number and toll-free TDD number for the hearing impaired. The Office of the Special Counsel, in the exercise of discretion, may agree to the deletion of any portion of the information referenced in the previous sentence, in those instances where space limitations in printed materials, or time limitations in electronically recorded materials, make inclusion of all the required information impractical.

6. Section 402.12 is amended by revising paragraph (c) to read as follows:

§ 402.12 Use of SLIAG Funds for Costs Incurred Prior to October 1, 1987.

* * * * *

(c) A State may use funds provided under this part for costs incurred prior to October 1, 1987, but after November 6, 1986, in providing public health assistance to eligible legalized aliens and to applicants for lawful temporary residence under sections 210, 210A and 245A of the INA, in conformity with the provisions of § 402.10(a).

§§ 402.21 and 402.22 [Amended]

7. Section 402.21 is amended by revising the third sentence of paragraph (b), revising paragraph (c)(2), adding paragraphs (c) (4) and (5) as set forth below. Section 402.22 (b) and (c) are redesignated as paragraphs (c)(6)(i) and (c)(6)(ii) of § 402.21 and revised to read as follows:

§ 402.21 Fiscal Control.

* * * * *

(b) * * * States must demonstrate that SLIAG-related costs, as defined in this part, incurred in SLIAG-reimbursable activities, equal or exceed the amount of SLIAG funds expended with respect to costs incurred in those activities. * * *

(c) * * *

(2) For public health assistance, States may establish allowability by accounting for actual expenditures made to or on behalf of identifiable eligible legalized aliens, or applicants for lawful temporary resident status under sections 210, 210A, or 245A of the INA, who qualify for and receive such assistance and/or services, by use of a statistically valid sampling of clients in the public health system of the State or local government, or by using the ratio of eligible legalized aliens in a service population to all members of the relevant service population.

* * * * *

(4) With respect to Phase II outreach, as defined in this part, a State must demonstrate that the costs of activities that provide information directly to specific individuals are attributable only to lawful temporary residents under sections 210, 210A, or 245A of the INA, and applicants for such status whose applications were pending with the Immigration and Naturalization Service at the time information is provided. For Phase II outreach activities that do not involve the provision of information directly to specific individuals, States must demonstrate that such activities

are targeted predominantly to or intended primarily for lawful temporary residents under sections 210, 210A, or 245A of the INA or applicants for such status whose applications are pending with the Immigration and Naturalization Service at the time information is provided. The State must demonstrate that the amount of any fiscal year's allotment used for this purpose did not exceed the amount described in § 402.11(k) and was consistent with the limitations of § 402.11(i).

(5) With respect to employment discrimination education and outreach, as defined in this part, the State must demonstrate that funds were expended only for activities described in the State's approved application pursuant to § 402.41(d) and the limitations of § 402.11 (i), (n), and (o) and that the amount of any fiscal year's allotment used for this purpose did not exceed the amount described in § 402.11(1).

(6)(i) For program administrative costs, as defined in this part, a State may establish allowability by use of the proportion of eligible legalized aliens provided assistance and/or services allowable under this part by a recipient, as defined in this part, relative to all persons provided such assistance and/or services; by use of the proportion of program or service costs actually incurred in providing assistance and/or services allowable under this part by a recipient, relative to all costs of providing the same assistance and/or services allowable under this part by the recipient; or by use of such other basis as will document that administrative costs incurred in providing such assistance and/or services and reimbursed under this part are allowable, allocable to SLIAG, and reasonable.

(ii) Consistent with section 604 of the Emergency Immigrant Education Act, of the amount paid to a State educational agency for educational services, only 1.5 percent may be used for administrative costs incurred by the State educational agency in carrying out its function under this part.

§ 402.22 [Reserved]

8. Section 402.22 is removed and reserved.

9. Section 402.31 is amended by revising paragraph (b) to read as follows:

§ 402.31 Determination of Allocations.

* * * * *

(b) *Calculation of Allocations.* Each time the Department calculates State allocations, it will use the best data then available to the Secretary on the distribution of eligible legalized aliens by State. The Department will determine each State's SLIAG-related costs to be included in the computation of its allocation for a fiscal year by adding to the sum of SLIAG-related costs reported for all previous fiscal years by that State, pursuant to § 402.51(e) (1) and (2), the total amount of estimated SLIAG-related costs included in the State's approved application for that fiscal year, pursuant to § 402.41(c) (1) and (2). In the event that a State has not submitted an approved report for a fiscal year, the Department will include no costs for that fiscal year in its calculation.

10. Section 402.32 is revised to read as follows:

§ 402.32 Determination of State Allotments.

Except as noted below, a State's allotment is the difference between the amount determined under § 402.31(b) of this regulation and the cumulative amount previously allotted to the State. In the event that the amount determined under § 402.31(b) is less than the cumulative amount previously allotted to a State, that State's allotment will be zero. The allotments of the remaining States would be calculated by multiplying the difference between the amount determined under § 402.31(b) of this regulation and the cumulative amount previously allotted to the State by the ratio of the amount of funds available for grants to States to the sum of the differences between the amounts determined under § 402.31(b) and the amounts previously awarded to those States.

11. Section 402.41 is amended by redesignating paragraph (c)(1) as paragraph (c) and revising the second sentence of that paragraph, removing paragraph (c)(2), redesignating paragraph (d)(1) as paragraph (d)(1)(i) and revising it, adding new paragraph (d)(1)(ii), adding a sentence at the end of paragraph (d)(2), and adding a sentence at the end of the third sentence of paragraph (f), and adding the undesignated paragraph at the end of the section as the last sentence of paragraph (b), to read as follows:

§ 402.41 Application Content.

* * * * *

(c) * * * Programs and activities must be identified by the purposes listed in § 402.10(a). * * *

(d) * * *

(1) (i) Descriptions of the programs and activities for which SLIAG-related costs will be incurred; and,

(ii) If a State elects to use its allotment for employment discrimination education and outreach, a description of the State's planned education and outreach activities, including: descriptions of the kinds of government or private agencies or other entities, if any, through which these activities will be conducted; brief descriptions of the targeted audience(s) for these activities; and, preproduction copies or the text of any material intended for distribution to the public to be produced or disseminated with SLIAG funds, if available at the time the application is submitted.

(2) * * * For SLIAG administrative costs, Phase II outreach, and employment discrimination education and outreach, the descriptions must instead include the basis for the estimate of SLIAG-related costs, as defined in this Part.

(f) * * * If the State elects to use SLIAG funds for employment discrimination education and outreach, it must also designate in its application a contact person for this activity, if different from the single point of contact. * * *

12. Section 402.43 is amended by revising paragraph (a) and by removing the first sentence and revising the second sentence of paragraph (b) to read as follows:

§ 402.43 Application Deadline.

(a) An Application from a State for SLIAG funds for any Federal fiscal year must be received by the Department by October 1 of that fiscal year. If a State fails to submit an application by this date, funds which it may otherwise have been eligible to receive shall be distributed among States submitting timely approved applications in accordance with § 402.33 of this Part.

(b) In order to receive funds under this part, a State's application for a fiscal year must be approvable by the Secretary by December 15 of that fiscal year. * * *

13. Section 402.44 is amended by adding paragraph (d) to read as follows:

§ 402.44 Basis for Approval.

* * * * *

(d) (1) The Department will forward to the Office of Special Counsel information provided by a State pursuant to §402.41(d).

(2) The Office of the Special Counsel will review information forwarded to it by the Department pursuant to paragraph (d) (1) of this section to determine whether the activities described therein conflict with or unnecessarily duplicate other employment discrimination education and outreach efforts. Certification to the Department by the Office of the Special

Counsel that the State's submission meets this criterion is a prerequisite for approval by the Department.

14. Section 402.45 is amended by revising paragraph (a), and revising the first sentence of paragraph (b), to read as follows:

§ 402.45 Amendments to applications.

(a) (1) If, during the course of a fiscal year, a State adds a program or activity for which it intends to claim reimbursement or make payment in that fiscal year, it must submit an amendment (containing appropriate information pursuant to § 402.41(c)) to its approved application for that fiscal year prior to the due date for reports required by § 402.51 of this part.

(2) If a State plans to initiate employment discrimination education and outreach activities not described in its application pursuant to § 402.41(d), it must submit an application amendment, which shall be reviewed in accordance with procedures described in § 402.41(d) of this part. The Department's approval of such an amendment is a prerequisite for the initiation of such new activities, except as provided for in § 402.11(n) (2).

(b) Except as provided for in § 402.11(k) and (n), a State may use SLIAG funds received for a fiscal year to reimburse or pay SLIAG related costs for programs or activities described in paragraph (a) of this section retroactive to the date the activity began, but no earlier than the first day of the fiscal year and only to the extent described in § 402.10(d), except that funds received in FY 1992, if any, may be used for costs incurred on or after October 1, 1989. * * *

15. Section 402.51 is amended by designating the first two sentences of paragraph (e) as paragraph (e) (1) and revising the second sentence of that paragraph, designating the third sentence of paragraph (e) as paragraph (e) (2) and revising it, designating the last sentence of paragraph (e) as paragraph (e) (3), and revising it to read as follows:

§ 402.51 Reporting.

* * * * *

(e) (1) * * * The report must provide, for each program or activity identified in the State's application, the amount of SLIAG-related costs, as defined in this part, incurred in that program or activity, identified as public assistance, public health assistance, educational services, Phase II outreach, employment discrimination education and outreach, and SLIAG administrative costs, as defined in this part, the amount of SLIAG funds obligated for that program or activity, and the time period for which the funds were obligated.

(2) The report must contain a description of the methodology used to determine actual SLIAG-related costs, if different from the description provided in the State's application pursuant to § 402.41 (d) (2) of this part.

(3) Federal and State costs of providing assistance under a State plan approved under title XIX of the Social Security Act to aliens whose status has been adjusted under sections 245A and 210A of the INA by virtue of the exceptions to the bar to Medicaid eligibility (sections 245A (h) (2) and (3) of the INA) must be shown separately in States' reports.

[FR Doc. 91-10833 Filed 5-6-91; 8:45 am]
BILLING CODE 4150-04-M

federal register

Tuesday
May 7, 1991

Part VII

The President

Proclamation 6287—National Tourism Week, 1991

Legislative Calendar

Federal Register
Vol. 56, No. 88
Tuesday, May 7, 1991

Presidential Documents

Title 3—

The President

Proclamation 6287 of May 3, 1991

National Tourism Week, 1991

By the President of the United States of America

A Proclamation

From coast to coast the United States is marked by an abundance of beautiful public parks and fascinating historic landmarks, as well as a variety of recreational and cultural attractions. These features, coupled with the hospitality of our people and the high quality of American travel services and accommodations, make the United States the world's number one tourist destination.

Tourism and business travel not only provide rewarding educational opportunities for individuals but also contribute to the Nation's economic prosperity. The travel and tourism industry is America's second largest private employer, directly or indirectly supporting millions of jobs across the country. According to the United States Department of Commerce, the industry is also our largest export earner. With nearly $350 billion spent annually by all travellers and tourists in the United States, travel and tourism account for about 6.5 percent of our gross national product.

While travel and tourism enrich virtually every community in which they thrive, they are especially important to rural America. More and more, Americans and international visitors are travelling to rural America, not only to explore our forests, parks, and recreation areas, but also to enjoy a respite from the hustle and bustle of urban life. Businesses are beginning to discover the many advantages of holding retreats and seminars in the country. All of this activity brings thousands of dollars into rural economies, benefitting small businesses and entire communities alike.

Both in rural areas and in our cities, the revenue generated by travel and tourism helps to spur needed development—including the building of schools, where children can learn about our Nation's past and acquire the knowledge and skills needed to enjoy a bright future.

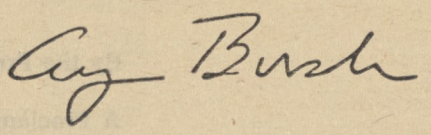
Students can benefit significantly from travel in the United States, as can everyone who recognizes it as a wonderful learning opportunity. Indeed, the many historic and cultural landmarks preserved across America help to tell our Nation's story. Monuments and museums, battlefields and nature trails—all trace the rich history of America's native peoples and the immigrants who helped to make this land the home of freedom and opportunity as well. Moreover, in today's shops and markets, in our courthouses and legislative halls, visitors can see American free enterprise and democracy at work. This year is a most exciting time to rediscover America, since we celebrate the 200th year of our Bill of Rights.

This week, let us honor all those Americans who work in the travel and tourism industry—particularly those who are striving to promote tourism in rural areas and to increase America's share of the world tourism market. Each of us benefits, in so many ways, from their year-round efforts.

The Congress, by Senate Joint Resolution 102, has designated the week beginning on the first Sunday in May as "National Tourism Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week of May 5 through May 11, 1991, as National Tourism Week. I call upon the people of the United States to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of May, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.



[FR Doc. 91-11019
Filed 5-6-91; 10:24 am]
Billing code 3195-01-M

Reader Aids

Federal Register

Vol. 56, No. 88

Tuesday, May 7, 1991

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, MAY

CFR PARTS AFFECTED DURING MAY

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.

24 CFR

888..... 19932–20078

Proposed Rules:

50..... 20262
219..... 20262
221..... 20262
241..... 20262
248..... 20262

26 CFR

Proposed Rules:

1..... 19933, 21112
301..... 19947

Proposed Rules:

1..... 20161, 20567
301..... 19963

27 CFR

Proposed Rules:

9..... 19965

28 CFR

544..... 20088
552..... 20511, 21036

30 CFR

56..... 19948
57..... 19948
216..... 20126
250..... 20127
913..... 20535

Proposed Rules:

904..... 20165
906..... 20167
935..... 21113

31 CFR

500..... 20349
550..... 20540

32 CFR

58a..... 21077
367..... 21077
367a..... 21078

33 CFR

117..... 20350
149..... 21081

Proposed Rules:

117..... 21114
100..... 20393

34 CFR

445..... 20308

38 CFR

17..... 20351
21..... 20129

Proposed Rules:

3..... 20394
4..... 20168–20171, 20395

39 CFR

20..... 19949
233..... 20361

40 CFR

6..... 20541
52..... 20137–20140
60..... 20497
80..... 20546
180..... 19950
228..... 20548
250..... 20548
261..... 19951
271..... 21082

Proposed Rules:

85..... 20568
799..... 21115

43 CFR

Public Land Orders:

205 (Revoked in part by 6855)..... 19952
6844..... 20066
6855..... 19952
6856..... 20550
6857..... 20551

Proposed Rules:

3160..... 20568

45 CFR

402..... 21238

46 CFR

Proposed Rules:

32..... 21116
580..... 19952
581..... 19952
583..... 19952
309..... 21118

47 CFR

73..... 19953, 20362
87..... 21083

Proposed Rules:

Ch. I..... 20396
22..... 19968
73..... 19968

48 CFR

Proposed Rules:

15..... 20506
17..... 20506
31..... 20506
47..... 20573
52..... 20506, 20573
215..... 21121
219..... 20318
237..... 21121
252..... 21121
1631..... 20574
1649..... 20574
1652..... 20574

49 CFR

531..... 20362
571..... 20363

Proposed Rules:

245..... 21216
571..... 20171, 20396–20408

50 CFR

17 (3 documents)..... 21084–21091
216..... 21096
380..... 21097
663..... 20142
672..... 20144

Proposed Rules:

17..... 21123
215..... 19970
222..... 20410
Ch. VI..... 20410
630..... 20183

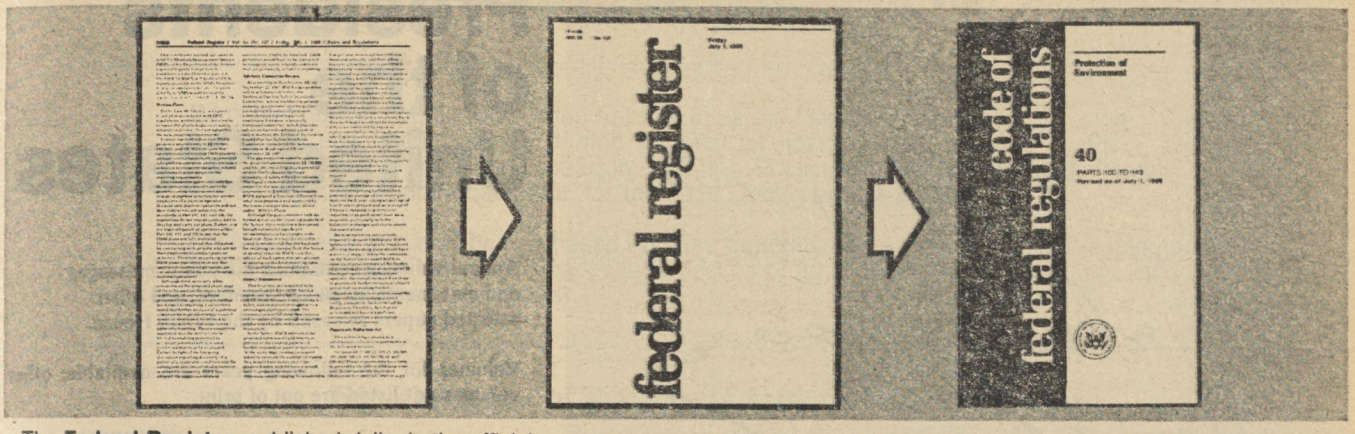
LIST OF PUBLIC LAWS

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 May 1, 1991

The Federal Register

Regulations appear as agency documents which are published daily in the **Federal Register** and codified annually in the **Code of Federal Regulations**



The **Federal Register,** published daily, is the official publication for notifying the public of proposed and final regulations. It is the tool for you to use to participate in the rulemaking process by commenting on the proposed regulations. And it keeps you up to date on the Federal regulations currently in effect.

Mailed monthly as part of a **Federal Register** subscription are: the LSA (List of CFR Sections Affected) which leads users of the **Code of Federal Regulations** to amendatory actions published in the daily **Federal Register;** and the cumulative **Federal Register Index.**

The **Code of Federal Regulations** (CFR) comprising approximately 196 volumes contains the annual codification of the final regulations printed in the **Federal Register.** Each of the 50 titles is updated annually.

Individual copies are separately priced. A price list of current **CFR** volumes appears both in the **Federal Register** each Monday and the monthly **LSA** (List of **CFR** Sections Affected). Price inquiries may be made to the Superintendent of Documents, or the Office of the Federal Register.

Superintendent of Documents Subscription Order Form

Order Processing Code:
***6463**

Charge your order. It's easy!

MasterCard VISA

Charge orders may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday–Friday (except holidays)

☐ **YES,** please send me the following indicated subscriptions:

- **Federal Register**
  - **Paper:**
    ____$340 for one year
    ____$170 for six-months
  - **24 x Microfiche Format:**
    ____$195 for one year
    ____$97.50 for six-months
  - **Magnetic tape:**
    ____$37,500 for one year
    ____$18,750 for six-months

- **Code of Federal Regulations**
  - **Paper**
    ____$620 for one year
  - **24 x Microfiche Format:**
    ____$188 for one year
  - **Magnetic tape:**
    ____$21,750 for one year

1. The total cost of my order is $_____. All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____)
(Daytime phone including area code)

3. Please choose method of payment:

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

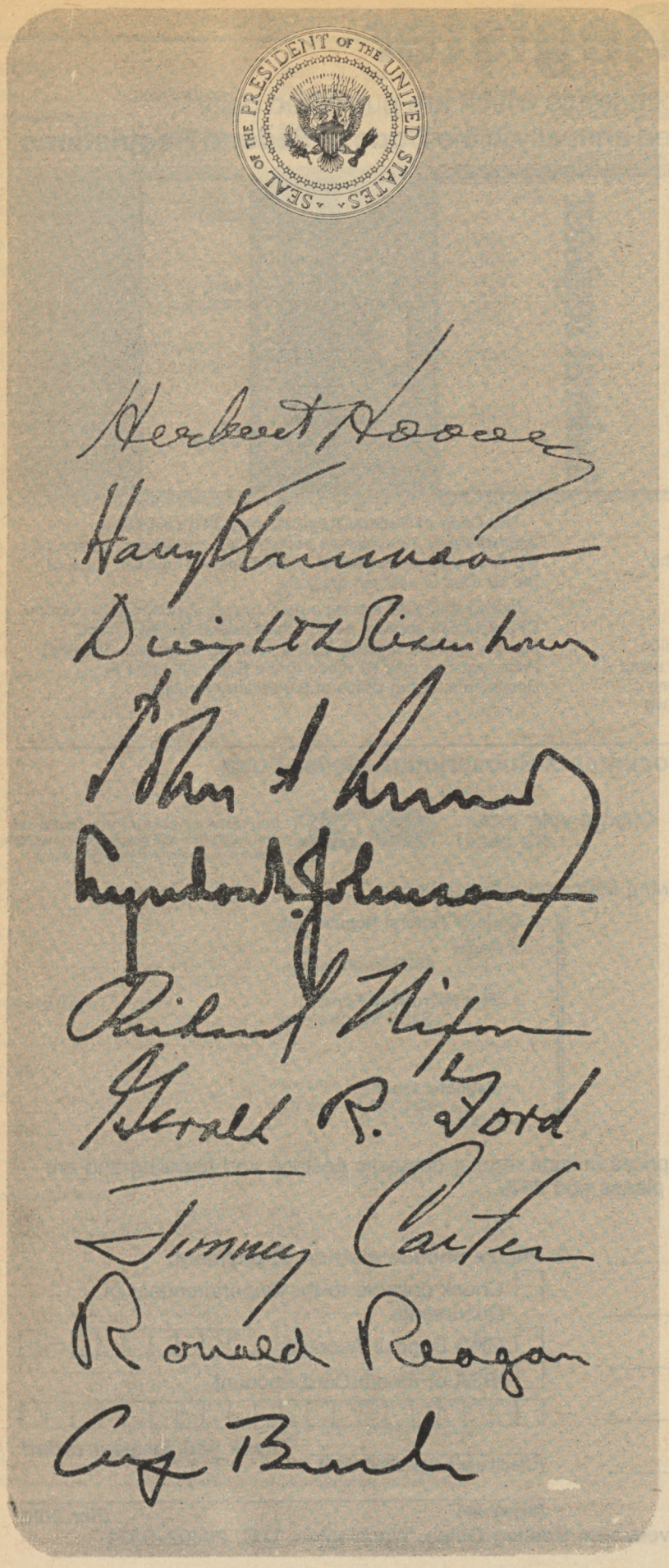
_____
(Credit card expiration date)

Thank you for your order!

_____
(Signature)

(Rev. 2/90)

Mail To: Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9371



Public Papers of the Presidents of the United States

Annual volumes containing the public messages and statements, news conferences, and other selected papers released by the White House.

Volumes for the following years are available; other volumes not listed are out of print.

Jimmy Carter

1980–81 (Book II) $22.00

1980–81 (Book III) $24.00

Ronald Reagan

1981 ..... $25.00

1982 (Book II) $25.00

1983 (Book I) $31.00

1983 (Book II) $32.00

1984 (Book I) $36.00

1984 (Book II) $36.00

1985 (Book I) $34.00

1985 (Book II) $30.00

1986 (Book I) $37.00

1986 (Book II) $35.00

1987 (Book I) $33.00

1987 (Book II) $35.00

1988 (Book I) $39.00

George Bush

1989 (Book I) $38.00

1989 (Book II) $40.00

Published by the Office of the Federal Register, National Archives and Records Administration

Order from Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402-9325.

Public Laws

102d Congress, 1st Session, 1991

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 102d Congress, 1st Session, 1991.

(Individual laws also may be purchased from the Superintendent of Documents, Washington, DC 20402-9328. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws and prices).

Superintendent of Documents Subscriptions Order Form

Order Processing Code:
***6216**

Charge your order. It's easy!

To fax your orders and inquiries–(202) 275-0019

☐ **YES,** please send me ____ subscriptions to **PUBLIC LAWS** for the 102d Congress, 1st Session, 1991 for $119 per subscription.

1. The total cost of my order is $_____. All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____) _____
(Daytime phone including area code)

3. Please choose method of payment:

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐☐-☐

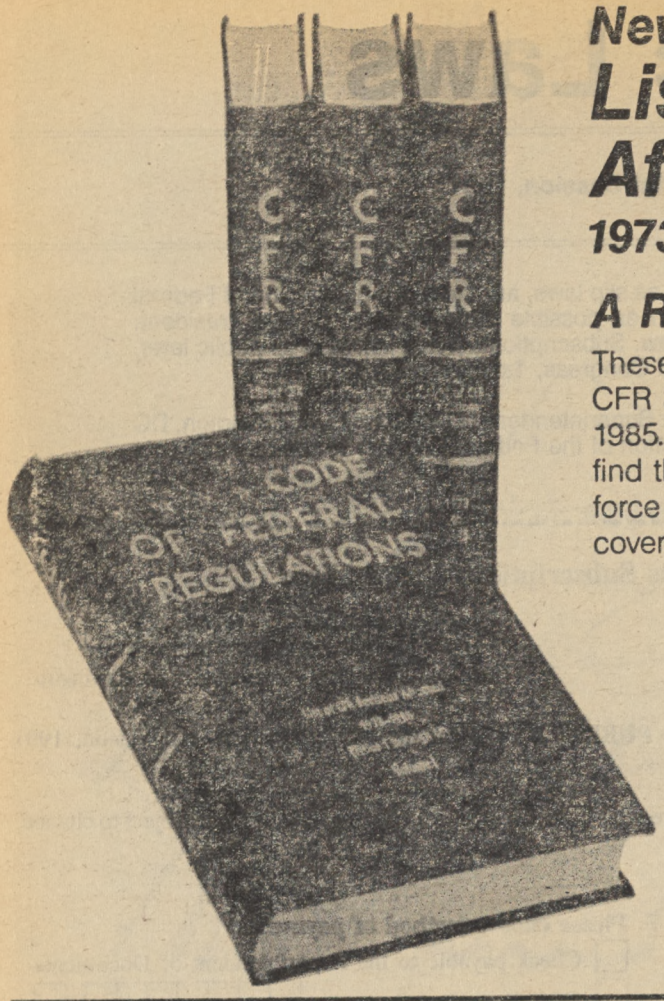
☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____ ***Thank you for your order!***
(Credit card expiration date)

_____
(Signature) 1/91

4. Mail To: Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9371



New Publication
List of CFR Sections Affected
1973-1985
A Research Guide

These four volumes contain a compilation of the "List of CFR Sections Affected (LSA)" for the years 1973 through 1985. Reference to these tables will enable the user to find the precise text of CFR provisions which were in force and effect on any given date during the period covered.

Volume I (Titles 1 thru 16).....$27.00
Stock Number 069-000-00029-1

Volume II (Titles 17 thru 27).....$25.00
Stock Number 069-000-00030-4

Volume III (Titles 28 thru 41).....$28.00
Stock Number 069-000-00031-2

Volume IV (Titles 42 thru 50).....$25.00
Stock Number 069-000-00032-1

Superintendent of Documents **Publications** Order Form

Order Processing Code:
***6962**

Charge your order. It's easy!

MasterCard VISA

To fax your orders and inquiries–(202) 275-2529

Please Type or Print (Form is aligned for typewriter use.)
Prices include regular domestic postage and handling and are good through 7/91. After this date, please call Order and Information Desk at 202-783-3238 to verify prices. International customers please add 25%.

Qty.	Stock Number	Title	Price Each	Total Price
1	021-602-00001-9	Catalog–Bestselling Government Books	**FREE**	**FREE**
			Total for Publications	

(Company or personal name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

( )
(Daytime phone including area code)

Mail To: Superintendent of Documents
Government Printing Office
Washington, DC 20402-9325

Please Choose Method of Payment:

☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐☐–☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

(Credit card expiration date)

Thank you for your order!

(Signature)

Rev 1-91

Microfiche Editions Available...

Federal Register

The Federal Register is published daily in 24x microfiche format and mailed to subscribers the following day via first class mail. As part of a microfiche Federal Register subscription, the LSA (List of CFR Sections Affected) and the Cumulative Federal Register Index are mailed monthly.

Code of Federal Regulations

The Code of Federal Regulations, comprising approximately 196 volumes and revised at least once a year on a quarterly basis, is published in 24x microfiche format and the current year's volumes are mailed to subscribers as issued.

Microfiche Subscription Prices:

Federal Register:

One year: $195
Six months: $97.50

Code of Federal Regulations:

Current year (as issued): $188

Superintendent of Documents Subscriptions Order Form

Order Processing Code:
*** 6462**

Charge your order. It's easy! MasterCard VISA

Charge orders may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday–Friday (except holidays)

☐ **YES,** please send me the following indicated subscriptions:

24x MICROFICHE FORMAT:

____ **Federal Register:** ____ One year: $195 ____ Six months: $97.50

____ **Code of Federal Regulations:** ____ Current year: $188

1. The total cost of my order is $_____ . All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____) _____
(Daytime phone including area code)

3. Please choose method of payment:

☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐-☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____ ***Thank you for your order!***
(Credit card expiration date)

_____
(Signature)

4. Mail To: Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9371 (Rev. 2/90)