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

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1421

Grain and Similarly Handled Commodities

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule; correction.

SUMMARY: This action corrects two provisions which were erronerously stated in the final rule published on May 2, 1991 (56 FR 20101). Generally, that final rule amended the manner in which producers may participate in the Commodity Credit Corporation (CCC) price support programs for wheat, feed grains, rice, oilseeds (including soybeans), and farm-stored peanuts and the terms and conditions of CCC price support programs for wheat, feed grains, rice, oilseeds, and farm-stored peanuts, and specified the CCC price support loan eligibility quality requirements for the 1991 and subsequent year's crops.

EFFECTIVE DATE: June 19, 1991.

FOR FURTHER INFORMATION CONTACT: Steve P. Gill, Agricultural Marketing Specialist, Commodity Operations Division, Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013. Telephone (202) 447–6500.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512–1 and it has been determined to be "non-major" because these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the federal assistance program, as found in the catalogue or Federal Domestic Assistance, to which this final rule applies is Commodity Loans and Purchases, 10.051.

It has been determined that the Regulatory Flexibility Act is not applicable because CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rule making with respect to the subject matter of these determinations.

It has been determined by environmental evaluations for the wheat, feed grain, rice, oilseed, and farm-stored peanuts CCC price support programs that these programs will have no significant impact on the quality of the human environment.

These programs are not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, and 48 FR 29115 (June 24, 1983).

Public reporting burden for the information collections contained in this final rule with respect price support programs for wheat, feed grain, rice, oilseeds, and farm-stored peanuts is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The information collection has previously been cleared by the Office of Management and Budget, assigned number 0560–0087.

Background

A final rule was published in the Federal Register on May 2, 1991, at 56 FR 20101 which amended regulations found at 7 CFR part 1421 with respect to the price support program for wheat, feed grain, rice, oilseeds, and farm-stored peanuts which is conducted by CCC. In amending the provisions which govern the CCC price support program, CCC erronerously stated 20/64 instead of 14/64 in setting forth the sieve size requirement for sunflower seed used for a purpose other than to extract oil and omitted the word "not" in stating how the adjusted world price (AWP) for canola will be determined. Also, the sieve size requirement is being revised for clarity. Accordingly, this final rule amends 7 CFR part 1421 to provide that (1) sunflower seed used for a purpose other than to extract oil must pass over a 14/64" round hole screen and (2) if major f.o.b. export market price quotations for canola are not available for one or more days in the 30-day period ending the Friday prior to announcement, the available quotations during the period will be used.

List of Subjects in 7 CFR Part 1421

Grains, Loan programs/agriculture, Price support programs, Warehouses.

Correction to Final Rule

Accordingly, 7 CFR part 1421 is amended as follows:

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

1. The authority citation for 7 CFR part 1421 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, 1441z, 1444f–1, 1445b–3a, 1445c–3, 1445e, and 1446f; 15 U.S.C. 714b and 714c.

2. Section 1421.18 is amended by revising paragraph (b)(15)(ii)(A) to read as follows:

§ 1421.18 Warehouse-stored loans.

* * * * *

(b) * * *

(15) * * *

(ii) * * *

(A) The sunflower seed must pass over a 14/64" round hole screen.

* * * * *

3. Section 1421.25 is amended by revising the second sentence of paragraph (c)(5)(i) to read as follows:

§ 1421.25 Market price repayments.

* * * * *

(c) * * *

(5) * * *

(i) * * * If price quotations are not available for one or more days in the 30-day period ending the Friday prior to announcement, the available quotations during the period will be used. * * *

* * * * *

Signed at Washington, DC, on June 13, 1991.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 91–14614 Filed 6–18–91; 8:45 am]

BILLING CODE 3410–05–M

7 CFR Part 1435

Sugar Assessments

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule sets forth the regulations necessary for the collection of the nonrefundable marketing assessment imposed on sugar processed from domestically grown sugar beets and sugarcane as required by amendments made by the Omnibus Budget Reconciliation Act of 1990 (the "Reconciliation Act") to the Agricultural Act of 1949 (the "1949 Act").

DATES: Effective date: June 19, 1991.

Comments must be received on or before July 19, 1991 in order to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim rule. Comments should be mailed or delivered to Bruce R. Weber, Director, Commodity Analysis Division, Agricultural Stabilization and Conservation Service, room 3741, South Agriculture Building, U.S. Department of Agriculture, Washington, DC 20250. Comments received may also be inspected at room 3741 beween 9 a.m. and 4:30 pm., Monday through Friday except holidays.

FOR FURTHER INFORMATION CONTACT: Matt Smargiasso, Financial Management Division, Agricultural Stabilization and Conservation Service; telephone: (202) 382–0011.

SUPPLEMENTARY INFORMATION: This interim rule has been reviewed under United States Department of Agriculture (USDA) procedures implementing Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major". It has been determined that the provisions of this interim rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete in domestic or export markets.

The Executive Vice President, Commodity Credit Corporation (CCC) certifies that this interim rule will not have a significant economic impact on a substantial number of small entities. Consequently, a regulatory flexibility analysis is not required under the provisions of the Regulatory Flexibility Act.

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. "Therefore, an Environmental Assessment and an Environmental Impact Statement are not necessary for this interim rule.

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this interim rule applies are: Commodity Loan Purchases; 10.051.

This interim rule requires an information collection form CCC–80, see Attachment 1, which is subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35). ASCS has requested OMB to approve the information collection under expedited review before this rule is final. The public reporting burden for these collections of information is estimated to vary from 60 to 120 minutes per response, with an average of 90 minutes per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The program covered by this interim rule is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

The provisions of this rule are effective upon publication in the **Federal Register** since the Reconciliation Act requires the imposition of assessments on the 1991 crops of raw cane sugar and beet sugar which will soon be processed. However, comments are requested and will be taken into consideration in developing the final rule.

Statutory Background

Section 1105 of the Reconciliation Act amended section 206 of the 1949 Act to provide that for the 1991 through 1995 crops of sugarcane and sugar beets, the first processor shall remit to CCC a nonrefundable marketing assessment in an amount equal to .18 cents per pound of raw cane sugar and .193 cents per pound of beet sugar, respectively. As amended, section 206 of the 1949 Act provides for the imposition of penalties if any person fails to: Collect or remit such funds; or comply with the record keeping requirements which are necessary to ensure that such collections or remittances are made. Generally, the interim rule provides as follows:

1. *Area of coverage.* The marketing assessments apply to all first processors of domestically grown sugar beets and sugarcane operating in the 50 United States, the several territories, the District of Columbia, and Puerto Rico.

2. *Marketing Assessment Payable.* The marketing assessment shall be payable on beet sugar and raw cane sugar or an alternative sugar product processed from domestically grown 1991–1995 crops of sugar beets and sugarcane. "Domestically grown" refers to sugar beets and sugarcane grown in the areas identified in the previous paragraph.

3. *Time for Remittance.* Remittances will be due by the end of the month following the month in which the sugar beets or sugarcane were processed after June 30, 1991 until July 1, 1996.

List of Subjects in 7 CFR Part 1435

Loan programs/agriculture, Price support programs, Reporting and recordkeeping requirements, Sugar.

PART 1435— SUGAR

1. The authority citation for 7 CFR part 1435 is revised to read as follows:

Authority: 7 U.S.C. 1421, 1423, 144bg; 15 U.S.C. 714b and 714c.

2. Subpart—Regulations Governing the Protection of Sugar Producers (§§ 1435.200–1435.206) is revised to read as follows:

Subpart—Assessments

Sec.

1435.200 General statement.
1435.201 Definitions.
1435.202 Amount of the marketing assessment.
1435.203 Remittance.
1435.204 Penalty.
1435.205 Maintenance and inspection of records.
1435.206 Refunds.

Subpart—Assessments

§ 1435.200 General statement.

(a) This subpart sets forth the terms and conditions for the payment to the Commodity Credit Corporation of marketing assessments for the 1991

through 1995 crops of sugar beets and sugarcane.

(b) The marketing assessment applies to:

(1) All raw cane sugar or alternative sugar products processed from domestically produced sugarcane during the 1991 through 1995 crop years; and

(2) All beet sugar or alternative products processed from domestically produced sugar beets during the 1991 through 1995 crop years.

(c) All first processors of sugar beets and sugarcane are responsible to remit the marketing assessment. The marketing assessment shall be due and payable to the Commodity Credit Corporation by the last day of the calendar month following the month in which the sugarcane and sugar beets were processed.

§ 1435.201 Definitions.

Alternative products means sweeteners derived from sugar beets and sugarcane that CCC determines may be computed to a beet sugar or raw cane sugar equivalent for purposes of determming an assessment due CCC. Examples include, but are not limited to, liquid sucrose and cane syrup. Alternative products will be converted by weight, in accordance with the formula set forth in this part which is used to administer the CCC sugar price support loan program, in order to determine the assessment due CCC.

Beet sugar means a product derived from processing sugar beets.

First Processor means a person who commercially processes sugar beets and sugarcane into beet sugar, raw cane sugar, alternative products such as, but not limited to, liquid sucrose, cane syrup, molasses, or other products used as sweeteners.

Intermediate products means a compound such as a sucrose syrup that can be stored until being further processed into sugar or until used in its alternative form. The assessment is payable after the intermediate product is converted to beet sugar, raw cane sugar, or used in its alternative form, rather than when the intermediate product is processed.

Raw cane sugar means a product derived from processing sugarcane

§ 1435.202 Amount of the marketing assessment.

(a) First processors shall prepare a form CCC–80 each month that shows the quantity of:

(1) Beet sugar processed;

(2) Raw cane sugar processed;

(3) Alternative products processed;

(4) And intermediate products processed during the previous calendar month.

(b) The amount of the beet sugar marketing assessment to be remitted shall be the sum determined by multiplying the number of pounds, or in the case of alternative products equivalent pounds, of beet sugar processed from domestically produced sugar beets in a calendar month by .193 cents per pound. The amount of such pounds shall be specified on form CCC–80.

(c) The amount of the marketing assessment on raw cane sugar to be remitted to CCC shall be the sum determined by multiplying the number of pounds of raw cane sugar, or in the case of alternative products equivalent pounds, processed from domestically grown sugarcane in a calendar month by .18 cents per pound. The amount of such pounds shall be specified on form CCC–80.

§ 1435.203 Remittance.

Marketing assessments shall be remitted on a monthly basis and shall be due and payable to the CCC by the last day of the month following the month in which the sugar beets or sugarcane were processed. Remittances not received by the last day of the calendar month following the month the sugar beets or sugarcane were processed will be considered late and the processor shall be assessed a penalty in accordance with § 1435.204. Sugar processors shall send the remittance as specified by CCC.

§ 1435.204 Penalty.

A penalty equal to 100 percent of the price support loan rate shall be assessed on all assessment amounts a processor fails to remit to CCC. A penalty equal to 100 percent of the price support loan rate shall be assessed on any deficiencies in assessments payable to CCC, as determined by CCC, due to the processor failing to maintain adequate documentation to support the payment of the marketing assessment. In addition to the penalty, interest on unpaid assessments or deficiencies in assessments paid shall be collected from the date the marketing assessment was due CCC at the rate specified in part 1403 of this chapter beginning on the first day of the month after the payment is due in accordance with § 1435.203 and such interest shall continue to accrue until such amount is paid. Interest shall be charged for amounts that are not received by the required date; however if the payment is received within 30 days, no penalty shall apply.

§ 1435.205 Maintenance and inspection of records.

Representatives of CCC shall have the right to have access to the premises of the processor in order to inspect, examine, and make copies of the books, records, accounts, and other data as are deemed necessary by CCC or CCC's agents to verify compliance with the requirements of this subpart. Such books, records, accounts, and other written data shall be retained by the processor for not less than three years from the date the remittance is made to CCC.

§ 1435.206 Refunds.

Marketing assessments are nonrefundable. However, upon presentation of acceptable evidence to the Controller, CCC, as determined by CCC, adjustments in an assessment may be made by CCC to reflect the actual processing of raw cane sugar or beet sugar by the processor.

Note: The following Attachment 1 will not appear in the Code of Federal Regulations.

Signed at Washington, DC June 13, 1991 by:

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

BILLING CODE 3410-05-M

Attachment 1

Form Approved - OMB No. 0560-XXXX

CCC-80
(PROPOSAL 1)

U.S. DEPARTMENT OF AGRICULTURE
Commodity Credit Corporation

1. PRODUCTION PERIOD

A. MONTH	B. YEAR

SUGAR PROCESSOR REPORT OF MONTHLY PRODUCTION TO DETERMINE ASSESSMENT DUE COMMODITY CREDIT CORPORATION (CCC)

NOTE: *The following statements are made in accordance with the Privacy Act of 1974 (5 USC 552a). This report is authorized by 7 CFR Part 1435, this information is necessary for the collection of the nonrefundable marketing assessment imposed on sugar processed from domestically grown sugar beets and sugarcane as required by amendments made by the Omnibus Budget Reconciliation Act of 1990 (the "Reconciliation Act") to the the Agricultural Act of 1949. Furnishing the data is required; however, without it a penalty equal to 100 percent of the loan rate shall be assessed on any deficiencies in assessments payable to CCC, as determined by CCC, due to the processor failing to maintain adequate documentation to support the payment of the marketing assessment. This information may be furnished to any agency responsible for enforcing the provisions of the Act. Public reporting burden for this collection of information is estimated to average 90 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, D.C. 20250, and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0560-XXXX), Washington, D.C. 20503. RETURN THIS COMPLETED FORM TO YOUR*

2. NAME AND ADDRESS OF PROCESSOR	TELEPHONE NO. (area code)	RETURN TO:

SECTION A - ASSESSMENT OF BEET AND RAW SUGAR

	RAW CANE SUGAR	RAW BEET SUGAR
3. Pounds of Raw Sugar or Beet Sugar	lbs.	lbs.
4. Pounds of Alternative Product *(Please specify)*		
		lbs.
5. Total Pounds Assessed *(Item 3 + Item 4)*		lbs.
6. Pounds of Intermediate Product		lbs.
7. Assessment Due CCC	$	

8. USE THIS SPACE FOR CALCULATIONS

DRAFT COPY

SECTION B - CERTIFICATION

I hereby certify that the above information is true and correct to the best of my knowledge and belief.

SIGNATURE OF RESPONSIBLE OFFICIAL	TITLE	DATE

NOTE: Definitions of raw cane sugar, beet sugar, alternative product, and intermediate product are found in 7 CFR Part 1435.

This program or activity will be conducted on a nondiscriminatory basis without regard to race, color, religion, national origin, age, sex, marital status, or handicap.

PROCESSOR'S COPY

[FR Doc. 91-14470 Filed 6-18-91; 8:45 am]
BILLING CODE 3410-05-C

7 CFR Part 1494

Export Bonus Programs

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule with request for comments; suspension of subpart D.

SUMMARY: The Commodity Credit Corporation (CCC) is suspending the regulations at title 7, chapter XIV, part 1494, subpart D, Dairy Export Incentive Program Operations, which were published in the Federal Register on June 7, 1991 (56 FR 26323–26325). This suspension of subpart D will allow CCC time to re-qualify exporters for program participation before it implements the new program operations regulations.

EFFECTIVE DATE: Subpart D, published at 56 FR 26323–36325, dated June 7, 1991, is suspended until July 3, 1991.

FOR FURTHER INFORMATION CONTACT: William Hawkins at (202) 245–1635.

SUPPLEMENTARY INFORMATION: On June 7, 1991, CCC published an interim rule with request for comments in the Federal Register. This interim rule established in the form of regulations the criteria considered in evaluating and approving proposals for country and commodity initiatives under the Export Enhancement Program (EEP) and the Dairy Export Incentive Program (DEIP). The criteria for the EEP and the DEIP are found in subparts A and C, respectively, of 7 CFR Part 1494. This interim rule also established program operations regulations for the DEIP in subpart D. Program operations regulations for the EEP were already codified at subpart B.

The effective date for the interim rule was shown as the date of publication, June 7, 1991. This will remain the effective date for subparts A and C. However, CCC must re-qualify exporters for program participation before the program operations provisions in subpart D are implemented. In addition, subpart D is based upon subpart B, which was published in the Federal Register as a final rule on June 3, 1991 (56 FR 25005) but which will not become effective until July 3, 1991.

For the reasons stated above, title 7, chapter XIV, part 1494, subpart D, published at 56 FR 26323–26325, dated June 7, 1991, is suspended until July 3, 1991.

Signed this 13th day of June, 1991 at Washington, DC.

F. Paul Dickerson,

General Sales Manager and Vice President, Commodity Credit Corporation.

[FR Doc. 91–14615 Filed 6–18–91; 8:45 am]

BILLING CODE 3410–10–M

Farmers Home Administration

7 CFR Parts 1930, 1948, 1951, and 1965

Processing Multiple Family Housing Payments

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) is amending its regulations to reflect changes in the internal processing of collections for Multiple Family Housing loans. Prior to this change, project payments were converted to a paper based form and mailed to a central point for data conversion. This caused a delay of 4 to 15 days before the payment was processed to the account, often causing current accounts to appear delinquent on reports and in statements mailed to borrowers. The intended effect is to allow payments to be credited to the account overnight, thus assuring accurate reporting and statements.

EFFECTIVE DATE: June 19, 1991.

FOR FURTHER INFORMATION CONTACT: Jeanine Johnson, Senior Loan Specialist, Farmers Home Administration, U.S. Department of Agriculture, room 5328, South Agriculture Building, Washington, DC 20250, Telephone (202) 382–9729.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and, since this action has no impact on FmHA borrowers or other members of the public, it has been determined to be exempt from those requirements because it involves only internal agency management. It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking since it involves internal agency management and publication for comment is unnecessary.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, Environmental Program. It is the determination of FmHA that this action does not constitute a major Federal Action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

For reasons set forth in the final rule related to Notice 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), this activity is related to the following programs that are subject to intergovernmental consultations with State and local officials:

10.405—Farm Labor Housing Loan and Grants
10.411—Rural Housing Site Loans (Section 523 and 524 Site Loans)
10.415—Rural Rental Housing Loans
10.427—Rural Rental Assistance Payment (Rental Assistance)

List of Subjects

7 CFR Part 1930

Accounting, Administrative practice and procedure, Grant programs—Housing and community development, Loan programs—Housing and community development, Low and moderate income housing—Rental, Reporting requirements.

7 CFR Part 1948

Business and industry, Coal, Community development, Community facilities, Energy, Grant programs—Housing and community development, Housing, Nuclear energy, Planning, Rural areas, and Transportation.

7 CFR Part 1951

Accounting, Credit, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing loans—Servicing, Mortgages, Collection of loan payments and depositing payment through the Concentration Banking System (CBS), Financial Institutions.

7 CFR Part 1965

Administrative practice and procedure, Low and moderate income housing—Rental, Mortgages.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1930—GENERAL

1. The authority citation for part 1930 is amended to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70.

Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

2. Exhibit E is amended by removing VII D and revising paragraphs X.A.2.a.(3), X.A.2.b and X.B.1. to read as follows:

Exhibit E of Subpart C—Rental Assistance Program

X. * * *
A. * * *
2. * * *
a. * * *

(3) Enter the payment data via field office terminals as required in Exhibit A to subpart K of part 1951 (available in any FmHA office).

b. The District Director should verify the accuracy of the borrower's servicing address shown on the Finance Office (FO) record. When the address shown is incorrect, corrections must be made on Automated Multi-Housing Accounting System (AMAS) Screen M5A "Record Borrower/Project Data" via a field computer terminal.

B. * * *

1. As part of the servicing plan, the District Director may agree to releasing a portion of the monthly RA for project operations.

* * * * *

3. Exhibit E is further amended in the introductory text of paragraph XIV A by revising the first sentence and removing the second sentence and by revising paragraphs XV.A.1.b., XV.A.1.c. and XV.A.1.d. to read as follows:

XIV. * * *

A. When a project's obligated funds are fully disbursed under any given RA agreement number, RA will be automatically terminated by the Finance Office and no further RA requests will process against that RA agreement number. * * *

* * * * *

XV. * * *
A. * * *
1. * * *

b. The District Director will notify the borrower in writing.

c. With a suspend code on the project record, entered by the State Director through the AMAS M5A screen, the Finance Office will suspend all RA payments to the affected project.

d. The State Director may reinstate the RA to the same borrower in the same project, by removing the suspend code from the M5A screen through a field office terminal.

* * * * *

4. Exhibit H is amended by revising the introductory text of paragraph IX. and paragraph IX. A. 2. to read as follows:

Exhibit H of Subpart C—Interest Credits on Insured RRH and RCH Loans

IX. *Loan Payments:* With each payment made, the borrower will complete Form FmHA 1944–29. The FmHA representative will process the payment as required in subparts B and K of part 1951 of this chapter.

A. * * *

2. When a payment is made for any month that involves a rental surcharge, Form FmHA 1944–29 will be completed with the amount of the surcharge being inserted in the spaces provided. This form will be completed and the amount reported as a charge on the project account regardless of whether the surcharge is actually collected by the borrower.

* * * * *

PART 1948—RURAL DEVELOPMENT

5. The authority citation for part 1948 continues to read as follows:

Authority: 7 U.S.C. 1989; 7 CFR 2.23; 7 CFR 2.70.

Subpart B—Section 601—Energy Impacted Area Development Assistance Program

6. Section 1948.90 is amended by revising the last sentence of paragraph (b)(4) to read as follows:

§ 1948.90 Land transfers.

* * * * *

(b) * * *

(4) * * * Funds will be transmitted to the Finance Office in accordance with FmHA Instruction 1951–B, § 1951.58(k), available in FmHA offices.

* * * * *

PART 1951—SERVICING AND COLLECTIONS

7. The authority citation for part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart B—Collections

8. Section 1951.55 is revised to read as follows:

§ 1951.55 Receiving and processing collections.

FmHA offices receive borrower payments either through the mail or in person in the form of checks, money orders, and cash. Payments are recorded on the appropriate accounting forms which are Form FmHA 451–2, Form FmHA 1944–9, Form FmHA 1951–55, or a payment coupon. Forms FmHA 451–2 and FmHA 1944–9 are used to transmit accounting information to the Finance Office. Form FmHA 1951–55 is used to assemble payment information which the District Offices use to transmit MFH account information through field office terminals. In addition, the FmHA office records payments on a management system card, a servicing card, or a payment tracking form, as appropriate.

Subpart K—Predetermined Amortization Schedule System (PASS) Account Servicing

9. Section 1951.501 is amended by adding a new paragraph (d) to read as follows:

§ 1951.501 General.

* * * * *

(d) All MFH loan payments will be processed using Exhibit A of this subpart (available in any FmHA office).

10. Section 1951.506 is amended by revising paragraphs (a)(6) and (c) to read as follows:

§ 1951.506 Processing payments.

(a) * * *

(6) The District Director will certify that data on current tenant certifications held in the District Office supports claims on Form FmHA 1944–29. The District Director will transmit payments as directed in Exhibit A of this subpart (available in any FmHA office).

* * * * *

(c) *Uncollectible payment.* Uncollectible payments will be handled under subpart B of this part. The payment effective date for the replacement payment will be the date the replacement payment is received in the District Office, not the date of the original payment.

11. Section 1951.507 is amended by revising paragraph (e) to read as follows:

§ 1951.507 Maintaining borrower accounts.

* * * * *

(e) *Maintaining records of accounts in District Offices.* Records of accounts will be maintained in the District Office. Form FmHA 1905–6, "Management System Card—Multifamily Housing," or other system authorized by FmHA regulations will be maintained for each project. For projects on PASS, the Management System Card will be flagged with an orange signal between Position "5" and "RRH". Exhibit A–1 of this subpart (available in any FmHA office) should be used to track payments.

12. Section 1951.512 is revised to read as follows:

§ 1951.512 Changes in the application of loan payments.

District Office employees with State Director authorization according to § 1930.143 of subpart C to part 1039 of this chapter are authorized to approve reapplication of loan payments between accounts when payments have been applied in error. All authorization for reapplication of payments must conform to the policies expressed in this subpart. No change may be made if the loan is paid in full, the cancelled note or notes have been returned to the borrower, and the security instruments have been satisfied. The District Director will process the changes as prescribed in Exhibit A of this subpart (available in any FmHA office).

13. Section 1951.550 is revised to read as follows:

§ 1951.550 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575–0106. Public reporting burden for this collection of information is estimated to be 15 minutes per response, with an average of 15 minutes per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Office, OIRM, Room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0575–0106), Washington, DC 20503.

PART 1965—REAL PROPERTY

14. The authority citation for part 1965 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart B—Security Servicing for Multiple Housing Loans

15. Section 1965.65 is amended by revising paragraph (f)(14)(i) to read as follows:

§ 1965.65 Transfer of real estate security and assumption of loans.

* * * * *

(f) * * *

(14) * * *

(i) *Identification.* Payments received on the date of transfer will be remitted as Regular payments on Form FmHA 1951–55 "Collection Log." The payments will be credited to the transferor's borrower and project number when the payment should be credited prior to the transfer. The payments will be credited to the transferee's borrower and project number when the payment should be credited after the transfer.

* * * * *

16. Section 1965.100 is revised to read as follows:

§ 1965.100 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575–0100. Public reporting burden for this collection of information is estimated to vary from 5 minutes to 4.25 hours per response, with an average of .60 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0575–0100), Washington, DC 20503.

* * * * *

Dated: March 12, 1991.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 91–14612 Filed 6–18–91; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 245

[INS Number: 1409–91]

RIN 1115–AB76

Adjustment of Status; Certain H–1 Nonimmigrant Nurses

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule implements section 162(f) of the Immigration Act of 1990 (IMMACT 90), Public Law 101–649, November 29, 1990. The interim rule establishes procedures for the adjustment of status to that of lawful permanent resident for certain alien nurses, their spouses and children.

DATES: This interim rule is effective June 19, 1991. Written comments must be submitted on or before July 19, 1991.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW., room 5304, Washington, DC 20536. To ensure proper handling, please reference INS number 1409–91 on your correspondence.

FOR FURTHER INFORMATION CONTACT: Rita A. Boie, Senior Immigration Examiner, Adjudications Branch, Immigration and Naturalization Service, 425 I Street NW., room 7223, Washington, DC 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION: The Immigration Nursing Relief Act of 1989, Public Law 101–238 (INRA), was enacted in response to the critical shortage of nurses in the United States. In addition to requiring medical facilities to develop, recruit and retain United States nurses, INRA allows certain alien nurses who were in the United States as of September 1, 1989, to adjust immigration status to that of lawful permanent residents, without regard to the numerical limitations generally applicable to preference immigrants.

Eligible aliens must have been in the United States as H–1 nonimmigrant registered nurses as of September 1, 1989, and employed as registered nurses in the United States for three or more years before filing for adjustment of status or must be the spouses or children of eligible nurses. All eligible aliens must apply for adjustment of status on or before March 15, 1995.

The original language of the INRA did not waive other provisions of the Immigration and Nationality Act (the Act) for either nurses or their family members. A significant number of potential INRA beneficiaries were subsequently found to be ineligible to become lawful permanent residents because they could not meet general statutory requirements for adjustment of status. Most were ineligible because they fell within the provisions of section 245(c) of the Act. Section 245(c) of the Act prohibits the adjustment of status of preference immigrants who have been employed without authorization, are not in lawful nonimmigrant status at the time the application for adjustment is filed, or have failed to continuously maintain lawful nonimmigrant status in the past.

The Service's original interim regulations relating to the adjustment of status provisions of the INRA were published at 55 FR 10395 and became effective March 16, 1990. The Service received numerous comments regarding the provisions of the original regulations. The Service received approximately 400 letters from concerned individuals and organizations. In addition, petitions were received containing the signatures of over 1,300 persons.

Almost all commenters urged the Service to extend the benefits of the INRA to family members residing abroad. Many also expressed concern about the provisions restricting the benefits of the INRA adjustment of status provisions to applicants who had

continually maintained lawful nonimmigrant status and who had not engaged in unauthorized employment in the United States. Several pointed out that, because of the extreme shortage of nurses and confusion regarding Service employment regulations, nurses were routinely encouraged to "moonlight" for health care facilities other than the petitioning hospital or clinic. Therefore, many otherwise eligible nurses would not be able to adjust status because of unauthorized employment. A few commenters requested clarification of specific portions of the regulations.

The IMMACT 90 amendments have significantly altered the provisions of the INRA. The Service is, however, limited by the terms of the amended INRA and cannot simply extend this benefit to applicants for immigrant visas. Other issues raised by many of the commenters are addressed by this rule.

Because of the volume of comments concerning the original interim regulation and the significant changes that must be made in order to implement the IMMACT 90 amendments, the Service is reissuing the INRA regulations in interim form and is again requesting public comment. Portions of the original INRA regulations not effected by IMMACT 90 are retained in this rule.

Section 162(f) of IMMACT 90 retroactively amends the INRA to allow additional alien nurses and accompanying family members to benefit from the adjustment of status provisions of the INRA. The IMMACT 90 amendments temporarily suspend portions of section 245(c) of the Act for INRA beneficiaries who apply for adjustment of status before the end of the transition period. The transition period will continue until October 17, 1991.

The IMMACT 90 amendments direct the Service to consider aliens who apply for adjustment of status under INRA before the end of the transition period, as meeting the Act's section 245(c) requirements of being in lawful nonimmigrant status and having continuously maintained lawful nonimmigrant status. The amendments also allow the Service to grant lawful permanent resident status to INRA adjustment applicants who were employed without authorization before November 29, 1990. These provisions apply to alien nurses and to their accompanying spouses and children.

The Service intends to further extend this consideration to employment taking place between November 29, 1990 and the end of the transition period. Taking this approach is necessary and appropriate, since it ensures the broadest implementation of the intent of Congress to provide for the adjustment of status of eligible nurses and their accompanying spouses and children.

The bars in section 245(c) of the Act will be reinstated after the transition period ends. An application filed after the end of the transition period will be denied if the alien engaged in unauthorized employment after November 29, 1990. The application will also be denied if the alien failed to maintain status (except through no fault of his or her own) after the end of the transition period.

The IMMACT 90 amendments are retroactive. An INRA beneficiary may file a motion to reopen an application for adjustment of status which had been denied prior to November 29, 1990, so that the application may be considered under the amended law.

The original regulation amended the list of technical violations of nonimmigrant status which will not cause an alien to be ineligible for adjustment of status. This provision, which added technical violations of nonimmigrant status committed by nurses who subsequently were reinstated to H–1 status in accordance with Public Law 101–658 (November 15, 1988) to the list, is retained in this rule.

Provisions of the original rule concerning eligibility, application period and the application have been reorganized and reworded in order to clarify the requirements for obtaining the adjustment of status benefits of the INRA.

The original rule also amended 8 CFR 245.1(f)(1) and 245.2(a)(5) to implement the INRA requirement that adjustment be accomplished under section 245 of the Act without the restrictions of sections 201 and 202 of the Act. These provisions are retained in the current rule.

This rule also makes organizational, grammatical and stylistic changes to 8 CFR part 245.

Compliance with 5 U.S.C. 553(d) as to notice of proposed rulemaking and delayed effective date are impracticable and unnecessary as the changes have been mandated by the passage of Public Law 101–649, (IMMACT 90) which retroactively amends Public Law 101–238 (INRA). Early implementation will allow alien nurses and their spouses and children to immediately obtain the additional benefits available to applicants for adjustment of status under the INRA.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does 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 Executive Order 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

The information collection requirement contained in this regulation has been cleared by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. The OMB control number for this collection is contained in 8 CFR 299.5, Display of Control Numbers.

List of Subjects in 8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, part 245 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

1. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1154, 1182, 1186a, 1255, and 1257; 8 CFR part 2.

2. In § 245.1, paragraphs (b) introductory text, (b)(4), (c)(1), (c)(2)(iv), (d)(3), (f)(1) are revised to read as follows:

§ 245.1 Eligibility.

* * * * *

(b) *Ineligible aliens.* The following categories of aliens are ineligible to apply for adjustment of status to that of a lawful permanent resident alien under section 245 of the Act:

* * * * *

(4) Any alien who, on or after January 1, 1977, was employed in the United States without authorization prior to filing an application for adjustment of status. This restriction shall not apply to an alien who is:

(i) An immediate relative as defined in section 201(b) of the Act;

(ii) A special immigrant as defined in section 101(a)(27)(H) of the Act;

(iii) Eligible for the benefits of Public Law 101–238 (the Immigration Nursing Relief Act of 1989) and files an application for adjustment of status on or before October 17; or

(iv) Eligible for the benefits of Public Law 101–238 (the Immigration Nursing Relief Act of 1989), and has not entered into or continued in unauthorized

employment on or after November 29, 1990.

* * * * *

(c) * * *

(1) *Lawful Immigration Status.* For purposes of section 245(c)(2) of the Act, the term "lawful immigration status" will only describe the immigration status of an individual who is:

(i) In lawful permanent resident status;

(ii) An alien admitted to the United States in nonimmigrant status as defined in section 101(a)(15) of the Act, whose initial period of admission has not expired or whose nonimmigrant status has been extended in accordance with part 214 of this chapter;

(iii) In refugee status under section 207 of the Act, such status not having been revoked;

(iv) In asylee status under section 208 of the Act, such status not having been revoked;

(v) In parole status which has not expired, been revoked or terminated; or

(vi) Eligible for the benefits of Public Law 101–238 (the Immigration Nursing Relief Act of 1989) and files an application for adjustment of status on or before October 17, 1991.

(2) * * *

(iv) A technical violation resulting from the Service's application of the maximum five/six year period of stay for certain H–1 nurses only if the applicant was subsequently reinstated to H–1 status in accordance with the terms of Public Law 101–656 (Immigration Amendments of 1988).

* * * * *

(d) * * *

(3) Adjustment of certain nurses who were in H–1 nonimmigrant status on September 1, 1989 (Pub. L. 101–238)—

(i) *Eligibility.* An alien is eligible to apply for adjustment of status without regard to the numerical limitations of sections 201 and 202 of the Act if:

(A) The applicant was in the United States in the status of a nonimmigrant under section 101(a)(15)(H)(i) of the Act to perform services as a registered nurse as of September 1, 1989,

(B) The applicant has been employed in the United States as a registered nurse for an aggregate of three years prior to the date of application for adjustment of status,

(C) The applicant's continued employment as a registered nurse meets the standards established for certification described in section 212(a)(14) of the Act prior to June 1, 1991 or section 212(a)(5)(i) on or after June 1, 1991,

(D) The applicant is the beneficiary of a valid, unexpired visa petition filed in accordance with this chapter according him or her preference status under the provisions of the Immigration and Nationality Act, and

(E) The applicant properly files an application for adjustment of status under the provisions of section 245 of the Act.

(ii) *Application period.* To benefit from the provisions of Public Law 101–238 (the Immigration Nursing Relief Act of 1989), an alien must properly file an application for adjustment of status under section 245 of the Act on or before March 15, 1995.

(iii) *Application.* An applicant for the benefits of Public Law 101–238 must file an application for adjustment of status on Form I–485, accompanied by the fee and supporting documents described in § 245.2 of this part. Beneficiaries of Public Law 101–238 must also submit:

(A) A visa petition or evidence that the applicant is currently the beneficiary of a valid unexpired visa petition, filed in compliance with this chapter, which accords the applicant preference status under the provisions of the Immigration and Nationality Act,

(B) A request for a determination by the district director that the alien is qualified for and will engage in the occupation of registered nurse, as currently listed on Schedule A (20 CFR part 656),

(C) Evidence, in the form of letters from employers stating the beginning and ending dates of employment as a registered nurse, showing that the applicant has been employed in the United States as a registered nurse in the United States for an aggregate of three years prior to the date the application for adjustment of status is filed,

(D) Evidence that the applicant was licensed as a registered nurse during periods of qualifying employment, and

(E) Evidence which establishes that the applicant was in the United States in H–1 nonimmigrant status for the purpose of performing services as a registered nurse on September 1, 1989.

(iv) *Effect of section 245(c)(2).* An applicant for the benefits of the adjustment of status provisions of Public Law 101–238 must establish eligibility for adjustment of status under all provisions of section 245 unless those provisions have specifically been waived.

(A) *Application for adjustment of status filed on or before October 17, 1991.* An applicant who qualifies for the benefits of Public Law 101–238, who properly files an application for adjustment of status on or before October 17, 1991, may be granted adjustment of status even though the alien has engaged or is engaging in unauthorized employment. For purposes of adjustment of status, the applicant will be considered to have continuously maintained a lawful nonimmigrant status throughout his or her stay in the United States as a nonimmigrant and to be in lawful nonimmigrant status at the time the application is filed.

(B) *Application for adjustment of status filed after October 17, 1991.* An alien who files an application for adjustment of status after October 17, 1991, will be subject to the provisions of section 245(c) of the Act. The application for adjustment of status will be denied if the applicant was employed without authorization after November 29, 1990. The application will be denied if the alien failed to continuously maintain a lawful nonimmigrant status (other than through no fault of his or her own for technical reasons) or if the alien was not in lawful nonimmigrant status at the time the application was filed.

(C) *Motions to reopen.* The Immigration Act of 1990 (Public Law 101–649) which became law on November 29, 1990, retroactively amended the Immigration Nursing Relief Act of 1989 (Public Law 101–238). An alien whose application for adjustment of status under the provisions of the Immigration Nursing Relief Act of 1989 was denied before November 29, 1990, because of unauthorized employment, failure to continuously maintain a lawful nonimmigrant status or not being in lawful immigration status at the time of filing, may file a motion to reopen the adjusmtment application. The motion to reopen must be made in accordance with the provisions of 8 CFR 103.5. The service will reopen the application for adjustment of staus and enter a new decision based upon the provisions of the Immigration Nursing Relief Act, as amended by the Immigration Act of 1990.

(v) *Description of qualifying employment.* Qualifying employment as a registered nurse may have taken place at any time before the alien files the application for adjustment of status. It may have occurred before, on or after the enactment of Public Law 101–238. All qualifying employment must have occurred in the United States. The qualifying employment as a registered nurse may have occurred while the alien was in any immigration status, provided that the alien was in H–1 nonimmigrant status for the purpose of performing services as a registered nurse on September 1, 1989. The employment need not have been continuous, provided the applicant can establish that he or she engaged in qualifying

employment for a total of three or more years. Qualifying employment may include periods when the applicant possessed a provisional or temporary license to perform services as a registered nurse. Qualifying employment may not include periods when the applicant was not licensed to perform duties as a registered nurse.

(vi) *Effect of enactment on spouse or child.*

(A) *Spouse or child accompanying principal alien.* The accompanying spouse or child of an applicant for adjustment of status who benefits from Public Law 101–238, may also apply for adjustment of status. All benefits and limitations of this section, including those resulting from the implementation of the adjustment of status provisions of section 162(f) of Public Law 101–649, apply equally to the principal applicant and his or her accompanying spouse or child.

(B) *Spouse or child residing outside the United States or ineligible for adjustment of status.* A spouse or child who is ineligible to apply for adjustment of status as an accompanying spouse or child is not immediately eligible for issuance of an immigrant visa under the provisions of Public Law 101–238. However, the spouse or child may be eligible for visa issuance under other provisions of the Act.

(*1*) *Existing relationship.* A spouse or child acquired by the principal alien prior to the approval of the principal's adjustment of status application may be accorded the derivative priority date and preference category of the principal alien. The spouse or child may use the priority date and category when it becomes curent, in accordance with existing limitations outlined in sections 201 and 202 of the Act. The priority date is not considered immediately available for these family members under Public Law 101–238.

(*2*) *Relationship entered into after adjustment of status is approved.* An alien who acquires lawful permanent residence under the provisions of Public Law 101–238 may file a petition under section 204 of the Act for an alien spouse, unmarried son or unmarried daughter in accordance with existing laws and regulations. The priority date is not considered immediately available for these family members under Public Law 101–238.

* * * * *

(f) * * *

(1) *Availability of immigrant visas under section 245.* An alien is not eligible for the benefits of section 245 of the Act unless an immigrant visa is immediately available to him or her at the time the application is filed. If the applicant is a preference or nonpreference alien, the current Department of State Visa Office Bulletin on Availability of Immigrant Visa Numbers will be consulted to determine whether an immigrant visa is immediately available. An immigrant visa is considered immediately avaialble if the applicant's prefernce or nonpreference priority date is no later than the date shown in the Bulletin, or the Bulletin shows that number for visa applicants in his or her category are current. An immigrant visa is also considered immediately available if the applicant establishes eligibility for the benefits of Public Law 101–238. Information about the immediate availability of an immigrant visa may be obtained at any service office.

* * * * *

3. In § 245.2, paragraph (a)(5)(ii) is amended by revising the second sentence to read as follows:

§ 245.2 Application.

(a) * * *

(5) * * *

(ii) *Under section 245.* * * * An application for adjustment of status as a preference or nonpreference alien shall not be approved until an immigrant visa number has been allocated by the Department of State, except when the applicant has established eligibility for the benefits of Public Law 101–238.* * *

* * * * *

Dated: March 18, 1991.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 91–14430 Filed 6–18–91; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90–CE–48–AD; Amendment 39–7024; AD 91–12–13]

Airworthiness Directives; Dornier 228 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Dornier 228 series airplanes. This action requires the replacement of certain horizontal stabilizer electric trim system relays and the modification of the connections to these relays. Optional electrical installations on these airplanes can cause higher specific switching cycles and higher peak currents and reduces the life of the relays and the reliability of the system. A failed relay could result in an uncommanded trim motion and possible loss of control of the airplane. The actions specified by this AD are intended to prevent electrical reliability reduction and assure proper functioning of the electric trim system.

DATES: Effective July 19, 1991. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 19, 1991.

ADDRESSES: Dornier 228 Service Bulletin (SB) No. SB–228–160, dated December 18, 1989, and Dornier 228 SB No. SB–228–164, Revision 1, dated August 28, 1990, that are discussed in this AD may be obtained from Dorier Luftfahrt GmbH, Product Support, P.O. Box 3, D–8031 Wessling, Federal Republic of Germany; Telephone (49.8153)–300; Facsimile (49.8153)–30.29.85. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. R. Stoer, Brussels Aircraft Certification Office, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium; Telephone (322)–513.38.30; or Mr. Herman Belderok, FAA, 601 E. 12th Street, Kansas City, Missouri 64106; Telephone (816) 426–6932, ext. 2710; Facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that would be applicable to certain Dornier 228 series airplanes was published in the Federal Register on November 9, 1990 (55 FR 47070). The proposed AD would have required replacement of the horizontal stabilizer electric system relays 4CC, 5CC, 8CC, and 9CC with improved relays and modification of the relay connections on certain Dornier 228 series airplanes in accordance with Dornier Service Bulletin No. SB–228–164, Revision 1, dated August 28, 1990.

Interested persons were then afforded the opportunity to participate in the making of this amendment. Three commenters responded. All three commented favorably upon the AD, but stated that the failures are not limited to only those airplanes equipped with optional installations of autopilot and/or elevator electric trim coupiing systems. All three recommended that airplanes that are not equipped with

these optional installations be modified in accordance with the instructions in Dornier SB No. SB–228–160, dated December 18, 1989. The FAA concurred with these comments and determined that the chances of relay failure and uncommanded trim motion are reduced if the affected airplanes that are not equipped with these optional installations are modified in accordance with the instructions in Dornier SB No. SB–228–160.

The proposal was rewritten accordingly. Since the applicability then went beyond the scope of the original proposal, a supplementary notice of proposed rulemaking was published in the Federal Register on March 8, 1991 (56 FR 9909).

Interested persons were again afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The economic analysis paragraph that is discussed below, has been revised to increase the specified hourly labor rate from $40 an hour (as was cited in the preamble of the notice of proposed rulemaking (NPRM)) to $55 an hour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD action to account for various inflationary costs in the aviation industry.

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the change in the economic analysis and minor editorial corrections. These minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

It is estimated that 43 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 5 hours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $1,017 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $55,556.

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 copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES".**

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:

AD 91–12–13 DORNIER: Amendment 39–7024; Docket No. 90–CE–48–AD.

Applicability: Model Dornier 228–100, Dornier 228–101, Dornier 228–200, Dornier 228–201, Dornier 228–202, and Dornier 228–212 airplanes (serial numbers (S/N) 7005 through 7167, S/N 8002 through 8161, and 8163 through 8190), certificated in any category.

Compliance: Required within the next 600 hours time-in-service after the effective date of this AD, unless already accomplished.

To retain the reliability of the horizontal stabilizer electric trim system, accomplish the following:

(a) Replace relays 4CC, 5CC, 8CC, and 9CC with improved relays and modify the electrical connections of these relays in accordance with the following:

(1) For airplanes that utilize the autopilot and/or trim coupling option, perform the replacements and modification in accordance with the instructions in Dornier Service Bulletin No. SB–228–164, Revision 1, dated August 28, 1990.

(2) For airplanes that do not utilize the autopilot and the trim coupling option, perform the replacements and modification in accordance with the instructions in Dornier Service Bulletin No. SB–228–160, dated December 18, 1989.

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

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 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 and modifications required by this AD shall be done in accordance with Dornier 228 Service Bulletin (SB) No. SB–228–160, dated December 18, 1989, and Dornier 228 SB No. SB–228–160, dated December 18, 1989, and Dornier 228 SB No. SB–228–164, Revision 1, dated August 28, 1990. 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 Dornier Luftfahrt GmbH, Product Support, P.O. Box 3, D–8031 Wessling, Federal Republic of Germany. 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 July 19, 1991.

Issued in Kansas City, Missouri, on May 22, 1991.

Herman C. Belderok,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–14616 Filed 6–18–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 91–ASO–10]

Revision of Control Zone and Transition Area, Fort Myers, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises the Fort Myers, FL Control Zone and Transition Area. On May 30, 1991 the Fort Myers VORTAC was relocated to the Southwest Florida Regional Airport and re-named the Lee County VORTAC. The existing control zone and transition area had arrival area extensions predicated on the Fort Myers VORTAC. This action eliminates the arrival area extensions northeast, southwest and northwest of the Page Field Airport. The transition area is increased from an 8.5-mile to an 11.5-mile radius of Southwest Florida Regional Airport. Additionally, a minor correction is made in the latitude/longitude coordinate position of the Page Field Airport.

EFFECTIVE DATE: 0901 u.t.c. September 19, 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 April 11, 1981, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Fort Myers, FL Control Zone and Transition Area (56 FR 14668). This action was prompted by the pending relocation and re-naming of the Fort Myers VORTAC which was scheduled for May 30, 1991. The VORTAC would be relocated to Southwest Florida Regional Airport and re-named the Lee County VORTAC. This proposed action would eliminate several arrival area extensions at Page Field Airport predicated on the Fort Myers VORTAC and increase the transition area from an 8.5-mile to an 11.5-mile radius of Southwest Florida Regional Airport. Additionally, a minor correction would be made in the latitude/longitude coordinate position of Page Field Airport. 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. This amendment is the same as that proposed in the notice. Sections 71.171 and 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 Fort Myers, FL Control Zone and Transition Area. Effective May 30, 1991 the Fort Myers VORTAC was relocated from Page Field Airport to Southwest Florida Regional Airport and re-named the Lee County VORTAC. This action will eliminate several arrival area extensions in vicinity of Page Field Airport which were predicated on the Fort Myers VORTAC. Also, the transition area is increased from an 8.5-mile to an 11.5-mile radius of Southwest Florida Regional Airport. Additionally, a minor correction is made in the latitude/longitude coordinate position of Page Field Airport.

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

List of Subjects in 14 CFR Part 71

Aviation safety, control zone.

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

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Fort Myers, FL [Revised]

Within a 5-mile radius of Page Field (lat. 26°35'11" N., long. 81°51'49" W.), excluding that portion that coincides with Fort Myers Southwest Florida Regional Airport Control Zone.

§ 71.181 [Amended]

3. Section 71.181 is amended as follows:

Fort Myers, FL [Revised]

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of Page Field Airport (lat. 26°35'11" N., long. 81°51'49" W.); within an 11.5-mile radius of Southwest Florida Regional Airport (lat. 26°32'10" N., long. 81°45'18" W.).

Issued in East Point, Georgia, on June 6, 1991.

Walter E. Denley,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 91–14562 Filed 6–18–91; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 91–ASO–11]

Revision of Control Zone, Fort Myers Southwest Florida Regional Airport, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises the Fort Myers Southwest Florida Regional Airport, FL Control Zone. The Fort Myers VORTAC has been relocated from Page Field to Southwest Florida Regional Airport and renamed the Lee County VORTAC. This action would add an arrival area extension to provide controlled airspace for a new standard instrument approach procedure (SIAP) based on the relocated facility. Additionally, since continuous weather reporting service is available for the airport and the control zone is operated full time, the option to establish the operating hours via Notice To Airmen (NOTAM) is removed from the control zone description.

EFFECTIVE DATE: 0901 u.t.c., September 19, 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 April 11, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Fort Myers Southwest Florida Regional Airport, FL Control Zone (56 FR 14669). The proposed action would add an arrival area extension in order to provide necessary controlled airspace protection for a new SIAP predicated on the Lee County VORTAC. Additionally, it would eliminate the existing option to operate the control zone part time by NOTAM since continuous weather reporting service is now available. 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. This amendment is the same as that proposed in the notice. Section 71.171 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 Fort Myers Southwest Florida Regional Airport, FL Control Zone. A new SIAP has been developed based on the newly established Lee County VORTAC and this action will add an arrival area extension to provide controlled airspace protection for instrument flight rules (IFR) aircraft executing the approach procedure. Additionally, since full time weather reporting service is now available, the option to operate the control zone part time via NOTAM is removed from the control zone description.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Control zone.

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 of part 71 continues to read as follows:

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

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Fort Myers Southwest Florida Regional Airport, FL [Revised]

Within a 5-mile radius of Southwest Florida Regional Airport (lat. 26°32'10" N., long. 81°45'18" W.); within 3 miles each side of the Lee County VORTAC 251° radial extending from the 5-mile radius zone to 8.5 miles west of the VORTAC; excluding that portion which lies 3.5 miles north of and parallel to the extended centerline of Runway 6/24.

Issued in East Point, Georgia, on June 6, 1991.

Walter E. Denley,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 91–14561 Filed 6–18–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 91–ASO–13]

Revision of Transition Area, Punta Gorda, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises the Punta Gorda, FL Transition Area. This action adds an arrival area extension south of the Charlotte County Airport. This additional controlled airspace is needed to provide protection of instrument flight rules (IFR) aircraft executing a new standard instrument approach procedure (SIAP) to Runway 3 based on the Punta Gorda VOR. Additionally, a minor correction is made in the latitude/longitude coordinate position of the Charlotte County Airport.

EFFECTIVE DATE: 0901 u.t.c., September 19, 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 April 26, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Punta Gorda, FL Transition Area (56 FR 19331). This action proposed to add an arrival area extension south of the Charlotte County Airport to provide additional controlled airspace protection of IFR aircraft executing a new SIAP to Runway 3 based on the Punta Gorda VOR. Also, a minor change would be made in the latitude/longitude coordinate position of the Charlotte County Airport. 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 Punta Gorda, FL Transition Area. An arrival area extension is added to provide additional controlled airspace protection for IFR aircraft executing a new VOR SIAP to Runway 3 at the Charlotte County Airport. Also, a minor correction is made in the latitude/longitude coordinate position of the airport.

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 area.

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Punta Gorda, FL [Revised]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Charlotte County Airport (lat. 26°55'02" N., long. 81°59'29" W.); within 3 miles each side of the Punta Gorda VOR (lat. 26°54'59" N., long. 81°59'29" W.) 036° and 199° radials, extending from the 6.5-mile radius

area to 8.5 miles northeast and south of the VOR.

Issued in East Point, Georgia, on June 6, 1991.

Walter E. Denley,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 91-14560 Filed 6-18-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 91-ASO-8]

Revision of Control Zone, Daytona Beach, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises the Daytona Beach, FL Control Zone. Presently, the Ormond Beach Municipal Airport is within the Daytona Beach Control Zone. Aircraft operations within the zone are governed by weather conditions as reported at the Daytona Beach Regional Airport. This has created some difficulty since weather conditions may vary considerably between the two airports. This action eliminates that portion of the control zone which surrounds the Ormond Beach Municipal Airport, including the arrival area extension west of the airport. This action raises the floor of controlled airspace from the surface to 700 feet above the surface in vicinity of the Ormond Beach Municipal Airport. Additionally, a minor correction is made in the latitude/longitude coordinates of the Daytona Beach Regional Airport.

EFFECTIVE DATE: 0901 u.t.c., September 19, 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 April 11, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Daytona Beach, FL Control Zone (56 FR 14670). This proposed action would eliminate that portion of the control zone which surrounds the Ormond Beach Municipal Airport including the arrival area extension west of the airport. Aircraft operations within the control zone are governed by weather observations taken at the Daytona Beach Regional Airport. Since weather conditions may vary between the two airports, it was proposed that the portion of the zone in vicinity of the Ormond Beach Municipal Airport be eliminated. If approved, the proposed action would raise the floor of controlled airspace from the surface to 700 feet above the surface in vicinity of the Ormond Beach Municipal Airport. Additionally, a minor correction would be made in the latitude/longitude coordinates of Daytona Beach Regional Airport. 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. This amendment is the same as that proposed in the notice. Section 71.171 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 Daytona Beach, FL Control Zone. This action will eliminate that portion of the control zone in vicinity of the Ormond Beach Municipal Airport, including the arrival area extension west of the airport. Effectively, the floor of controlled airspace in vicinity of the Ormond Beach Municipal Airport will be raised from the surface to 700 feet above the surface. Additionally, a minor correction is made in the latitude/longitude coordinate position of the Daytona Beach Regional Airport.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Control zone.

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

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Daytona Beach, FL [Revised]

Within a 5-mile radius of Daytona Beach Regional Airport (lat. 29°10'51" N., long. 81°03'22" W.).

Issued in East Point, Georgia, on June 6, 1991.

Walter E. Denley,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 91-14564 Filed 6-18-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 91-ASO-9]

Revision of Transition Area, Yazoo City, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises the Yazoo City, MS Transition Area. The existing transition area is centered on the Barrier Field Airport which was closed concurrent with opening the new Yazoo County Airport. The new airport is located 2.9 miles west of the old Barrier Field Airport. A new standard instrument approach procedure (SIAP) has been developed to serve Runway 35 at the Yazoo County Airport. This action centers the transition area on the new airport in order to provide controlled airspace for protection of instrument flight rules (IFR) aeronautical operations. Additionally, the operating status of the Yazoo County Airport will be changed from visual flight rules (VFR) to IFR concurrent with publication of the SIAP.

EFFECTIVE DATE: 0901 u.t.c., September 19, 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 April 11, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Yazoo City, MS Transition Area (56 FR 14671). The existing transition area is centered on the Barrier Field Airport which was closed concurrent with opening the new Yazoo County Airport. A new SIAP has been developed to serve the Yazoo County Airport. The proposed action would center the transition on the new airport which is located 2.9 miles west of the closed Barrier Field Airport. The purpose of this proposed action was to provide additional controlled airspace for protection of IFR aeronautical operations. Also, it was proposed that the operating status of the Yazoo County Airport be changed from VFR to IFR concurrent with publication of the standard 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 Yazoo City, MS Transition Area. This action will center the transition area on the new Yazoo County Airport instead of the Barrier Field Airport which has been closed. A SIAP has been developed to serve Runway 35 at the new airport. This action will lower the base of controlled airspace from 1200 feet to 700 feet above the surface in vicinity of the Yazoo County Airport in order to provide additional controlled airspace for protection of IFR aeronautical operations. Additionally, the operating status of the Yazoo County Airport will be changed from VFR to IFR concurrent with publication of the Runway 35 SIAP.

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 area.

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Yazoo City, MS [Revised]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Yazoo County Airport (lat. 32°52'59"N., long. 90°27'49"W.).

Issued in East Point, Georgia, on June 7, 1991.

Don Cass,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 91–14563 Filed 6–18–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 91–ANM–3]

Establishment of Transition Areas; Kemmerer, Wyoming

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes transition areas to provide a controlled airspace environment for the new non-directional radio beacon (NBD) approach to runway 34 at the Kemmerer Municipal Airport, Kemmerer, Wyoming. The transition areas will segregate aircraft operating in visual flight rules (VFR) conditions from those operating under instrument flight rules (IFR). The areas will be depicted on aeronautical charts to provide references for pilots.

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

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM–535, Federal Aviation Administration, Docket No. 910–ANM–3, 1601 Lind Avenue SW., Renton, Washington 98055–4056, Telephone: (206) 227–2537.

SUPPLEMENTARY INFORMATION:

History

On April 8, 1991, the FAA proposed to amend part 71 of the Federal Aviation regulations (14 CFR part 71) to establish controlled airspace for a new NDB approach to the Kemmerer Municipal Airport (56 FR 14223). 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. Accordingly, the rule is adopted as proposed. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations provides controlled airspace transition areas for instrument flight rules procedures for the new NDB approach to runway 34 at the Kemmerer Municipal Airport. The intent is to segregate aircraft operating in visual flight rules conditions from those operating under instrument flight rules. The areas will be depicted on appropriate aeronautical charts so that pilots may circumnavigate the areas or comply with instrument flight rules procedures.

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, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 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. App. 1348(1), 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:

Kemmerer, Wyoming [New]

That airspace extending upward from 700 feet above the surface within 9.2-mile radius of the Kemmerer Municipal Airport (Lat. 41°49'30"N, Long. 110°33'30"W), and within 3.5 miles each side of the 179° bearing from the Kemmerer NDB (Lat. 41°49'21"N, Long. 110°33'15"W), extending from the 9.2-mile radius area to 11.5 miles south of the NDB; and that airspace extending upward from 1,200 feet above the surface between Lat. 41°43'30"N, Long. 110°02'30"W; to 41°29'00"N, Long. 110°39'30"W; to Lat. 41°48'30"N, Long. 110°43'00"W; to the point of beginning excluding that airspace within the Fort Bridger, Wyoming, Transition Area.

Issued in Seattle, Washington, on June 10, 1991.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division.

[FR Doc. 91–14566 Filed 6–18–91; 8:45 am]

BILLING CODE 4910–13–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1215

RIN 2700–AA29

Tracking and Data Relay Satellite System (TDRSS)

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA is amending 14 CFR part 1215, subpart 1215.1, "Use and Reimbursement Policy for Non-U.S. Government Users." This subpart updates the policy governing the Tracking and Data Relay Satellite System (TDRSS) services provided to non-U.S. Government users and the reimbursement for rendering such services. This rule establishes an equitable basis for use of and reimbursement for TDRSS and service by non-U.S. Government users. The tracking, telemetry, and command services provided by the TDRSS represent a significant growth in the capability of presently available services provided via the ground tracking station network.

EFFECTIVE DATE: June 19, 1991.

ADDRESSES: Office of Space Operations, Code OX, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Eugene Ferrick, 202–453–2030.

SUPPLEMENTARY INFORMATION: The TDRSS space segment consists of two satellites in geostationary orbit, with one or more additional satellites in geostationary orbit to be operated as required. The ground segment consists of a single ground terminal and the necessary operational control and interface devices and interconnecting communications circuit services located at White Sands, New Mexico.

NASA published its final rule in the **Federal Register** on March 9, 1983, 48 FR 9845. This amendment corrects the organizational setting and reflects new user responsibility for obtaining frequency authorizations in § 1215.107 and in appendix C. Additionally, appendix A has been updated to reflect CY 1992 reimbursement rates for use of TDRSS service. Since these changes are internal and administrative in nature and do not affect existing regulations, notice and public comment are not required.

The National Aeronautics and Space Administration has determined that:

1. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, since it will not exert a significant economic impact on a substantial number of small business entities.

2. This rule is not a major rule as defined in Executive Order 12291.

List of Subjects in 14 CFR Part 1215

Satellites, Tracking and Data Relay Satellite System, Communications equipment, Government contract.

For reasons set out in the Preamble, 14 CFR part 1215, subpart 1215.1 is amended as follows:

PART 1215—TRACKING AND DATA RELAY SATELLITE SYSTEM (TDRSS)

1. The authority citation for 14 CFR part 1215 continues to read as follows:

Authority: Sec. 203, Pub. L. 85–568, 72 Stat. 429, as amended; 42 U.S.C. 2473.

2. Section 1215.100 is revised to read as follows:

§ 1215.100 General.

The TDRSS represents a major investment by the U.S. Government with the primary goal of providing improved tracking and data acquisition services to spacecraft in low earth orbit or to mobile terrestrial users such as aircraft or balloons. It is the objective of NASA to operate as efficiently as possible with the TDRSS. This is to the mutual benefit of all users. Such user consideration will permit NASA and non-NASA service to be delivered without compromising the mission objectives of any individual user. To encourage users toward achieving efficient TDRSS usage, this reimbursement policy has been established to purposely influence users to operate with TDRSS in the most efficient and orderly manner possible. Additionally, the reimbursement policy is designed to comply with the Bureau of the Budget Circular A–25 on User Charges, dated September 23, 1959, which requires that a reasonable charge should be made to each identifiable recipient for a measurable unit or amount of Government service or property from which a special benefit is derived.

3. Section 1215.101 is revised to read as follows:

§ 1215.101 Scope.

This Subpart sets forth the policy governing TDRSS services provided to non-U.S. government users and the reimbursement for rendering such services. It excludes TDRSS services provided as standard or optional services to Space Transportation System (STS) users under existing policy for Shuttle and Spacelab (14 CFR subparts 1214.1, 1214.2, and 1214.8); i.e., user command and telemetry support, which utilizes and is a part of the Shuttle or Spacelab communications system, is a Shuttle/Spacelab service. Cooperative missions are also not under the purview of this Subpart. The arrangements for TDRSS services for cooperative missions will be covered in a Memorandum of Understanding (MOU), as a consequence of negotiations between NASA and the other concerned party. Any MOU which includes provision for any TDRSS service will require signatory concurrence by the Associate Administrator for Space Operations prior to dedicating Office of Space Operations resources for support of a cooperative mission.

4. Section 1215.104 is revised to read as follows:

§ 1215.104 Apportionment and assignment of services.

No user may apportion, assign, or otherwise convey to any third party its TDRSS service. Each user may obtain service only through contractual

agreement with the Associate Administrator for Space Operations.

5. Section 1215.105 is amended by revising paragraphs (b) and (d) to read as follows:

§ 1215.105 Delivery of user data.

* * * * *

(b) User data handling requirements beyond the NGT interface will be provided as a standard service to the user, to the extent that the requirements do not exceed NASA's planned standard communications system. Any additional data transport or handling requirements exceeding NASA's capability will be dealt with as a mission-unique service.

* * * * *

(d) NASA will provide TDRSS services on a "reasonable efforts" basis and, accordingly, will not be liable for damages of any kind to the user or third parties for any reason, including but not limited to failure to provide contracted-for services. The price for TDRSS services does not include a contingency or premium for any potential damages. The user will assume any risk of damages or obtain insurance to protect against any risk.

6. Section 1215.107 is revised to read as follows:

§ 1215.107 User data security and frequency authorizations.

(a) User data security is not provided by the TDRSS. Responsibility for data security resides solely with the user. Users desiring data safeguards shall provide and operate, external to the TDRSS, the necessary equipment or systems to accomplish data security. Any such user provisions must be compatible with data flow through TDRSS and not interfere with other users.

(b) All radio frequency authorizations associated with operations pursuant to this directive are the responsibility of the user. If appropriate, authority(ies) must be obtained from the Federal Communications Commission (FCC) for operations consistent with U.S. footnote 303 of the National Table of Frequency Allocations, FCC Rules and Regulations at 47 CFR 2.106.

7. Section 1215.108 is amended by revising paragraph (a) to read as follows:

§ 1215.108 Defining user service requirements.

* * * * *

(a) Initial requests for TDRSS service from non-U.S. Government users should be addressed to NASA Headquarters, Code OX, Space Network Division, Washington, DC 20546. Upon review and preliminary acceptance of the service requirements by NASA Headquarters, the appropriate areas of GSFC will be assigned to the project to produce the detailed requirements, plans and documentation necessary for support of the mission. Changes to user requirements shall be made as far in advance as possible and shall be submitted in writing to both NASA Headquarters, Code OX, Space Network Division, and GSFC, Code 501, Greenbelt, MD 20771.

* * * * *

8. Section 1215.109 is amended by revising paragraphs (b)(2)(i) and (b)(6) introductory text to read as follows:

§ 1215.109 Scheduling user service.

* * * * *

(b) * * *

(2) * * *

(i) Launch, reentry, landing of the STS Shuttle, or other NASA launches.

* * * * *

(6) Disruptive updates are scheduled updates which, by virtue of priorities, cause previously scheduled user services to be rescheduled or deleted or are requested by the user less than 45 minutes prior to the scheduled support period.

* * * * *

9. Section 1215.111 is revised to read as follows:

§ 1215.111 User postponement of service.

The user may postpone the initiation of contracted service (e.g., user launch date) by delivery of written notification to NASA Headquarters, Code OX. Any delay in the contracted start of service date may affect the quantity of service to be provided due to commitments to other support requirements. Therefore, the validity of previous estimates of predicted support availability may no longer be applicable.

10. Section 1215.113 is amended by revising paragraphs (a) and (c) to read as follows:

§ 1215.113 User charges.

(a) The user shall reimburse NASA the sum of the charges for standard and mission-unique services. Charges will be based on the service rates applicable for the calendar year.

* * * * *

(c) The user shall reimburse NASA for the costs of any mission unique services provided by NASA.

* * * * *

11. Section 1215.114 is amended by revising paragraph (b) to read as follows:

§ 1215.114 Service rates.

* * * * *

(b) Rates for TDRSS services will be set by the Associate Administrator for Space Operations each October for the following year, January through December. Rate variations will reflect changes in operating costs, loading formulas and escalation.

* * * * *

12. Appendix A is revised to read as follows:

Appendix A to Part 1215—Estimated Service Rates in 1992 Dollars for TDRSS Standard Services (Based on NASA Escalation Estimate)

TDRSS user service rates for services rendered in CY–92 based on current projections in 1992 dollars are as follows:

Single Access Service—Forward command, return telemetry, or tracking, or any combination of these, the base rate is $188.00 per minute for non-U.S. Government users.

Multiple Access Forward Service—Base rate is $42.00 per minute for non-U.S. Government users.

Multiple Access Return Service—Base rate is $13.00 per minute for non-U.S. Government users.

13. Appendix C is revised to read as follows:

Appendix C To Part 1215—Typical User Activity Timeline

Time (approximate)	Activity
Project conceptualization (At least 3 years before launch: Ref. § 1215.108(a)).	Request NASA Headquarters perform study to determine availability of TDRSS. If accepted as a user, begin contractual negotiation by submission of $25,000 non-refundable charge, and place into mission model.
3 years before launch (Ref. § 1215.109(c))	Submit general user requirements to permit preliminary planning. Begin payment for pre-mission activities (Ref. § 1215.115(b)(5)).
18 months before launch (earlier if interfacing is expected)	Provide detailed requirements for technical definition and development of operational documents and ICD's. (Ref. § 1215.109(e)). If appropriate, initiate action with the Federal Communications Commission for license to communicate with TDRSS at least 18 months prior to launch (Ref. § 1215.107(b)).

Time (approximate)	Activity
3 weeks prior to a scheduled support period (SSP). 2 weeks prior to an SSP.	Submit scheduling request to GSFC covering a weekly period. Receive schedule from GSFC based on principles of priority (Ref. § 1215.109(b)(2)). Acknowledgement to GSFC required.
Up to 12 hours prior to an SSP.	Can cancel an SSP without charge (Ref. § 1215.113(a)(1)).
Up to 45 minutes prior to an SPP.	Can schedule an SSP if a time slot is available without impacting another user.
Between SSP minus 45 minutes and the SSP.	Schedule requests will be charged at the disruptive update rate (Ref. § 1215.109(b)(5)).
Real-Time	Emergency service requests will be responded to per the priority system (Ref. § 1215.109(b)(3)) and assessed the emergency service rate.

Dated: June 7, 1991.

Richard H. Truly,

Administrator.

[FR Doc. 91-14320 Filed 6-18-91; 8:45 am]

BILLING CODE 7510-01-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1211

Final Rule: Requirements for Automatic Residential Garage Door Operators

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Consumer Product Safety Improvement Act of 1990 provides that, as of January 1, 1991, "each automatic residential garage door opener manufactured on or after that date for sale in the United States shall conform to the entrapment protection requirements of the * * * Underwriters Laboratories, Inc. Standards for Safety—UL 325, third edition, as revised May 4, 1988." Congress stated that these requirements are to be considered a consumer product safety rule issued by the Commission under section 9 of the Consumer Product Safety Act. In this final rule, the Commission is codifying the provisions of the UL 325 standard that specify entrapment protection requirements and an additional statutory labeling requirement. As discussed in this notice, Congress also provided for revision of the entrapment protection requirements when U.S. develops additional entrapment protection provisions or, in the absence of UL activity, the Commission develops additional requirements. Additionally, Congress required that, effective July 1, 1991, manufacturers of automatic residential garage door openers must, in consultation with the CPSC, notify the public of the potential for entrapment and advise the public to test their openers.

EFFECTIVE DATE: June 19, 1991. The substance of the requirements mandated by Congress apply to automatic residential garage door openers manufactured on or after January 1, 1991 for sale in the United States, the effective date prescribed by Congress.

FOR FURTHER INFORMATION CONTACT: George Sushinsky, Project Manager, Directorate for Engineering Sciences, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492-6494.

SUPPLEMENTARY INFORMATION:

A. Background

1. The Consumer Product Safety Improvement Act of 1990

On November 16, 1990, the President signed into law the Consumer Product Safety Improvement Act of 1990 (the "Act"). This Act reauthorized the Consumer Product Safety Commission ("CPSC") for a period of two years and specified certain products for the Commission to regulate.

Entrapment Protection Requirements

Section 203 of the Act stated that the entrapment protection requirements of the Underwriters Laboratories, Inc. ("UL") Standards for Safety—UL 325, third edition, as revised May 4, 1988, "shall be considered to be a consumer product safety rule issued by the Consumer Product Safety Commission under section 9 of the Consumer Product Safety Act." Consumer Product Safety Improvement Act of 1990, Public Law No. 101-608, Section 203(a), (b), 104 Stat. 3110. Congress provided that automatic residential garage door openers [1] manufactured on or after January 1, 1991 must conform to the UL 325 entrapment protection requirements. *Id.* Section 203(b)(1). This standard requires that an automatic garage door opener shall reverse within two seconds of contacting a two inch (50.8-mm) test object whose top inch is resilient. In addition, the standard requires that the door reopen if the bottom limit switch is not activated within thirty seconds after the control is pressed to start the closing cycle.

Congress recognized that industry is currently working with UL to develop a revised voluntary standard that would include additional entrapment protection. See H.R. Rep. No. 914, 101st Cong., 2d Sess. 20 (1990). Thus, Congress provided that additional entrapment protection requirements issued by UL in the future will also become effective as mandatory safety standards. Accordingly, section 203 provides a requirement that all residential automatic garage door openers manufactured on and after January 1, 1993 for sale in the United States must conform to any additional entrapment protection requirements of UL 325 to become effective on or before January 1, 1993. *Id.* Section 203(b)(2)(A).

If, by June 1, 1992, UL has not issued a revision to the May 4, 1988 edition of UL 325 requiring an additional entrapment protection feature or device in addition to that set forth in the May 4, 1988 standard, Congress required that the Commission must begin a rulemaking proceeding, to be completed by October 31, 1992, requiring an additional such feature or device on all automatic residential garage door openers manufactured after January 1, 1993, for sale in the United States. *Id.* Section 203(b)(2)(B).

If UL issues a revision to the May 4, 1988 standard after the Commission has started its rulemaking proceeding, the Commission must terminate its proceeding and incorporate the UL revision into the consumer product safety rule, unless the UL revision does not carry out the purpose of the Congressionally mandated entrapment protection requirements. *Id.* If UL proposes further revisions to UL 325, UL must notify the Commission and the proposed revision shall be incorporated in the consumer product safety rule (unless the Commission notifies UL within 30 days that the revision does not carry out the purposes of the Congressionally mandated requirements). *Id.* Section 203(c).

Labeling Requirements

Congress also mandated certain labeling requirements to go into effect on January 1, 1991. A manufacturer selling or offering for sale in the United States an automatic residential garage door opener on or after that date must

[1] Congress used the term "garage door opener"; however, the UL standard uses the term "garage door operator." This notice uses the terms interchangeably.

"clearly identify on any container of the system and on the system the month or week and year the system was manufactured and its conformance with the requirements of subsection (b) [UL 325 entrapment protection provisions]." *Id.* Section 203(d). These labeling requirements are satisfied by display of the UL logo or listing mark, and compliance with the date marking requirements of UL 325 on the container and the system. *Id.*

Notification Requirements

Congressionally mandated notification requirements will become effective July 1, 1991. As of that date, all manufacturers of automatic residential garage door openers must, in consultation with the Commission, "notify the public of the potential for entrapment by garage doors equipped with automatic garage door openers and advise the public to test their openers for the entrapment protection feature or device required by [the UL 325 entrapment protection provisions]." *Id.* Section 203(e).

Preemption

Congress specifically addressed the issue of preemption of other State or local requirements pertaining to automatic residential garage door openers. Subsection (f) of the Act provides that, with respect to the Congressionally-required entrapment protection provisions, "only those provisions of laws of States or political subdivisions which relate to the labeling of automatic residential garage door openers and those provisions which do not provide at least the equivalent degree of protection from the risk of injury associated with automatic residential garage door openers as the consumer product safety rule provides shall be subject to (the preemption provisions of section 26(a) of the CPSA, 15 U.S.C. 2075)." *Id.* section 203(f). Thus, state law provisions governing, for example, repair and servicing requirements, would not be preempted. See H.R. Rep. No. 914, 101st Cong., 2d Sess. 20 (1990).

Implementing Regulations

Congress provided that, should the Commission issue any regulations to implement the requirements of section 203 of the Act, the provisions of section 553 of title 5 (the Administrative Procedure Act) shall apply. Sections 7 and 9 of the CPSA will not apply to the issuance of such regulations. Consumer Product Safety Improvement Act, Section 203(g). Congress also required that "[a]ny additional or revised requirement issued by the Commission shall provide an adequate degree of protection to the public." *Id.*

2. The Consumer Product Safety Act

Section 203(a) provides that the entrapment protection provisions of UL 325 shall be deemed to be a consumer product safety rule issued under section 9 of the CPSA. Section 9 of the CPSA specifies the rulemaking procedure by which the Commission issues consumer product safety standards. 15 U.S.C. 2058. Because Congress mandated the UL provisions as a rule issued by the Commission, the regulatory procedures of section 9 do not apply. Thus, the Commission is issuing this codification of the entrapment protection provisions of UL 325 as a final rule. If, at a later date, the Commission decides to issue additional rules implementing these requirements or amending them, only the notice and comment procedure of the Administrative Procedure Act ("APA"), 5 U.S.C. 553, not the procedure provided in section 9 of the CPSA, would apply. See Consumer Product Safety Improvement Act, Section 203(g).

B. The Regulation

This notice sets forth the entrapment protection provisions of UL 325 which Congress mandated as a standard of the Commission. The provisions recounted here are only excerpts from the UL standard for safety—UL 325—for door, drapery, gate, louver, and window operators and systems. This UL standard contains many provisions not stated in this notice because Congress only mandated issuance of the entrapment protection provisions as a Commission regulation. Thus, those provisions of the UL standard that relate to entrapment protection are codified as a Commission regulation. A brief summary of the provisions follows.

Section 1211.1 provides that the standard applies to all residential garage door operators manufactured on or after January 1, 1991 for sale in the United States.

Section 1211.2 supplies the following definition of "residential garage door operator": A vehicular door operator which is (1) intended for use in a home or associated garage; (2) is rated 600 volts or less; and (3) is intended to be employed in ordinary locations in accordance with the current National Electrical Code, NFPA 70. This definition incorporates the definition of residential garage door operator contained in UL325. The Commission finds that this definition accurately reflects Congressional intent. The Commission interprets this definition to exclude garage door operators in apartment building garages, which buildings UL 325 apparently considers to be commercial.

Section 1211.3 provides an explanation of the units of measurement referred to in the standard.

Section 1211.4 sets out the requirements for protection against entrapment. Subsection (a) provides the general requirement that an automatically-reset protective device, if used, must not result in a risk of injury to persons. Subsection (b) explains in detail the testing requirements to protect against entrapment. The standard requires that an automatic garage door must not remain in contact with a two inch (50.8-mm) test object, whose top is capable of being compressed, for longer than two seconds. The operator must be tested for fifty open-and-close cycles of operation with the operator connected to the type of garage door with which it is intended to be used or, if the operator is intended to be used with more than one type of garage door, with the type of garage door specified in the standard.

Section 1211.4 further states that a residential garage door operator must not allow the door to remain in contact with an obstructing object if the lower limiting device is not activated within 30 seconds or less once the close has begun. To determine compliance with this requirement, an operator must be subjected to ten open-and-close cycles of operation while it is connected to the appropriate garage door. The testing cycles do not have to be consecutive.

This section further provides that a means to manually detach the door operator from the door must be provided, must be colored red, and must be easily distinguishable from the rest of the operator. Additional requirements for the means of manual detachment are specified in subsection (b)(12).

Section 1211.5 requires that an instruction manual must accompany a residential garage door operator and specifies the instructions that must appear in the manual. This section also requires a trial installation using the instruction manual.

Section 1211.6 requires permanent marking of the garage door operator. The marking must consist of (1) the manufacturer's name, trademark, or other descriptive marking by which the organization responsible for the product may be identified (this identification may be in a traceable code if the garage door operator is identified by the brand or trademark of a private labeler); (2) the catalog number of the equivalent; (3) the voltage, frequency, and input in amperes or watts; and (4) the date or other dating period of manufacture not exceeding any three consecutive months

(the date may be abbreviated or in an established or otherwise accepted code). If the manufacturer produces or assembles the operator at more than one factory, the marking must identify the particular factory.

Section 1211.6 further requires that residential garage door operators be provided with a separate cautionary label to be mounted near the actuating switch which specifies the means to detach the operator from the door and contains the word "CAUTION" and the following (or comparable) statement: "To reduce the risk of injury to person, operate door only when fully visible, properly adjusted, and free of obstructions. Do not permit children to play in the area of door. See instruction manual."

Section 1211.6 further requires an additional cautionary label that instructs one to detach the door from the operator if the door becomes obstructed and that shows the method to detach the operator. Finally, section 1211.6 provides that the carton and instruction manual for an operator must be marked with the word "WARNING" and a statement indicating that the operator should only be used with the appropriate door.

Section 1211.7 restates the labeling requirement established by Congress which requires a manufacturer to identify, on the container of a residential garage door opener and on the system itself, the month or week and the year the system was manufactured and that it conforms with the requirements of § 1211.4. Congress provided that UL marking would satisfy this statutory labeling requirement.

C. Product Certification and Recordkeeping

Section 14(a) of the CPSA requires that every manufacturer of a product that is subject to a consumer product safety standard and is distributed in commerce must issue a certificate which specifies any applicable consumer product safety standards and certifies that the product conforms to the applicable standards. 15 U.S.C. 2063(a)(1). This certificate must accompany the product or be furnished to any distributor or retailer to whom the product is delivered. The certificate must be based on a test of each product or on a reasonable testing program. The certificate must state the name of the manufacturer or private labeler issuing the certificate and must include the date and place of manufacture. *Id.* These certification requirements apply to garage door operators covered by this consumer product safety rule.

Section 16(b) of the CPSA authorizes the Commission to issue a rule specifying reasonable requirements for the records that a manufacturer, private labeler, or distributor of a consumer product must maintain and/or provide to the Commission in order for the Commission to determine compliance with rules issued under the CPSA. 15 U.S.C. 2065(b).

The Commission may, in the future, issue rules under sections 14(a) and 16(b) of the CPSA specifying certification and record-keeping requirements applicable to automatic residential garage door operators. Such rules would improve the Commission staff's ability to identify violative products. If the Commission does decide to issue certification and record-keeping rules it would initiate a separate rulemaking proceeding commencing with a notice of proposed rulemaking and an opportunity for public comment.

D. Effective Date

As explained above, Congress provided that the entrapment protection requirements of UL 325 would become effective as a Commission rule and that residential garage door operators manufactured on or after January 1, 1991 must conform to these requirements. Thus, the substance of these requirements became effective on that date. This codification, however, contains some editorial changes to put the requirements into regulatory language. Therefore, the codification will become effective upon publication. Because Congress has mandated the substance of the rule and the effective date for the substantive requirements, the Commission finds that a delayed effective date for the codification is unnecessary and that there is good cause, in accordance with 5 U.S.C. 553(d)(3), for making the codification effective upon publication.

List of Subjects in 16 CFR Part 1211

Consumer protection, Labeling, Packaging and containers.

For the reasons set forth in the preamble, the Consumer Product Safety Commission is amending title 16, chapter II, by adding part 1211 to read as follows:

PART 1211—SAFETY STANDARD FOR AUTOMATIC RESIDENTIAL GARAGE DOOR OPERATORS

Sec.

1211.1 Effective date.
1211.2 Definition.
1211.3 Units of measurement.
1211.4 Protection against risk of injury from entrapment.
1211.5 Instruction manual.
1211.6 UL marking requirement.
1211.7 Statutory labeling requirement.

Authority: Sec. 203, Pub. L. 101-608, 104 Stat. 3110.

§ 1211.1 Effective date.

This standard applies to all residential garage door operators manufactured on or after January 1, 1991 for sale in the United States.

§ 1211.2 Definition.

As used in this part 1211: *Residential garage door operator* means a vehicular door operator which is

(a) intended for use in a home or associated garage;

(b) is rated 600 volts or less; and

(c) is intended to be employed in ordinary locations in accordance with the current National Electrical Code, NFPA 70.

§ 1211.3 Units of measurement.

If a value for measurement as given in these requirements is followed by an equivalent value in other units, in parentheses, the second value may be only approximate. The first stated value is the requirement.

§ 1211.4 Protection against risk of injury from entrapment.

(a) *General requirements.* (1) If an automatically-reset protective device is employed, automatic restarting of a motor shall not result in a risk of injury to persons.

(2) A residential garage door operator is considered to comply with the requirement in paragraph 1211.4(a)(1) if some means is provided to prevent the motor from restarting when the protector closes.

(b) *Entrapment.* (1) Except for the first 1 foot (0.30 m) of travel as measured over the path of the moving door operating member, a downward moving residential garage door shall not remain in contact with an obstructing object as specified in paragraph 1211.4(b)(2) for more than 2 seconds.

(2) The object used for the obstruction is to be 2 inches (50.8 mm) high, resilient in the first inch, and capable of being compressed to 1 inch (25.4 mm) under 100 pounds (445 N) of force. For the tests, the object is to be placed on the garage floor and at various heights under the leading edge of the door and located in line with the driving point of the operator.

(3) An operator is to be tested for 50 open-and-close cycles of operation while the operator is connected to the type of residential garage door with which it is intended to be used or with the doors specified in paragraph 1211.4(b)(4). The force adjustment on the operator is to be at the maximum setting or at the setting that represents the most

severe operating condition. Any accessories that are intended for use with the door are to be attached and the test is to be repeated.

(4) If the operator is intended to be used with more than one type of door, the operator is to be tested on a sectional door with a curved track and on a one-piece door with jamb hardware and no track. If the operator is not intended for use on either or both of these types of doors, a one-piece door with track hardware or a one-piece door with pivot hardware, as appropriate, may be used for the tests. See the marking requirements at § 1211.6(d) of this part.

(5) Compliance with the requirement in paragraph 1211.4(b)(1) may be accomplished by reversal of the rotation of the motor, by spring loading, or by other means.

(6) A residential garage door operator marketed separately from the door that it is intended to control shall have the means to comply with the requirement in paragraph 1211.4(b)(1) inherent in the operator.

(7) A residential garage door operator shall not allow the door to remain in contact with an obstructing object if the lower limiting device is not actuated in 30 seconds or less following the initiation of the close cycle. If the door is stopped manually during its descent, the 30 seconds may be measured from the resumption of the close cycle.

(8) Switches or relays used for the purpose mentioned in paragraph 1211.4(b)(7) shall be tested for 100,000 cycles of operation and shall be connected in such a manner that malfunction of the switch or relay will result in the operator being inoperative with respect to downward movement of the door.

(9) If another means, such as a solid-state device, is used for the purpose mentioned in paragraph 1211.4(b)(7) it shall be as reliable as the switch or relay mentioned in paragraph 1211.4(b)(8).

(10) To determine whether an operator complies with the requirement in paragraph 1211.4(b)(7) an operator is to be subjected to 10 open-and-close cycles of operation while connected to the door or doors specified in paragraphs 1211.4(b) (3) and (4). The cycles need not be consecutive; that is, there may be any number of motor cooling-off periods during the test. The means provided to comply with the requirement in paragraph 1211.4(b)(1) is to be inoperative or defeated during the test. An obstructing object is to be provided so that the door cannot activate a lower limiting device.

(11) During the closing cycle, the system providing compliance with paragraphs 1211.4(b) (1) and (7) shall function regardless of a short anywhere in the circuit that initiates the close cycle.

(12) A means to manually detach the door operator from the door shall be provided. The means shall be colored red and shall be easily distinguishable from the rest of the operator. It shall be capable of being adjusted to a height of 6 feet (1.8 m) above the garage floor when the operator is installed as specified in § 1211.5 (b) and (c) of this part. The means shall be constructed so that a hand can firmly grip it and detach the operator by applying a maximum of 50 pounds (220 N) of force to the means with the door obstructed in the down position. The obstructing object, as described in paragraph 1211.4(b)(2) is to be located in several different positions. If a twisting motion is involved to detach the door operator from the door, the detachment shall require a torque of not more than 10 pound-inches (1.1N m). A marking with instructions for detaching the operator shall be provided as required by § 1211.6 (b) through (c) of this part.

(13) A push of a control button or buttons that initiate movement of a door shall stop and may reverse the door on the down cycle. On the up cycle, a push of a button or buttons shall stop the door but not reverse it.

§ 1211. 5 Instruction manual.

(a) A residential garage door operator shall be provided with an instruction manual. The instruction manual shall give complete instructions for the safe and correct installation, operation, and servicing of the operator. To determine whether the installation instructions in the instruction manual comply with this requirement, at paragraphs 1211.5 (b) and (e), a trial installation is to be made using the instruction manual.

(b) Instructions that clearly detail installation and adjustment procedures required to effect proper operation of the safety means provided shall be provided with each door operator.

(c) The installation instructions shall recommend that a door operator be installed 7 feet (2.1 m) or more above the floor and that the detach means be installed at a height of 6 feet (1.8 m) above the floor.

(d) If installation heights in addition to those specified in paragraph 1211.5(c) are recommended, such as for restricted height installations, they shall be evaluated during the trial installation test. See § 1211.4(b)(1) of this part.

(e) A residential garage door or door operator shall be provided with complete and specific instructions for the correct adjustment of the control mechanism and the need for periodic checking and, if needed, adjustment of the control mechanism so as to maintain satisfactory operation of the door. The instructions shall be in a form that can be mounted adjacent to the door installation and directions for the installer shall indicate the need for mounting these directions.

§ 1211.6 UL marking requirement.

(a) Unless specifically excepted, marking required in this standard shall be permanent. Ink-printed and stenciled markings, decalcomania labels, and pressure sensitive labels are among the types of marking that are considered acceptable if they are acceptably applied and are of good quality.

(b) Except as provided below, a garage door operator shall be plainly marked, at a location where the marking will be readily visible—after installation, in the case of a permanently connected appliance—with:

(1) the manufacturer's name, trademark, or other descriptive marking by which the organization responsible for the product may be identified—hereinafter referred to as the manufacturer's name;

(2) the catalog number or the equivalent;

(3) the voltage, frequency, and input in amperes or watts; and

(4) the date or other dating period of manufacture not exceeding any three consecutive months.

(c) The ampere rating shall be included unless the full-load power factor is 80 percent or more, or, for a cord-connected operator, unless the rating is 50 watts or less. The number of phases shall be indicated if an operator is for use on a polyphase circuit. The date code repetition cycle shall not be less than 20 years.

(d) Exception No. 1: The manufacturer's identification may be in a traceable code if the operator is identified by the brand or trademark owned by a private labeler.

(e) Exception No. 2: The date of manufacture may be abbreviated or in an established or otherwise accepted code.

(f) If a manufacturer produces or assembles operators at more than one factory, each finished operator shall have a distinctive marking, which may be in code, to identify it as the product of a particular factory.

(g) A residential garage door operator shall be provided with a separate cautionary label or tag for permanent installation near the wall-mountable

electrical actuating switch. The instruction manual shall direct that the label be mounted near the switch. The label shall specify the means to detach the operator from the door and shall also contain the word "CAUTION" and the following statement or the equivalent in clearly legible form: "To reduce the risk of injury to person, operate door only when fully visible, properly adjusted, and free of obstructions. Do not permit children to play in the area of door. See instruction manual."

(h) A residential garage door operator shall be provided with a separate cautionary label attached to or adjacent at all times to the means provided to detach the operator from the garage door. This label shall be marked with the following statement or the equivalent: "If the door becomes obstructed, detach door from operator as follows." The method to detach the operator shall be shown on the label.

(i) The carton and the instruction manual for an operator shall be marked with the word "WARNING" and the following or the equivalent: "To reduce the risk of injury to persons—Use this operator only with (a) _____ door(s)."

§ 1211.7 Statutory labeling requirement.

(a) A manufacturer selling or offering for sale in the United States an automatic residential garage door operator manufactured on or after January 1, 1991, shall clearly identify on any container of the system and on the system the month or week and year the system was manufactured and its conformance with the requirements of § 1211.4 of this part.

(b) The display of the UL logo or listing mark, and compliance with the date marking requirements of UL–325, on both the container and the system, shall satisfy the requirements of this subsection.

Dated: June 12, 1991.

Sadye E. Dunn,

Secretary,

Consumer Product Safety Commission.

[FR Doc. 91–14489 Filed 6–18–91; 8:45 am]

BILLING CODE 6355–01–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

Disclosure of Past Performance by Commodity Pool Operators and Commodity Trading Advisors

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission (Commission) has adopted amendments to its rules relating to disclosure of past performance by commodity pool operators (CPOs) and commodity trading advisors (CTAs) to permit presentation of past performance, including the rate of return, by means other than that currently set forth in such rules where the Commission has approved such alternative means. These amendments are intended to assist CPOs and CTAs in presenting their past performance in a way that is not misleading and lessen the necessity for individual inquiries concerning specific methods of presenting past performance.

EFFECTIVE DATE: The amendments to rule 4.21(a)(4), rule 4.21(a)(4)(ii)(F), rule 4.21(a)(5) and rule 4.31(a)(3) are effective June 19,1991.

FOR FURTHER INFORMATION CONTACT: Susan C. Ervin, Chief Counsel, or Paul Bjarnason, Chief Accountant, Division of Trading and Markets, 2033 K Street NW., Washington, DC 20581. Telephone (202) 254–8955.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Notice

While the Commission has determined that these rule amendments will not affect the existing paperwork burden previously approved by the Office of Management and Budget, the public reporting burden for the collection of information which includes Commission Rules 4.21 and 4.31 and all other rules pertaining to the operations and activities of CPOs and CTAs and to monthly reporting by futures commission merchants (3038–0005) is estimated to average 30.6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Joe F. Mink, CFTC Clearance Office, 2033 K Street NW., Washington, DC 20581; and to Office of Management and Budget, Paperwork Reduction Project (3038–0005), Washington, DC 20503.

II. Rule Amendments

A. Background

Commission Rules 4.21 and 4.31 [1] set forth the requirements for disclosure by CPOs to prospective pool participants and by CTAs to prospective clients, respectively. Among other things, a CPO must disclose in a Disclosure Document furnished to prospective pool participants the actual performance record of the CPO and of each of its principals [2] with respect to the particular pool described in the Document as well as any other pool operated by the CPO and by each of its principals within the preceding three years, and the actual performance record for the preceding three years of all accounts other than the pool described in the Document directed [3] by the pool's CTA and by each of the CTA's principals. Rule 4.21(a) (4) and (5). Similarly, a CTA must disclose to its prospective clients in a Disclosure Document the actual performance record for the preceding three years of all accounts directed by the CTA and by each of its principals. Commission Rule 4.31(a)(3).

The Commission requires that actual past performance be displayed in the Disclosure Document in a table showing at least quarterly for the prescribed time period [4] certain information, current as of a date not more than three months preceding the date of the Document.[5] One of the required disclosures is the rate of return (ROR) for the period. The formula for ROR is set forth in rule 4.21(a)(4)(ii)(F) with respect to past performance disclosure by a CPO for the pool described in the Document and other pools operated by the CPO and its principals in the preceding three years. That formula is incorporated by reference in rule 4.21(a)(5)(ii) with respect to disclosure by the CPO of the past performance of the pool's CTA and the CTA's principals and in rule 4.31(a)(3)(ii) with respect to disclosure by a CTA concerning its past performance and that of its principals.

The Commission recognizes, however, that due to the increasing numbers and

[1] 17 CFR 4.21 and 4.31 (1991). Commission rules referred to herein are found at 17 CFR ch. I (1991).

[2] For purposes of the part 4 rules, the term "principal" is defined in Commission Rule 4.10(e).

[3] For purposes of the part 4 rules, the term "directed" is defined in Commission Rule 4.10(f).

[4] Such time period may be as long as three years depending upon the trading history of the pool, the CPO, the CTA and the principals involved.

[5] Net performance for the period represents the change in the net asset value net of additions, withdrawals and redemptions. Commission Rule 4.21(a)(4)(ii)(D).

varied operations of CPOs and CTAs,[6] there may be instances where calculation of ROR under the current rules could be misleading and an alternative method of ROR calculation would not be misleading and would provide meaningful disclosure to prospective pool participants and clients.[7] Distortions in ROR computed under the Commission's current rules could result, for example, where additions and/or withdrawals are substantial and occur early in the reporting period. The Commission raised these and other past performance disclosure issues in an interpretative statement and request for comments issued simultaneously with a companion release of the Securities and Exchange Commission regarding CPO disclosure requirements. 54 FR 5597, at 5599–5600 (February 6, 1989). Certain of the comments received in response to that release suggested alternative ROR computation methods.

Upon review of such comments and its own reconsideration of the matter, on February 27, 1991 the Commission published for comment in the **Federal Register** certain proposed amendments to its past performance rules.[8] The Commission received one comment letter on these proposals, which was from a trade association which represents CPOs and CTAs. Subject to the one exception discussed below (concerning the proposed delegation of authority to the Director of the Division of Trading and Markets), this letter supported the proposed amendments. Accordingly, based on its evaluation of the comments received and subject to the exception discussed below, the Commission has adopted the proposed amendments in the form in which they were proposed.

B. The Amendments

The Commission has determined to adopt as proposed an amendment to rule 4.21(a)(4)(ii)(F) that would permit computation of ROR pursuant to alternative methods "otherwise approved by the Commission" rather than pursuant to the current methed. As the Commission noted in its proposal, this amendment will also affect the ROR disclosure under rules 4.21(a)(5)(ii) and 4.31(a)(3)(ii), which incorporate by reference the provisions of rule 4.21(a)(4)(ii)(F).[9] Any alternative method approved by the Commission could be used, provided it does not result in the presentation of past performance in a misleading manner, even if the current method specified in the rules would also be acceptable. Use of any of the acceptable methods is subject to the overriding requirement that all material information be disclosed to existing or prospective pool participants, or existing or prospective clients, even if such information is not otherwise specifically required by the Commission's disclosure rules; thus presentations that are misleading, even if otherwise presented in accordance with Commission rules, are prohibited.[10]

The Commission has also determined to adopt as proposed amendments to the introductory text to rules 4.21(a)(4), 4.21(a)(5) and 4.31(a)(3) that would permit an alternative presentation as approved by the Commission with respect to other aspects of past performance disclosure as set forth in subsections (A) through (E) of rule 4.21(a)(4)(ii).[11]

As noted above, the Commission also proposed to amend its delegation of authority with respect to the rules governing CPOs and CTAs to permit the Director of the Division of Trading and Markets (the "Division") or the Director's designee to perform all functions reserved to the Commission under rules 4.21 and 4.31. In making this proposal the Commission noted that although the Division had previously provided relief in appropriate cases with respect to alternative methods of computation of ROR and other elements of past performance disclosure by CPOs and CTAs, such relief had necessarily been provided on a case-by-case basis. Thus the delegation of authority to the Division with respect to CPO and CTA disclosure requirements was intended to permit the Division to issue advisories and interpretations of general application from time to time as appropriate, thereby enhancing flexibility and obviating the need to apply for case-by-case relief. In light of the negative comment received on this subject, the availability of Commission procedures to address matters of general applicability, and its own reconsideration of the proposal, the Commission has concluded not to adopt this part of the proposal.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of these rules on small businesses. In this connection, the Commission previously has determined that registered commodity pool operators should not be considered small entities for purposes of the RFA.[12] With respect to community trading advisors, the Commission has stated that it would evaluate within the context of a particular rule proposal whether all or some should be considered to be small entities and, if so, that it would analyze the economic impact on them of any rule.[13] Because the rule amendments adopted herein amend the Commission's rules that currently are applicable to the above-mentioned registrants such that no additional burdens are imposed, the Commission believes that these amendments would not have a significant economic impact on the above-noted entities. Therefore, pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), the Chairman of the Commmission certifies that these final rules will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (PRA) 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission has submitted rules 4.21 and 4.31 and their associated information collection requirements to the Office of Management and Budget as part of information collection number 3038–0005. While these rules amendments have no burden, the group of rules of which they are a part has the following burden:

Average Burden Hours per Response	30.6
Number of Respondents	3,060
Frequency of Response	40

[6] As of April 30, 1991, there were 1,287 registered CPOs and 2,545 registered CTAs (some entitles may be registered in both capacities).

[7] In this regard, rule 4.21(h) and rule 4.31(g), respectively, provide that compliance by a CPO or CTA with specified disclosure rules does not relieve the registrant—

from any obligation under the (Commodity Exchange) Act or the regulations thereunder, including the obligation to disclose all material information even if the information is not specifically required by this section.

[8] 56 FR 8161.

[9] The Commission issued a companion Advisory with its proposal which set forth several methods of calculating ROR in addition to the method specified in rule 4.21(a)(4)(ii)(F). 56 FR 8109 (February 27, 1991).

[10] *See* Section 4*o* of the Commodity Exchange Act, 7 U.S.C. 6*o* (1988); 54 FR 5597, 5599 (1989); and *supra* n. 7.

[11] As noted above, these specific requirements are incorporated by reference in rules 4.21(a)(5)(ii) and 4.31(a)(3)(ii).

[12] 47 FR 18618, 18619–20 (April 30, 1982).

[13] 47 FR 18618, 18620 (April 30, 1982).

Persons wishing to comment on this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should Gary Waxman, Office of Management and Budget, room 3228, NEOB, Washington, DC 20503 (202) 395–7340. Copies of the information collection submission to OMB are available from Joe F. Mink, CFTC Clearance Officer, 2033 K Street, NW., Washington, DC 20581 (202) 254–9735.

List of Subjects in 17 CFR Part 4

Commodity Futures, Commodity Pool Operators, Commodity Trading Advisors, Consumer protection, Disclosure.

Authority delegations (government agencies).

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 2, 4b, 4c, 4l, 4m, 4n, 4o, 8a and 19 thereof, 7 U.S.C. 2, 4a(j), 6b, 6c, 6l, 6m, 6n, 6o, 12a and 23, the Commission hereby amends part 4 of chapter I of title 17 of the Code of Federal Regulations as follows:

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

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

Authority: Secs. 2(a)(1), 4b, 4c, 4l, 4m, 4n, 4o, 8a and 19 of the Commodity Exchange Act, 7 U.S.C. 2, 6b, 6c, 6l, 6m, 6n, 6o, 12a and 23; 5 U.S.C. 552 and 552b.

2. Section 4.21 is amended by revising paragraphs (a)(4) introductory text, (a)(4)(ii)(F) and (a)(5) introductory text to read as follows:

§ 4.21 Disclosure to prospective pool participants.

(a) * * *

(4) The actual performance record of the commodity pool operator and of each of its principals as specified below or by a method otherwise approved by the Commission; *Provided, however,* That nothing in this paragraph (a)(4) shall be construed to prohibit a commodity pool operator from disclosing additional information on such performance record so long as the pool operator complies with each of the specified requirements of this paragraph (a)(4), and such additional information is not misleading.

* * * * *

(ii) * * *

(F) The rate of return for the period, which shall be calculated by dividing the net performance by the beginning net asset value or by a method otherwise approved by the Commission; and

* * * * *

(5) The actual performance record of the pool's commodity trading advisor and of each of its principals as specified below or by a method otherwise approved by the Commission; *Provided, however,* That nothing in this paragraph (a)(5) shall be construed to prohibit a commodity pool operator from disclosing additional information on such performance record so long as the pool operator complies with each of the specified requirements of this paragraph (a)(5) and such additional information is not misleading.

* * * * *

3. Section 4.31 is amended by revising paragraph (a)(3) introductory text to read as follows:

§ 4.31 Disclosure to prospective clients.

(a) * * *

(3) The actual performance record of the commodity trading advisor and of each of its principals as specified below or which is calculated pursuant to a method otherwise approved by the Commission; *Provided, however,* That nothing in this paragraph (a)(3) shall be construed to prohibit a commodity trading advisor from disclosing additional information on such performance record so long as the trading advisor complies with each of the specified requirements of this paragraph (a)(3) and such additional information is not misleading.

* * * * *

Issued in Washington, DC on June 13, 1991, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91–14570 Filed 6–18–91; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8353]

RIN 1545–AO09

Information With Respect to Certain Foreign-Owned Corporations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final Income Tax Regulations relating to information that must be reported and records that must be maintained under section 6038A of the Internal Revenue Code. These regulations are necessary to provide appropriate guidance for affected reporting corporations and related parties. The regulations affect any reporting corporation (that is, certain domestic corporations and foreign corporations) as well as certain related parties of the reporting corporation.

EFFECTIVE DATE: These regulations are effective for taxable years beginning after July 10, 1989, except as follows:

§ 1.6038A–1 (a), (b), (e) (2), (g) through (n).	December 10, 1990
§ 1.6038A–3	March 20, 1990
§ 1.6038A–6	November 5, 1990
§ 1.6038A–7	December 10, 1990

FOR FURTHER INFORMATION CONTACT: Carol P. Tello or Grace Perez-Navarro of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:CORP:T:R) (202–377–9493 (Ms. Tello), 202–287–4851 (Ms. Perez-Navarro), not toll-free calls).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504 (h)) under control number 1545–1191. The estimated average annual reporting burden per respondent is 14 hours and 19 minutes. This time estimate is included in the burden of Form 5472. The estimated average annual recordkeeping burden per recordkeeper is 10 hours.

These estimates are an approximation of the average time expected to be necessary for record maintenance and collection of information. They are based upon such information as is available to the Internal Revenue Service. Individual respondents and recordkeepers may require greater or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attention: IRS Reports Clearance Officer T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

On December 10, 1990, the Internal Revenue Service published in the **Federal Register** proposed regulations (55 FR 50706) to the Income Tax Regulations (26 CFR part 1) under section 6038A of the Internal Revenue Code. Pursuant to section 7805 (f) of the Internal Revenue Code, the notice of proposed rulemaking was submitted to the Small Business Administration for comments on its impact on small business. Over sixty written comments were received from the public. A public hearing was held on February 22, 1991.

Explanation of Changes

General Requirements and Definitions

A number of significant changes were made to this section in response to suggestions from commentators. Most importantly, the de minimis rules now include a small corporation exception based upon the amount of gross receipts for the taxable year. This addition is in response to commentators who were concerned that a small business would not be able to meet the de minimis exception because of the requirement that the aggregate gross payments made to or received from a foreign related party be less than ten percent of the U.S. gross income of the corporation. The new small corporation exception permits corporations with less than $10,000,000 in gross receipts to be exempt from the record maintenance and authorization requirements of section 6038A.

The safe harbor for other corporations with related party transactions of de minimis value was modified to increase the amount of aggregate gross payments to $5,000,000.

Finally, the aggregation rules clarify that for purposes of the gross payments test, gross payments made to foreign related parties are added to gross payments received from foreign related parties.

In response to a number of comments, two exceptions to the definition of a reporting corporation have been provided. Where a foreign corporation doing business in the United States (i) is entitled to the benefits of the business profits article of a bilateral income tax treaty; and (ii) does not have, and is not deemed to have, a permanent establishment in the United States, the corporation is exempt from section 6038A. Additionally, a foreign corporation whose gross income is exempt from U.S. taxation under section 883 is not a reporting corporation, provided that the corporation timely and fully complies with the reporting requirements set forth in Rev. Proc. 91–12, 1991–6 I.R.B. 12, necessary to claim the exemption under section 883. If, however, upon audit, the corporation is determined to have a permanent establishment or to have gross income not exempt from U.S. taxation under section 883, section 6038A will apply.

The final regulations also clarify that the definition of a reporting corporation under § 1.6038A–1(c) applies for taxable years beginning before July 11, 1989.

Banks and other financial institutions, previously exempt from the filing requirement under section 6038A, were concerned about the effective date of provisions requiring them to file Form 5472. In response to these concerns, the information filing requirement under § 1.6038A–2 for such institutions will be effective for taxable years beginning after December 10, 1990.

A number of commentators identified the need to clarify whether the section 38 attribution rules or the section 267(c) attribution rules are to be used in applying section 267(b). The final regulations provide that the relationships enumerated in section 267(b) will be determined under the rules of section 318, except to the extent that section 267(c) creates more inclusive attribution rules.

In response to numerous comments, two examples were added to § 1.6038A–1 to illustrate the operation of the related party rules. Many commentators were concerned about the difficulty of securing the cooperation of entities in which the 25-percent foreign shareholder of the reporting corporation owns only a minority interest. The examples contrast a situation in which such a shareholder has control (within the meaning of section 482) of the minority-owned subsidiary with a situation in which it does not. The minority-owned subsidiary is a foreign related party only in the first situation.

The final regulations also incorporate a number of other changes to § 1.6038A–1. In response to concerns of some commentators, a principal operating company as well as a holding company may be authorized to act as an agent under § 1.6038A–5 for a foreign related party. The definition of a 25-percent foreign shareholder has been expanded to include persons that hold the stock of a reporting corporation either directly or indirectly; all direct and indirect 25-percent foreign shareholders must be identified on Form 5472. Also, the rule in the proposed regulations exempting controlled commercial entities as defined by section 892(a)(2)(B) from §§ 1.6038A–3 and 1.6038–5 has been deleted.

A rule permitting the reopening of an examination if the statute of limitations period for that taxable year has not expired has been added. Also added is a rule barring the reopening of a taxable year under section 6038A for examination purposes if the taxable year is open under section 6511 only for purposes of the carryback of net operating losses or net capital losses.

Finally, certain definitions contained in the text of section 6038A are effective for taxable years beginning after July 10, 1989.

Requirement of Information Return

A new exception from the filing requirement for foreign sales corporations was added to the final regulations in response to commentators who observed that under proposed § 1.6038A–2, a foreign sales corporation would be required to file Form 5472 because it is not required to file Form 5471. Under the final regulations, a foreign sales corporation that files Form 1120–FSC for a taxable year is exempt from the Form 5472 filing requirement.

Some commentators expressed concern about the potential difficulty in establishing the fair market value for transactions in which no monetary or nonmonetary consideration is paid. The final regulations are unchanged from the proposed regulations in this respect because the reasonable estimate rules contained in § 1.6038A–2(b)(6) address this problem.

Other commentators were concerned that the new category of "other amounts paid" in § 1.6038A–2(b)(3)(x) required to be reported on Form 5472 is too broad and would include such items as dividends and capital contributions. This paragraph has been clarified in the final regulations. The phrase "other amounts paid" includes only amounts that would be taken into account for the determination and computation of the taxable income of the reporting corporation.

Several commentators requested that the term "total assets," required to be provided by a reporting corporation on Form 5472, be defined. The final regulations provide that for U.S. reporting corporations the term total assets means all the assets of the reporting corporation. The regulations under section 6038C will clarify the meaning of total assets for foreign corporations engaged in a U.S. trade or business.

The final regulations adopt the suggestion of many commentators that disclosure under section 1059A be required only if the inventory costs of imported goods are greater than the costs taken into account in computing the value of the goods for customs purposes.

Finally, the final regulations clarify that if a reportng corporation is exempt from filing Form 5472 because a Form 5471 has been filed that provides duplicate information, the reporting corporation is also exempt from the record maintenane requirements of § 1.6038A–3 and the authorization of agent requirement of § 1.6038A–5. Such a reporting corporation, however, remains subject to the general record maintenance requirements of section 6001.

Record Maintenance

Most of the concerns of commentators focused on the record maintenance requirements of § 1.6038A–3. The majority of commentators stated that the requirements will impose significant burdens on affected foreign corporations. The safe harbor, in particular, was singled out for criticism. Additionally, the material profit and loss statement requirement was criticized as too complex. Many commentators requested that the term "relevant" be delineated or defined.

To be useful, the record maintenance rules must provide guidance for a wide variety of foreign persons located throughout the world, subject to varying record maintenance and record retention standards, who may have little or no familiarity with U.S. accounting and tax standards and tax administrative practices. The general guidance provided by section 6001 and the regulations thereunder do not provide the type of specific, detailed guidance that these persons may need. Additionally, section 6038A will be used by the Service to enforce all Code sections that affect the tax treatment of transactions between the reporting corporation and its foreign related parties; it is not limited to issues arising under section 482 or any other Code section.

For these reasons, an all-inclusive safe harbor is provided, with the instruction that an individual taxpayer or foreign person is required to maintain only those records that are relevant to its particular industry or business and to the U.S tax treatment of its transactions with foreign related parties. The final regulations clarify and expand upon these points.

The safe harbor also serves another function, that of limiting the number of potential profit and loss statements that a reporting corporation might otherwise be required to produce. Without a materiality standard, any product or service sold or provided within the United States, irrespective of its relative economic importance to the reporting corporation, might be the subject of a profit and loss statement.

In response to numerous comments concerning the complexity of the material profit and loss statements, the ten percent identifiable assets and the ten percent operating profit or loss tests have been eliminated from the definition of significant industry segments. For the high profit test, the rate of return on assets has been increased from 10 percent to 15 percent, the rate of return for an industry segment is compared to the group's worldwide operations, and the dollar threshold for U.S.-connected products has been raised to $100,000,000. The paragraph has been restructured to reflect the simpler tests to be applied.

Many commentators were concerned that constructing an accurate material profit and loss statement will be difficult. However, the profit and loss statement is not being used to determine precise U.S. tax liability of a reporting corporation. The tests for determining the material profit and loss statement are intended to identify in broad terms the relative importance of a particular product or product line (or service). For this purpose, any reasonable allocation methods and formats are acceptable.

Other commentators requested that the regulations state whether fair market value or basis of assets should be used for the rate of return on assets test under the high profit test. The final regulations permit any reasonable method to be used as long as that method is applied consistently. Also, the final regulations provide that current year data is to be used for the test.

To satisfy concerns about the meaning of the relevance standard, four new examples illustrate cases in which the record maintenance requirements are not applicable to the reporting corporation's foreign related parties.

In response to suggestions that section 6038A requires more burdensome recordkeeping than section 6001, a description of the record maintenance requirements under section 6001 (as stated by regulations under section 6001 and by official Service publications) has been added. This additional guidance reflects the equivalence of the requirements under the two sections.

Specifically, some commentators criticized the requirement of creating basic accounting records and material profit and loss statements if not otherwise maintained under the safe harbor as more burdensome than the requirements under section 6001. The final regulations in § 1.6038A–3(a) reflect the rule under § 1.6001–1(d) that permits a District Director to require specific records to be created upon notice to the taxpayer. The final regulations also reflect that in appropriate cases the relevant cost data required to construct a profit and loss statement is also necessary to establish the amount of gross income, deductions, credits or other matters required to be shown on an income tax return.

One commentator suggested that the regulations should apply the recordkeeping requirement only to reportable transactions. This suggestion has not been adopted because under the statute the recordkeeping requirement applies to all records that may be relevant to the tax treatment of transactions between a reporting corporation and any foreign related party.

Most commentators requested that the final regulations provide more guidance and more detail concerning the agreements that may be executed with District Directors or the Assistant Commissioner (International). The final regulations clarify that the agreement is to be executed with the District Director or the Assistant Commissioner (International) who has audit jurisdiction over the reporting corporation. The final regulations further provide that the agreement may include provisions relating to the authorization of agent requirement, the record maintenance requirement, and production and translation time periods that vary the rules contained in the final regulations.

The final regulations also clarify that a reporting corporation that enters into an agreement with a District Director or the Assistant Commissioner (International) generally will be required only to maintain those records specified under the safe harbor that permit an adequate audit of the income tax return of the reporting corporation and that, in most instances, the records required to be maintained under such an agreement would be less than what is required under the safe harbor. Further guidance with respect to District Director agreements will be issued in a revenue procedure.

One commentator suggested an independent review procedure that was endorsed by a number of other commentators. The proposal was not adopted because the regulations provide for individually negotiated agreements with District Directors.

In response to numerous concerns that the annual election to maintain records outside the United States was too burdensome, the final regulations provide that records may be maintained outside the United States if non-U.S. maintenance requirements to produce

documents are satisfied. These requirements are identical to the requirements imposed under the annual election contained in the proposed regulations; however, an agreement to meet those requirements is no longer required on Form 5472.

Finally, a clarification suggested by some commentators was adopted that limits the documents required under the category of financial and other documents filed with foreign governments within the safe harbor to the documents relevant to transactions between the reporting corporation and its foreign related parties.

Rules describing how the record maintenance requirements are to be applied to banks and other financial institutions will be coordinated with future regulations under section 6038C. The final regulations under section 6038A reserve these issues.

All records maintained by a foreign related party that are provided to the Service are tax return information, required to be kept confidential under section 6103.

Monetary Penalty

Commentators requested that the regulations describe facts or circumstances that might justify the granting of the reasonable cause exception to the imposition of the monetary penalty. Also requested was a definition of the term "small corporation" for purposes of the reasonable cause exception.

A new paragraph, "facts and circumstances taken into account," describes facts and circumstances that might justify the application of the reasonable cause exception. Specifically, if a reporting corporation could be related to a foreign person only within the meaning of section 482 and has a reasonable belief that the foreign person is not so related, reasonable cause exists if, in fact, the foreign person is related within the meaning of section 482. Also, a small corporation is defined as a corporation whose gross receipts for the taxable year are $20,000,000 or less.

Other commentators requested that review procedures be adopted for the denial of the reasonable cause exception. Review procedures are contained in Internal Revenue Manual supplements under section 6038A.

The suggestion that the application of the penalty provisions be phased in has not been adopted because the statute contains a clear effective date.

Authorization of Agent

Most commentators were concerned that the annual authorization of agent requirement would be too burdensome. The final regulations delete the annual authorization of agent requirement and provide that such authorization must be provided within 30 days of a request by the Service, rather than requiring the authorization to be filed with Form 5472.

The final regulations adopt the proposal that a single, consolidated authorization by a foreign parent for itself and on behalf of its group members be permitted. In the event that such a consolidated authorization is not legally enforceable, the noncompliance penalty adjustment under § 1.6038A–7 will apply.

The final regulations clarify that an authorization of agent executed by a foreign related party is to be disregarded in determining whether a trade or business exists for purposes of the Code or whether a permanent establishment under an income tax treaty exists for that foreign related party.

One commentator requested a rule that a subpoena or summons could not be directly issued to, or enforced against, a nonresident alien. See rule 30 of the Federal Rules of Civil Procedure. The legislative history states that the authorization of an agent by a foreign related party is limited to requests by the Service to examine records or produce testimony related to reportable transactions. The Internal Revenue Manual supplement will require that before a request for individual testimony of an employee of a foreign related party is made, every attempt to obtain the information from a U.S. person must be made. Additionally, national office review is required before a summons for individual testimony of an employee of a foreign related party may be issued.

Failure to Furnish Information

The most significant comment with respect to § 1.6038A–6 was the request to require that an applicable treaty exchange of information or Tax Information Exchange Agreement (TIEA) provision be used prior to issuing a section 6038A summons. The final regulations provide that generally a treaty exchange of information or TIEA provision will be used prior to section 6038A procedures where the information sought may be obtained on a timely and efficient basis. The absence or pendency of a treaty or TIEA request may not be asserted as grounds for refusing to comply with a summons or as a defense against the assertion of the noncompliance penalty adjustment under § 1.6038A–7.

The regulations provide that information is available on a timely and efficient basis if it can be obtained from a foreign government within 180 days. The Service's recent experience with the types of treaty requests most likely to be made under section 6038A indicates that the United States generally responds to such requests within 180 days. A new paragraph is added to clarify that the statute of limitations is suspended for the pendency of a court determination (including appeals therein) for the taxable year to which the summons that is the subject of the proceeding relates. This rule reflects the legislative history.

A suggestion that an exception be provided when the reporting corporation has acted in good faith to secure the compliance of the foreign related party was not adopted, because it is contrary to the legislative history.

The IRS Manual will instruct agents generally to use normal administrative requests and summons procedures to obtain relevant records and testimony directly from the reporting corporation. Only where these initial procedures are ineffective will the Service resort to the summons power under the agency authorization to obtain records and testimony of foreign related parties.

Also not adopted was a suggestion that an appeal to the District Director be permitted if it is determined that there has not been substantial compliance. Section 6038A(e)(4)(B) provides for review of such a determination by the federal district court having jurisdiction over the reporting corporation.

Finally, a commentator suggested that a rule be added that requires the issuance of an information document request prior to the issuance of a section 6038A summons. Such a procedure will be described in the Internal Revenue Manual.

Noncompliance Penalty

Some commentators were concerned that § 1.6038A–7 provides too much discretion to the Service. Various remedies were proposed. The legislative history is clear, however, that exercise of the sole discretion to establish allowable amounts of deductions and the cost of goods sold in the event of noncompliance is subject to only limited judicial review. The amounts established by the Service cannot be overturned by a court on the basis that the amount diverges from actual costs or other amounts incurred, or on the basis that they do not clearly reflect income. Furthermore, the fact that the amounts can be proven to be clearly erroneous by reference to materials or information that were not within the knowledge or possession of the Service should not be sufficient alone to cause a court to

redetermine allowable amounts of deductions and the cost of goods sold.

Drafting Information

The principal authors of these regulations are Carol P. Tello and Grace Perez-Navarro of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and Treasury Department participated in developing these regulations.

List of Subjects

26 CFR 1.6031–1 through 1.6060–2

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendment to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 is amended by adding the following citations:

Authority: 26 U.S.C. 7805 * * * Sections 1.6038A–1 through 1.6038A–7 also issued under 26 U.S.C. 6038A. * * *

Par. 2. Section 1.6038A–1 is removed.

Par. 3. New §§ 1.6038A–0 through 1.6038A–7 are added to read as follows:

§ 1.6038A–0 Table of contents.

This section lists the captions that appear in the regulations under section 6038A.

§ 1.6038A–1 **General requirements and definitions**

(a) Purpose and scope.
(b) In general.
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(3) 25-percent foreign shareholder.
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(iii) Status as a foreign related party.
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(e) Attribution rules.
(1) Attribution under section 318.
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(f) Foreign person.
(g) Foreign related party.
(h) Small corporation exception.
(i) Safe harbor for reporting corporations with related party transactions of *de minimis* value.
(1) In general.
(2) Aggregate value of gross payments made or received.
(j) Related reporting corporations.
(k) Consolidated return groups.
(l) Required information.
(2) Maintenance of records and authorization of agent.
(3) Monetary penalties.
(l) District Director.
(m) Examples.
(n) Effective dates.
(1) Section 1.6038A–1.
(2) Section 1.6038A–2.
(3) Section 1.6038A–3.
(4) Section 1.6038A–4.
(5) Section 1.6038A–5.
(6) Section 1.6038A–6.
(7) Section 1.6038A–7.

§ 1.6038A–2 Requirement of return

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(3) Foreign related party transactions for which only monetary consideration is paid or received by the reporting corporation.
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(5) Additional information.
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(2) Transactions solely with a domestic reporting corporation.
(3) Transactions with a corporation subject to reporting under section 6038.
(4) Transactions with a foreign sales corporation.
(g) Filing Form 5472 when transactions with related parties engaged in by a partnership are attributed to a reporting corporation.
(h) Effective dates for certain reporting corporations.

§ 1.6038A–3 Record maintenance

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(3) Examples.
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(1) Indirectly related records.
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(3) Material profit and loss statements.
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(i) In general.
(ii) Form of the statements.
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(d) Liability for certain partnership record maintenance.
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§ 1.6038A–5 Authorization of agent

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(b) Coordination with treaties.
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§ 1.6038A–7 Noncompliance

(a) In general.
(b) Determination of the amount.
(c) Separate application.
(d) Effective dates.

§ 1.6038A–1 General requirements and definitions.

(a) *Purpose and scope.* This section and §§ 1.6038A–2 through 1.6038A–7 provide rules for certain foreign-owned U.S. corporations and foreign corporations engaged in trade or business within the United States (reporting corporations) relating to information that must be furnished, records that must be maintained, and the authorization of the reporting corporation to act as agent for related foreign persons for purposes of sections 7602, 7603, and 7604 that must be executed. Section 6038A(a) and this section require that a reporting corporation furnish certain information annually and maintain certain records relating to transactions between the reporting corporation and certain related parties. This section also provides definitions of terms used in section 6038A. Section 1.6038A–2 provides guidance concerning the information to be submitted and the filing of the required return. Section 1.6038A–3 provides guidance concerning the maintenance of records. Section 1.6038A–4 provides guidance concerning the application of the monetary penalty for the failure either to furnish information or to maintain records. Section 1.6038A–5 provides guidance concerning the authorization of an agent for purposes of sections 7602, 7603, and 7604. Section 1.6038A–6 provides guidance concerning the failure to furnish information requested by a summons. Finally, § 1.6038A–7 provides guidance concerning the application of the noncompliance penalty for failure by the related party to authorize an agent or by the reporting corporation to substantially comply with a summons.

(b) *In general.* A reporting corporation must furnish the information described in § 1.6038A–2 by filing an annual information return (Form 5472 or any successor), and must maintain records as described in § 1.6038A–3.

(c) *Reporting corporation*—(1) *In general.* For purposes of section 6038A, a reporting corporation is either a domestic corporation that is 25-percent foreign-owned as defined in paragraph (c)(2) of this section, or a foreign corporation that is 25-percent foreign-owned and engaged in trade or business within the United States. After November 4, 1990, a foreign corporation engaged in a trade or business within the United States at any time during a taxable year is a reporting corporation. See section 6038C.

(2) *25-percent foreign-owned.* A corporation is 25-percent foreign-owned if it has at least one direct or indirect 25-percent foreign shareholder at any time during the taxable year.

(3) *25-percent foreign shareholder*—(i) *In general.* A foreign person is a 25-percent foreign shareholder of a corporation if the person owns at least 25 percent of—

(A) The total voting power of all classes of stock of the corporation entitled to vote, or

(B) The total value of all classes of stock of the corporation.

(ii) *Total voting power and value.* In determining whether one foreign person owns 25 percent of the total voting power of all classes of stock of a corporation entitled to vote or 25 percent of the total value of all classes of stock of a corporation, consideration will be given to all the facts and circumstances of each case, under principles similar to § 1.957–1(b)(2) (consideration of arrangements to shift formal voting power away from a foreign person).

(iii) *Direct 25-percent foreign shareholder.* A foreign person is a direct 25-percent foreign shareholder if it owns directly at least 25 percent of the stock of the reporting corporation, either by vote or by value.

(iv) *Indirect 25-percent foreign shareholder.* A foreign person is an indirect 25-percent foreign shareholder if it owns indirectly (or under the attribution rules of section 318 is considered to own indirectly) at least 25 percent of the stock of the reporting corporation, either by vote or by value.

(4) *Application to prior open years.* For taxable years beginning before July 11, 1989, the definition of a reporting corporation under this paragraph applies in determining whether a foreign-owned corporation is a reporting corporation.

(5) *Exceptions*—(i) *Treaty country residents having no permanent establishment.* A foreign corporation that has no permanent establishment in the United States under an applicable income tax convention is not a reporting corporation for purposes of section 6038A and this section. Accordingly, such a foreign corporation is not subject to §§ 1.6038A–2, 1.6038A–3, and 1.6038A–5. It must timely and fully provide the required notice to the Commissioner under section 6114. See section 6114 and the regulations thereunder for the notice that such a corporation must file and the applicable penalties for failure to file such notice.

(ii) *Qualified exempt shipping income.* A foreign corporation whose gross income is exempt from U.S. taxation under section 883 is not a reporting corporation provided that it timely and fully complies with the reporting requirements required to claim such exemption. In the event that such a corporation does not timely and fully comply with the reporting requirements under sections 887 and 883, it will be a reporting corporation subject to section 6038A, including the application of the monetary penalty for failure to file required information.

(iii) *Status as foreign related party.* Nothing in this paragraph affects the determination of whether a person is a foreign related party as defined in paragraph (g) of this section.

(d) *Related party.* The term "related party" means—

(1) Any direct or indirect 25-percent foreign shareholder of the reporting corporation,

(2) Any person who is related within the meaning of sections 267(b) or 707(b)(1) to the reporting corporation or

to a 25-percent foreign shareholder of the reporting corporation, or

(3) Any other person who is related to the reporting corporation within the meaning of section 482 and the regulations thereunder. However, the term "related party" does not include any corporation filing a consolidated federal income tax return with the reporting corporation.

(e) *Attribution rules*—(1) *Attribution under section 318.* For purposes of determining whether a corporation is 25-percent foreign-owned and whether a person is a related party under section 6038A, the constructive ownership rules of section 318 shall apply, and the attribution rules of section 267(c) also shall apply to the extent they attribute ownership to persons to whom section 318 does not attribute ownership. However, "10 percent" shall be substituted for "50 percent" in section 318(a)(2)(C), and section 318(a)(3) (A), (B), and (C) shall not be applied so as to consider a U.S. person as owning stock that is owned by a person who is not a U.S. person. Additionally, section 318(a)(3)(C) and § 1.318–1(b) shall not be applied so as to consider a U.S. corporation as being a reporting corporation if, but for the application of such sections, the U.S. corporation would not be 25-percent foreign owned.

(2) *Attribution of transactions with related parties engaged in by a partnership.* The transactions in which a domestic or foreign partnership engages shall be attributed to any reporting corporation whose interest in the capital or profits of the partnership, either directly or indirectly, combined with the interests of all related parties of the reporting corporation partner, equals 25 percent or more of the total partnership interests. Attribution of such transactions shall be made only to the extent of the partnership interest held by that reporting corporation partner. See sections 875 and 702(a) and the regulations thereunder. (Attribution shall not be made however, of transactions directly between the partnership and a reporting corporation.) Accordingly, a reporting corporation partner that is deemed to engage in transactions with related parties under this rule is subject to the information reporting requirements of § 1.6038A–2, to the record maintenance requirements of § 1.6038A–3, to the monetary penalty under § 1.6038A–4, to the requirement of authorization of agent under § 1.6038A–5, to the rules of § 1.6038A–6 relating to the requirement to produce records, and to the noncompliance penalty adjustment under § 1.6038A–7.

(f) *Foreign person.* For purposes of section 6038A, a foreign person is—

(1) Any individual who is not a citizen or resident of the United States, but not including any individual for whom an election under section 6013 (g) or (h) (relating to an election to file a joint return) is in effect;

(2) Any individual who is a citizen of any possession of the United States and who is not otherwise a citizen or resident of the United States;

(3) Any partnership, association, company, or corporation that is not created or organized in the United States or under the law of the United States or any State thereof;

(4) Any foreign trust or foreign estate, as defined in section 7701(a)(31); or

(5) Any foreign government (or agency or instrumentality thereof). To the extent that a foreign government is engaged in the conduct of commercial activity as defined under section 892 and the regulations thereunder, it will be treated as a foreign person under section 6038A and this section only for purposes of the information reporting requirements of § 1.6038A–2. A foreign government will not be treated as a foreign related party for purposes of §§ 1.6038A–3 and 1.6038A–5.

For purposes of section 6038A, a possession of the United States shall be considered to be a foreign country.

(g) *Foreign related party.* A foreign related party is a foreign person as defined under paragraph (f) of this section that is also a related party as defined under paragraph (d) of this section.

(h) *Small corporation exception.* A reporting corporation that has less than $10,000,000 in U.S. gross receipts for a taxable year is not subject to §§ 1.6038A–3 and 1.6038A–5 for that taxable year. Such a corporation, however, remains subject to the information reporting requirements of § 1.6038A–2 and the general record maintenance requirements of section 6001. For purposes of this paragraph, U.S. gross receipts includes all amounts received or accrued to the extent that such amounts are taken into account for the determination and computation of the gross income of the corporation. For purposes of this test, the U.S. gross receipts of all related reporting corporations shall be aggregated.

(i) *Safe harbor for reporting corporations with related party transactions of de minimis value*—(1) *In general.* A reporting corporation is not subject to §§ 1.6038A–3 and 1.6038A–5 for any taxable year in which the aggregate value of all gross payments it makes to and receives from foreign related parties with respect to related party transactions (including monetary consideration, nonmonetary consideration, and the value of transactions involving less than full consideration), is not more than $5,000,000 and is less than 10 percent of its U.S. gross income. Such a corporation, however, remains subject to the information reporting requirements of § 1.6038A–2 and the general record maintenance requirements of section 6001. For purposes of this paragraph, U.S. gross income means the gross income reportable by the reporting corporation (or the aggregate gross income reportable by all related reporting corporations) for U.S. income tax purposes. Gross payments made to or received from foreign related parties cannot be netted; rather, the gross payments made to and received from foreign related parties are to be aggregated. Thus, for example, if a reporting corporation receives $4,700,000 of gross payments from a related party and makes $500,000 of gross payments to the same related party, it has aggregate gross payments of $5,200,000, and, therefore, does not qualify for the safe harbor under this paragraph.

(2) *Aggregate value of gross payments made or received.* The aggregate value of gross payments made to (or received from) a foreign related party with respect to foreign related party transactions is determined by totaling the dollar amounts of foreign related party transactions as described in § 1.6038A–2(b) (3) and (4) on all Forms 5472 filed by the reporting corporation or related reporting corporations.

(j) *Related reporting corporations.* A reporting corporation is related to another reporting corporation if it is related to that other reporting corporation under the principles described in paragraphs (d) and (e) of this section.

(k) *Consolidated return groups*—(1) *Required information.* If a reporting corporation is a member of an affiliated group for which a U.S. consolidated income tax return is filed, the return requirement of § 1.6038A–2 may be satisfied by filing a consolidated Form 5472. The common parent, as identified on Form 851, must attach a schedule to the consolidated Form 5472 stating which members of the U.S. affiliated group are reporting corporations under section 6038A, and which of those are joining in the consolidated Form 5472. The schedule must provide the name, address, and taxpayer identification number of each member whose transactions are included on the

consolidated Form 5472. A member is not required to join in filing a consolidated Form 5472 merely because other members of the group choose to file one or more Forms 5472 on a consolidated basis.

(2) *Maintenance of records and authorization of agent.* Either the common parent or the principal operating company of an affiliated group filing a consolidated income tax return may be authorized under § 1.6038A–5 to act as the agent for foreign related persons engaged in transactions with members of the group solely for purposes of section 7602, 7603, and 7604 under section 6038A(e)(1) and § 1.6038A–5. Each member of the group, however, must maintain the records required under section 6038A (a) and § 1.6038A–3 relating to its related party transactions.

(3) *Monetary penalties.* The common parent (or principal operating company) and all reporting corporations that join in the filing of a consolidated Form 5472 are liable jointly and severally for penalties for failure to file Form 5472 and for failure to mantain records under section 6038A(d) and § 1.6038A–4(e). See § 1.1502–77(a) regarding the scope of agency of the common parent corporation.

(l) *District Director.* For purposes of the regulations under section 6038A, the term "District Director" means any District Director, or the Assistant Commissioner (International) when performing duties similar to those of a District Director with respect to any person over which the Assistant Commissioner (International) has appropriate jurisdiction.

(m) *Examples.* The following examples illustrate the rules of this section.

Example 1. P, a U.S. partnership that is engaged in a U.S. trade or business, is 75 percent owned by FC1, a foreign corporation that, in turn, is wholly owned by another foreign corporation, FC2. The remaining 25 percent of P is owned by Corp, a domestic corporation, that is wholly owned by FC3. P engages in transactions solely with FC2 and FC3. These transactions are attributed to FC1 and Corp. Under section 875, FC1 is considered as being engaged in a U.S. trade or business. For purposes of section 6038A and this section, FC1 and Corp are reporting corporations and must report their pro rata shares of the value of the transactions with FC2 and FC3. Thus, Corp must report 25 percent of P's transactions with FC3 and FC1 must report 75 percent of P's transactions with FC2.

Example 2. FC2 and FC3 are both foreign corporations that are wholly owned by FC1, also a foreign corporation. FC2 engages in a trade or business in the United States through a branch. The branch engages in related party transactions with FC1. FC2 is a reporting corporation. FC3 is a foreign related party. FC1 is a direct 25-percent foreign shareholder of both FC2 and FC3. Neither FC1 nor FC3 is a reporting corporation.

Example 3. FC1 owns 25 percent of total voting power in each of FC2 and FC3. FC2 and FC3 each own 20 percent of the total voting power of Corp, a domestic corporation. The remaining stock of Corp is owned by an unrelated domestic corporation. Neither FC2 nor FC3 is engaged in a U.S. trade or business. Under section 318(a)(2)(C) and paragraph (e) of this section, FC1 constructively owns its proportionate share of the stock of Corp owned directly by FC2 and FC3. Thus, FCl is treated as constructively owning five percent of Corp through each of FC2 and FC3 or a total of 10 percent of the Corp stock. Consequently, Corp is not a reporting corporation because no 25 percent shareholder exists.

Example 4. FP owns 100 percent of FCl which, in turn, owns 100 percent of FC2. FC2 owns 100 percent of FC3 which owns 100 percent of RC. FP, FC1, and FC2 are indirect 25-percent foreign shareholders of RC, and FC3 is a direct 25-percent foreign shareholder.

Example 5. FP owns 100 percent of USS, a U.S. corporation, and 25 percent of FS, a foreign corporation. The remaining 75 percent of FS is publicly owned by numerous small shareholders. Sales transactions occur between USS and FS. Applying the rules of this section, USS is a reporting corporation. It is determined that USS and FS are each controlled by FP under section 482 and the regulations thereunder. Therefore, FS is related to USS within the meaning of section 482 and is a related party to USS. Accordingly, the sales transactions between USS and FS are subject to section 6038A.

Example 6. The facts are the same as in *Example 5,* except that the remaining 75 percent of FS is owned by one shareholder that is unrelated to the FP group and it is determined that FS is not controlled by FP for purposes of section 482. Under these facts, FS is not a related party of either FP or USS. Accordingly, section 6038A does not apply to the sales transactions between FS and USS.

Example 7. P, a U.S. multinational, is a holding company that wholly owns X, a U.S. operating company, which in turn wholly owns FS, a controlled foreign corporation. Applying the rule of section 318(a)(3)(C), FS is deemed to own the stock of X that is actually held by P. However, under the rules of paragraph (e) of this section, X will not be a reporting corporation by reason of section 318.

(n) *Effective dates*—(1) *Section 1.6038A–1.* Paragraphs (c) (relating to the definition of a reporting corporation), (d) (relating to the definition of a related party), (e)(1) (relating to the application of section 318), and (f) (relating to the definition of a foreign person) of this section are effective for taxable Years beginning after July 10, 1989. The remaining paragraphs of this section are effective December 10, 1990, without regard to when the taxable year began.

(2) *Section 1.6038A–2.* Section 1.6038A–2 (relating to the requirement to file Form 5472) is generally effective for taxable years beginning after July 10, 1989. However, § 1.6038A–2 as it applies to reporting corporations whose sole trade or business in the United States is a banking, financing, or similar business as defined in § 1.864–4(c)(5)(i) is effective for taxable years beginning after December 10, 1990.

(3) *Section 1.6038A–3.* Section 1.6038A–3 (relating to the record maintenance requirement) is generally effective December 10, 1990. However, records described in § 1.6038A–3 in existence on or after March 20, 1990, must be maintained, without regard to when the taxable year to which the records relate began.

(4) *Section 1.6038A–4.* Section 1.6038A–4 (relating to the monetary penalty) is generally effective for taxable years beginning after July 10, 1989, for the failure to file Form 5472. For the failure to maintain records or the failure to produce documents under § 1.6038A–4(f)(2), the section is effective December 10, 1990, without regard to when the taxable year to which the records relate began.

(5) *Section 1.6038A–5.* Section 1.6038A–5 (relating to the authorization of agent requirement) is effective December 10, 1990, without regard to when the taxable year to which the records relate began.

(6) *Section 1.6038A–6.* Section 1.6038A–6 (relating to the failure to furnish information under a summons) is effective November 6, 1990, without regard to when the taxable year to which the summons relates began.

(7) *Section 1.6038A–7.* Section 1.6038A–7 (relating to the noncompliance penalty adjustment) is effective December 10, 1990, without regard to when the taxable year began.

§ 1.6038A–2 Requirement of return.

(a) *Form 5472 required*—(1) *In general.* Each reporting corporation as defined in § 1.6038A–1(c) (or members of an affiliated group filing together as described in § 1.6038A–1(k)) shall make a separate annual information return on Form 5472 with respect to each related party as defined in § 1.6038A–1(d) with which the reporting corporation (or any group member joining in a consolidated Form 5472) has had any reportable transaction during the taxable year. The information required by section 6038A and this section must be furnished even though it may not affect the amount of any tax due under the Code.

(2) *Reportable transaction.* A reportable transaction is any transaction

of the types listed in paragraphs (b) (3) and (4) of this section. However, if neither party to the transaction is a United States person as defined in section 7701(a)(30) and the transaction—

(i) Will not generate in any taxable year gross income from sources within the United States or income effectively connected, or treated as effectively connected, with the conduct of a trade or business within the United States, and

(ii) Will not generate in any taxable year any expense, loss, or other deduction that is allocable or apportionable to such income, the transaction is not a reportable transaction.

(b) *Contents of return*—(1) *Reporting corporation.* Form 5472 must provide the following information in the manner the form prescribes with respect to each reporting corporation:

(i) Its name, address (including mailing code), and U.S. taxpayer identification number; each country in which the reporting corporation files an income tax return as a resident under the tax laws of that country; its country or countries of organization, and incorporation; its total assets for U.S. reporting corporation; the places where it conducts its business; and its principal business activity.

(ii) The name, address, and U.S. taxpayer identification number, if applicable, of all its direct and indirect 25-percent foreign shareholders (for an indirect 25-percent foreign shareholder, explain the attribution of ownership); each country in which each 25-percent foreign shareholder files an income tax return as a resident under the tax laws of that country; the places where each 25-percent shareholder conducts its business; and the country or countries of organization, citizenship, and incorporation of each 25-percent foreign shareholder.

(iii) The number of Forms 5472 filed for the taxable year and the aggregate value in U.S. dollars of gross payments as defined in § 1.6038A–1(h)(2) made with respect to all foreign related party transactions reported on all Forms 5472.

(2) *Related party.* The reporting corporation must provide information on Form 5472, set forth in the manner the form prescribes, about each related party, whether foreign or domestic, with which the reporting corporation had a transaction of the types described in paragraphs (b) (3) and (4) of this section during its taxable year, including the following information:

(i) The name, U.S. taxpayer identification number, if applicable, and address of the related party.

(ii) The nature of the related party's business and the principal place or places where it conducts its business.

(iii) Each country in which the related party files an income tax return as a resident under the tax laws of that country.

(iv) The relationship of the reporting corporation to the related party.

(3) *Foreign related party transactions for which only monetary consideration is paid or received by the reporting corporation.* If the related party is a foreign person, the reporting corporation must set forth on Form 5472 the dollar amounts of all reportable transactions for which monetary consideration (including U.S. and foreign currency) was the sole consideration paid or received during the taxable year of the reporting corporation. The total amount of such transactions, as well as the separate amounts for each type of transaction described below, must be reported on Form 5472, in the manner the form prescribes. Where actual amounts are not determinable, a reasonable estimate (as described in paragraph (b)(6) of this section) is permitted. The types of transactions described in this paragraph are:

(i) Sales and purchases of stock in trade (inventory);

(ii) Sales and purchases of tangible property other than stock in trade;

(iii) Rents and royalties paid and received (other than amounts reported under paragraph (b)(3)(iv) of this section);

(iv) Sales, purchases, and amounts paid and received as consideration for the use of all intangible property, including (but not limited to) copyrights, designs, formulas, inventions, models, patents, processes, trademarks, and other similar intangible property rights;

(v) Consideration paid and received for technical, managerial, engineering, construction, scientific, or other services;

(vi) Commissions paid and received;

(vii) Amounts loaned and borrowed (except open accounts resulting from sales and purchases reported under other items listed in this paragraph (b)(3) that arise and are collected in full in the ordinary course of business);

(viii) Interest paid and received;

(ix) Premiums paid and received for insurance and reinsurance; and

(x) Other amounts paid or received not specifically identified in this paragraph (b)(3) to the extent that such amounts are taken into account for the determination and computation of the taxable income of the reporting corporation.

Amounts required to be reported under paragraph (b)(3)(vii) of this section shall be reported as monthly averages or outstanding balances at the beginning and end of the taxable year, as the form shall prescribe.

(4) *Foreign related party transactions involving nonmonetary consideration or less than full consideration.* If the related party is a foreign person, the reporting corporation must provide on Form 5472 a description of any reportable transaction, or group of reportable transactions, listed in paragraph (b)(3) of this section, for which any part of the consideration paid or received was not monetary consideration, or for which less than full consideration was paid or received. A description required under paragraph (b)(4) of this section shall include sufficient information from which to determine the nature and approximate monetary value of the transaction or group of transactions, and shall include:

(i) A description of all property (including monetary consideration), rights, or obligations transferred from the reporting corporation to the foreign related party and from the foreign related party to the reporting corporation;

(ii) A description of all services performed by the reporting corporation for the foreign related party and by the foreign related party for the reporting corporation; and

(iii) A reasonable estimate of the fair market value of all properties and services exchanged, if possible, or some other reasonable indicator of value.

If, for any transaction, the entire consideration received includes both tangible and intangible property and the consideration paid is solely monetary consideration, the transaction should be reported under paragraph (b)(3) of this section if the intangible property was related and incidental to the transfer of the tangible property (for example, a right to warranty services.)

(5) *Additional information.* In addition to the information required under paragraphs (b) (3) and (4) of this section, a reporting corporation must provide on Form 5472, in the manner the form prescribes, the following information:

(i) If the reporting corporation imports goods from a foreign related party, whether the costs taken into account in computing the basis or inventory cost of such goods are greater than the costs taken into account in computing the valuation of the goods for customs purposes, adjusted pursuant to section 1059A and the regulations thereunder, and if so, the reasons for the difference.

(ii) If the costs taken into account in computing the basis or inventory cost of such goods are greater than the costs taken into account in computing the valuation of the goods for customs purposes, whether the documents supporting the reporting corporation's treatment of the items set forth in paragraph (b)(5)(i) of this section are in existence and available in the United States at the time Form 5472 is filed.

(6) *Reasonable estimate*—(i) *Estimate within 25 percent of actual amount.* Any amount reported under this section is considered to be a reasonable estimate if it is at least 75 percent and not more than 125 percent of the actual amount.

(ii) *Other estimates.* If any amount reported under this paragraph (b) of this section fails to meet the reasonable estimate test of paragraph (b)(6)(i) of this section, the reporting corporation nevertheless may show that such amount is a reasonable estimate by making an affirmative showing of relevant facts and circumstances in a written statement containing a declaration that it is made under the penalties of perjury. The District Director shall determine whether the amount reported was a reasonable estimate.

(7) *Small amounts.* If any actual amount required under this section does not exceed $50,000, the amount may be reported as "$50,000 or less."

(8) *Accrued payments and receipts.* For purposes of this section, in the case of an accrual basis taxpayer, the terms "paid" and "received" shall include accrued payments and receipts, respectively.

(c) *Method of reporting.* All statements required on or with the Form 5472 under this section and § 1.6038A–5 shall be in the English language. All amounts required to be reported under paragraph (b) of this section shall be expressed in United States currency, with a statement of the exchange rates used.

(d) *Time and place for filing returns.* A Form 5472 required under this section shall be filed with the reporting corporation's income tax return for the taxable year by the due date (including extensions) of that return. A duplicate Form 5472 (including any attachments and schedules) shall be filed at the same time with the Internal Revenue Service Center, Philadelphia, PA 19255.

(e) *Untimely filed return.* If the reporting corporation's income tax return is untimely filed, Form 5472 (with a duplicate to Philadelphia) nonetheless shall be timely filed at the service center where the return is due. When the income tax return is ultimately filed, a copy of Form 5472 must be attached.

(f) *Exceptions—(1) No reportable transactions.* A reporting corporation is not required to file Form 5472 if it has no transactions of the types listed in paragraphs (b) (3) and (4) of this section during the taxable year with any related party.

(2) *Transactions solely with a domestic reporting corporation.* If all of a foreign reporting corporation's reportable transactions are with one or more related domestic reporting corporations that are not members of the same affiliated group, the foreign reporting corporation shall furnish on Form 5472 only the information required under paragraphs (b) (1) and (2) of this section, if the domestic reporting corporations provide the information required under paragraphs (b) (3) through (5) of this section. Such a foreign reporting corporation nonetheless is subject to the record maintenance requirements of § 1.6038A–3 and the requirements of §§ 1.6038A–5 and 1.6038A–6. The name, address, and taxpayer identification number of each domestic reporting corporation that provided such information must be indicated on Form 5472 in the space provided for the information under paragraphs (b) (1) and (2) of this section.

(3) *Transactions with a corporation subject to reporting under section 6038.* A reporting corporation is not required to make a return of information on Form 5472 with respect to a related foreign corporation for a taxable year for which a U.S. person that controls the foreign related corporation makes a return of information on Form 5471 that is required under section 6038 and this section, if that return contains information required under § 1.6038–2(f)(11) with respect to the reportable transactions between the reporting corporation and the related corporation for that taxable year. Such a reporting corporation also is not subject to §§ 1.6038A–3 and 1.6038A–5. It remains subject to the general record maintenance requirements of section 6001.

(4) *Transactions with a foreign sales corporation.* A reporting corporation is not required to make a return of information on Form 5472 with respect to a related corporation that qualifies as a foreign sales corporation for a taxable year for which the foreign sales corporation files Form 1120–FSC.

(g) *Filing Form 5472 when transactions with related parties engaged in by a partnership are attributed to a reporting corporation.* If transactions engaged in by a partnership are attributed under § 1.6038A–1(e)(2) to a reporting corporation, the reporting corporation need report on Form 5472 only the percentage of the value of the transaction or transactions equal to the percentage of its partnership interest. Thus, for example, if a partnership buys $1000 of widgets from the foreign parent of a reporting corporation whose partnership interest in the partnership equals 50 percent of the partnership interests (and the remaining 50 percent is held by unrelated parties), the reporting corporation must report $500 of purchases from a foreign related party on Form 5472.

(h) *Effective dates for certain reporting corporations.* For effective dates for this section, see § 1.6038A–1(n).

§ 1.6038A–3 Record maintenance.

(a) *General maintenance requirements*—(1) Section 6001 and section 6038A. A reporting corporation must keep the permanent books of account or records as required by section 6001 that are sufficient to establish the correctness of the federal income tax return of the corporation, including information, documents, or records ("records") to the extent they may be relevant to determine the correct U.S. tax treatment of transactions with related parties. Under section 6001, the District Director may require any person to make such returns, render such statements, or keep such specific records as will enable the District Director to determine whether or not that person is liable for any of the taxes to which the regulations under part I have application. See section 6001 and the regulations thereunder. Such records must be permanent, accurate, and complete, and must clearly establish income, deductions, and credits. Additionally, in appropriate cases, such records include sufficient relevant cost data from which a profit and loss statement may be prepared for products or services transferred between a reporting corporation and its foreign related parties. This requirement includes records of the reporting corporation itself, as well as to records of any foreign related party that may be relevant to determine the correct U.S. tax treatment of transactions between the reporting corporation and foreign related parties. The relevance of such records with respect to related party transactions shall be determined upon the basis of all the facts and circumstances. Section 6038A and this section provide detailed guidance regarding the required maintenance of records with respect to such transactions and specify penalties for noncompliance. Banks and other financial institutions shall follow the

specific record maintenance rules described in paragraph (h) of this section.

(2) *Safe harbor.* A safe harbor for record maintenance is provided under paragraph (c) of this section, which sets forth detailed guidance concerning the types of records to be maintained with respect to related party transactions. The safe harbor consists of an all-inclusive list of record types that could be relevant to different taxpayers under a variety of facts and circumstances. It does not constitute a checklist of records that every reporting corporation must maintain or that generally should be requested by the Service. A specific reporting corporation is required to maintain, and the Service will request, only those records enumerated in the safe harbor (including material profit and loss statements) that may be relevant to its business or industry and to the correct U.S. tax treatment of its transactions with its foreign related parties. Accordingly, not every item listed in the safe harbor must be maintained by every reporting corporation. A corporation that maintains or causes another person to maintain the records listed in paragraph (c)(2) of this section that may be relevant to its foreign related party transactions and to its business or industry will be deemed to have met the record maintenance requirements of section 6038A.

(3) *Examples.* The following examples illustrate the rules of this paragraph.

Example 1. RC, a U.S. reporting corporation, is owned by two shareholders, F and P. F is a foreign corporation that owns 30 percent of the stock of RC. P is a domestic corporation that owns the remaining 70 percent. RC purchases tangible property from F; however, the only potential audit issue with respect to these transactions is their treatment under section 482. It is determined that F does not in fact control RC and the two corporations do not constitute a group of "controlled taxpayers" for purposes of section 482 and the regulations thereunder. There are no other reportable transactions between RC and F. Under § 1.6038A–1(g), F is a foreign related party with respect to RC. Accordingly, RC is required to report its purchases of property from F under the reporting requirements of § 1.6038A–2. Nevertheless, because section 482 is not applicable to the transactions between RC and F, the records created by F with respect to its sales to RC are not relevant for purposes of determining the correct tax treatment of these transactions. RC is required to maintain its own records of these transactions under the requirements of section 6001, but the transactions are not subject to the record maintenance requirements of this section. If, however, on audit it is determined that F does control RC, all records relevant to determining the arm's length consideration for the tangible property under section 482 will be subject to these requirements.

Example 2. FP, a foreign person, owns 30 percent of the stock of RC, a reporting corporation. The remaining 70 percent of RC stock is held by persons that are not 25-percent foreign shareholders. It is determined that FP is related to RC within the meaning of section 482 and the regulations thereunder. The only transactions between FP and RC are FP's capital contributions, dividends paid from RC to FP, and loans from FP to RC. Under section 6001, RC is required to maintain all documentation necessary to establish the U.S. tax treatment of the capital contributions, dividends, and loans. RC is not required to maintain records in other categories listed in paragraph (c)(3) of this section because they are not relevant to the transactions between FP and RC. Records of FP not related to these transactions are not subject to the record maintenance requirements under section 6038A(a) and this section.

Example 3. G, a foreign multinational group, creates Sub, a wholly-owned U.S. subsidiary, in order to purchase tangible property from unrelated parties in the United States and resell such property to G. The property purchased by Sub is either used in G's business or resold to other unrelated parties by G. Sub's sole function is to act as a buyer for G and these purchases are the only transactions that G has with any U.S. affiliates. Under all the facts and circumstances of this case, it is determined that an analysis of the group's worldwide profit attributable to the property it purchases from Sub is not relevant for purposes of determining the tax treatment of the sales from Sub to G. Therefore, the records with respect to the profitability of G are not subject to the maintenance requirements of this section. However, all records related to the appropriate method under section 482 for determining an arm's-length consideration for the property sold by Sub to G are subject to the record maintenance requirements of this section.

Example 4. S, a U.S. reporting corporation, is the purchasing agent for its multinational parent group. It arranges for the purchase and export of miscellaneous tangible property to X, Y, and Z, each of which is a foreign related party. The miscellaneous tangible property is purchased from unrelated third parties for resale to X, Y, and Z. These resales of miscellaneous tangible property constitute the sole transactions between S and X, Y, and Z. The purchasing agent activity of S is not an integral part of the business activity of S or of any beneficiary of the purchasing agent services provided by S as defined in § 1.482–2(b)(7). Under § 1.482–2(b)(7), the arm's-length charge is deemed to be equal to the costs or deductions incurred with respect to the provision of the purchasing agent services. S is required to maintain records to permit verification upon audit of such costs or deductions. The records of X, Y, and Z are not relevant to the costs or deductions incurred by S with respect to its purchasing agent activities. Therefore, under section 6038A and this section, only the records maintained by S that permit verification of the costs and deductions of the purchasing agent services are relevant. Accordingly, solely with respect to these transactions, records of X, Y, and Z need not be maintained under section 6038A or this section. If, however, upon audit, it is determined that S is not merely engaging in services not integral to its business as defined in § 1.482–2(b)(7), the record maintenance requirements under section 6038A(a) and this section will be applicable to the records of S, X, Y and Z to the extent that such records are relevant for determining the correct tax treatment of transactions engaged in by X, Y, or Z with S. If S has other transactions with X, S must maintain or cause to be maintained records that may be relevant with respect to those transactions.

(b) *Other maintenance requirements*—(1) *Indirectly related records.* This section applies to records that are directly or indirectly related to transactions between the reporting corporation and any foreign related parties. An example of records that are indirectly related to such transactions is records possessed by a foreign subsidiary of a foreign related party that document the raw material or component costs of a product that is manufactured or assembled by the subsdiary and sold as a finished product by the foreign related party to the reporting corporation.

(2) *Foreign related party or third-party maintenance.* If records that are required to be maintained under this section are in the control of a foreign related party, the records may be obtained or compiled (if not already in the possession of the foreign related party or already compiled) under the direction of the reporting corporation and then maintained by the reporting corporation, the foreign related party, or a third party. Thus, for example, a foreign related party may either itself maintain such records outside the United States or permit a third party to maintain such records outside the United States, provided that the conditions described in paragraph (f) of this section are met. Upon a request for such records by the Service, a foreign related party or third party may make arrangements with the District Director to furnish the records directly, rather than through the reporting corporation.

(3) *Translation of records.* When records are provided to the Service under a request for production, any portion of such records must be translated into the English language within 30 days of a request for translation of that portion by the District Director. To the extent that any requested documents are identical to documents that have already been translated, an explanation of how such documents are identical instead may be

provided. An extension of this time period may be requested under paragraph (f)(4) of this section. Appropriate extensions will be liberally granted for translation requests where circumstances warrant. If a good faith effort is made to translate accurately the requested documents within the specified time period, the reporting corporation will not be subject to the penalties in §§ 1.6038A–4 and 1.6038A–7.

(4) *Exception for foreign governments.* A foreign government is not subject to the obligation to maintain records under this section.

(c) *Specific records to be maintained for safe harbor*—(1) *In general.* A reporting corporation that maintains or causes another person to maintain the records specified in this paragraph (c) that are relevant to its business or industry and to the correct U.S. tax treatment of its transactions with its foreign related parties will deemed to have met the record maintenance requirements of this section. This paragraph provides general descriptions of the categories of records to be maintained; the particular title or label applied by a reporting corporation or related party does not control. Functional equivalents of the specified documents are acceptable. Record maintenance in accordance with this safe harbor, however, requires only the maintenance of types of documents described in paragraph (c)(2) of this section that are directly or indirectly related to transactions between the reporting corporation and any foreign related party. Additionally, to the extent the reporting corporation establishes that records in a particular category are not applicable to the industry or business of the reporting corporation and any foreign related party, maintenance of such records is not required under this paragraph. Record maintenance in accordance with this paragraph (c) generally does not require the original creation of records that are ordinarily not created by the reporting corporation or its related parties. (If, however, a document that is actually created is described in this paragraph (c), it is to be maintained even if the document is not of the type ordinarily created by the reporting corporation or its related parties.) There are two exceptions to the rule. First, basic accounting records that are sufficient to document the U.S. tax effects of transactions between related parties must be created and retained, if they do not otherwise exist. Second, records sufficient to produce material profit and loss statements as described in paragraphs (c)(2) (ii) and (3) of this section that are relevant for determining the U.S. tax treatment of transactions between the reporting corporation and foreign related parties must be created if such records are not ordinarily maintained. All internal records storage and retrieval systems used for each taxable year must be retained.

(2) *Descriptions of categories of documents to be maintained.* The following records must be maintained in order to satisfy this paragraph (c) to the extent they may be relevant to determine the correct U.S. tax treatment of transactions between the reporting corporation and any foreign related party.

(i) *Original entry books and transaction records.* This category includes books and records of original entry or their functional equivalents, however designated or labelled, that are relevant to transactions between any foreign related party and the reporting corporation. Examples include, but are not limited to, general ledgers, sales journals, purchase order books, cash receipts books, cash disbursement books, canceled checks and bank statements, workpapers, sales contracts, and purchase invoices. Descriptive material to explicate entries in the foregoing types of records, such as a chart of accounts or an accounting policy manual, is included in this category.

(ii) *Profit and loss statements.* This category includes records from which the reporting corporation can compile and supply, within a reasonable time, material profit and loss statements of the reporting corporation and all related parties as defined in § 1.6038A–1 (d) (the "related party group") that reflect profit or loss of the related party group attributable to U.S.-connected products or services as defined in paragraph (c)(7)(i) of this section. The determination of whether a profit and loss statement is material is made under the rules provided in paragraph (c)(3) of this section. The material profit and loss statements described in this paragraph (c)(2)(ii) must reflect the consolidated revenue and expenses of all members of the related party group. Thus, records in this category include the documentation of the cost of raw materials used by a related party to manufacture finished goods that are then sold by another related party to the reporting corporation. The records should be kept under U.S. generally accepted accounting principles if they are ordinarily maintained in such manner; if not, an explanation of the material differences between the accounting principles used and U.S. generally accepted accounting principles must be made available. The statements need not reflect tracing of the actual costs borne by the group with respect to its U.S.-connected products or services; rather, any reasonable method may be used to allocate the group's worldwide costs to the revenues generated by the sales of those products or services. An explanation of the methods used to allocate specific items to a particular profit and loss statement must be made available. The explanation of material differences between accounting principles and the explanation of allocation methods must be sufficient to permit a comparison of the profitability of the group to that of the reporting corporation attributable to the provision of U.S.-connected products or services.

(iii) *Pricing documents.* This category includes all documents relevant to establishing the appropriate price or rate for transactions between the reporting corporation and any foreign related party. Examples include, but are not limited to, documents related to transactions involving the same or similar products or services entered into by the reporting corporation or a foreign related party with related and unrelated parties; shipping and export documents; commission agreements; documents relating to production or assembly facilities; third-party and intercompany purchase invoices; manuals, specifications, and similar documents relating to or describing the performance of functions conducted at particular locations; intercompany correspondence discussing any instructions or assistance relating to such transactions provided to the reporting corporations by the related foreign person (or vice versa); intercompany and intracompany correspondence concerning the price or the negotiation of the price used in such transactions; documents related to the value and ownership of intangibles used or developed by the reporting corporation or the foreign related party; documents related to cost of goods sold and other expenses; and documents related to direct and indirect selling, and general and administrative expenses (for example, relating to advertising, sales promotions, or warranties).

(iv) *Foreign country and third party filings.* This category includes financial and other documents relevant to transactions between a reporting corporation and any foreign related party filed with or prepared for any foreign government entity, any independent commission, or any financial institution.

(v) *Ownership and capital structure records.* This category includes records

or charts showing the relationship between the reporting corporation and the foreign related party; the location, ownership, and status (for example, joint venture, partnership, branch, or division) of all entities and offices directly or indirectly involved in the transactions between the reporting corporation and any foreign related party; a worldwide organization chart; records showing the management structure of all foreign affiliates; and loan documents, agreements, and other documents relating to any transfer of the stock of the reporting corporation that results in the change of the status of a foreign person as a foreign related party.

(vi) *Records of loans, services, and other non-sales transactions.* This category includes relevant documents relating to loans (including all deposits by one foreign related party or reporting corporation with an unrelated party and a subsequent loan by that unrelated party to a foreign related party or reporting corporation that is in substance a direct loan between a reporting corporation and a foreign related party); guarantees of a foreign related party of debts of the reporting corporation, and vice versa; hedging arrangements or other risk shifting or currency risk shifting arrangements involving the reporting corporation and any foreign related party; security agreements between the reporting corporation and any foreign related party; research and development expense allocations between any foreign related party and the reporting corporation; service transactions between any foreign related party and the reporting corporation, including, for example, a description of the allocation of charges for management services, time or travel records, or allocation studies; import and export transactions between a reporting corporation and any foreign related party; the registration of patents and copyrights with respect to transactions between the reporting corporation and any foreign related party: and documents regarding lawsuits in foreign countries that relate to such transactions between a reporting corporation and any foreign related party (for example, product liability suits for U.S. products).

(3) *Material profit and loss statements.* For purposes of paragraph (c)(2)(ii) of this section, the determination of whether a profit and loss statement is material will be made according to the following rules. An agreement between the reporting corporation and the District Director as described in paragraph (e) of this section may identify material profit and loss statements of the related party group and describe the items to be included in any profit and loss statements for which records are to be maintained to satisfy the requirements of paragraph (c)(2)(ii) of this section. In the absence of such an agreement, a profit and loss statement will be material if it meets any of the following tests: the existing records test described in paragraph (c)(4) of this section, the significant industry segment test described in paragraph (c)(5) of this section, or the high profit test described in paragraph (c)(6) of this section.

(4) *Existing records test.* A profit and loss statement is material under the existing records test described in this paragraph (c)(4) if any member of the related party group creates or compiles such statement in the course of its business operations and the statement reflects the profit or loss of the related party group attributable to the provision of U.S.-connected products or services (regardless of whether the profit and loss attributable to U.S.-connected products or services is shown separately or included within the calculation of aggregate figures on the statement). For example, a profit and loss statement is described in this paragraph if it was produced for internal accounting or management purposes, or for disclosure to shareholders, financial institutions, government agencies, or any other persons. Such existing statements and the records from which they were complied (to the extent such records relate to profit and loss attributable to U.S.-connected products or services) are subject to the record maintenance requirements described in paragraph (c)(2)(ii) of this section.

(5) *Significant industry segment test*—(i) *In general.* A profit and loss statement is material under the significant industry segment test described in this paragraph (c)(5) if—

(A) The statement reflects the profit or loss of the related party group attributable to the group's provision of U.S.-connected products or services within a single industry segment (as defined in paragraph (c)(7)(ii) of this section);

(B) The worldwide gross revenue attributable to such industry segment is 10 percent or more of the worldwide gross revenue attributable to the group's combined industry segments; and

(C) The amount of gross revenue earned by the group from the provision of U.S.-connected products or services within such industry segment is $25 million or more in the taxable year.

(ii) *Form of the statements.* Profit and loss statements compiled for the group's provision of U.S.-connected products or services in each significant industry segment must reflect revenues and expenses attributable to the operations in such segment by all members of the related party group. Statements may show each related party's revenues and expenses separately, or may be prepared in a consolidated format. Any reasonable method may be used to allocate the group's worldwide costs within the industry segment to the U.S.-connected products or services within that segment. An explanation of the methods used to prepare consolidated statements and to allocate specific items to a particular profit and loss statement must be made available, and the records from which the consolidations and allocations were prepared must be maintained.

(iii) *Special rule for component sales.* Where the U.S.-connected products or services consist of components that are incorporated into other products or services before sale to customers, the portion of the total gross revenue derived from sales of the finished products or services attributable to the components may be determined on the basis of relative costs of production. Thus, where relevant for determining whether the $25 million threshold in paragraph (c)(5)(i)(C) of this section has been met, the amount of gross revenue derived by the related party group from the provision of the finished products or services may be reduced by multiplying it by a fraction, the numerator of which is the costs of production of the related party group attributable to the component products or services that constitute U.S.-connected products or services and the denominator of which is the costs of production of the related party group attributable to the finished products in which such components are incorporated.

(iv) *Level of specificity required.* In applying the significant industry segment test of this paragraph (c)(5), groups of related products and services must be chosen to provide a reasonable level of specificity that results in the greatest number of separate significant industry segments in comparison to other possible classifications. This determination must be made on the basis of the particular facts presented by the operations of the related party group. The following rules, however, provide general guidelines for making such classifications. First, the related party group's operations that involve the provision of U.S.-connected products should be grouped into product lines. The rules of this paragraph (c)(5) should then be applied to determine if any such

product line would, standing alone, constitute a significant industry segment when compared to the related party group's operations as a whole. Any significant industry segments determined at the level of product lines should be further segregated, and tested for significant industry segments, at the level of separate products. Finally, any significant industry segments determined at the level of separate products should be segregated, and tested for significant industry segments, at the level of separate models. Similar principles should be applied in classifying and testing types of services. A profit and loss statement reflecting the related party group's provision of any product or service (or group of products or services as classified under these rules) that constitutes a significant industry segment will be considered material for purposes of this paragraph (c)(5). For definitions of the terms "product", "related products or services", "model", and "product line", see paragraph (c)(7) of this section.

(v) *Examples.* The rules for determining reasonable levels of specificity for significant industry segments may be illustrated by the following examples.

Example 1. A related party group is engaged in the manufacture and worldwide sales of automobiles and aftermarket parts. The group's operations within the categories of "automobiles" and "aftermarket parts". are each sufficient to constitute significant industry segments for the group under the rules of this paragraph (c)(5). No narrower classification of aftermarket parts results in any significant industry segments. Automobiles produced by the group are generally classified for marketing purposes by trade names; aggregating groups of automobiles by these trade names results in three significant industry segments, those for trade names A, B, and C. Finally, two car models sold under the trade name A ("A1" and "A2") and one car model sold under the trade name B ("B3"), produce sufficient revenue to constitute significant industry segments. Such classifications into trade names and car models are generally used in the related party group's industry; moreover, different types of classifications would produce fewer significant industry segments. Accordingly, a reasonable level of specificity for this related party group's industry segments would be eight categories of products consisting of "automobiles", "aftermarket parts", "A", "B", "C", "A1", "A2", and "B3".

Example 2. A related party group is engaged in manufacturing electronic goods that are distributed at retail in the United States by the reporting corporation. The group sells three types of products in the United States: televisions, radios, and video cassette recorders (VCRs). Each of these three broad product areas constitutes a significant industry segment for the group as a whole. VCRs can be further segregated by price into high-end and low-end models, and the provision of each constitutes a significant industry segment for the group. Revenues from only one VCR model, model number VCRX–10, are sufficiently large to make the provision of that model a significant industry segment. With respect to televisions, the group normally accounts for these products by size. Using this classification, portable televisions, medium-sized televisions, and consoles each constitute significant industry segments. Narrower classifications by television model numbers result in no additional significant industry segments. Finally, a single radio product line, those sold under the trade name R, produces sufficient revenue to constitute a significant industry segment, but no other radio models or product groups are large enough to constitute a significant industry segment. In each case, these classifications conform to normal business practices in the industry and result in the greatest possible number of significant industry segments for this related party group. Accordingly, a reasonable level of specificity for this related party group's industry segments would include the ten categories consisting of "VCRs", "high-end VCRs", "low-end VCRs", "model number VCRX–10", "televisions", "portable televisions", "medium-sized televisions", "console televisions", "radios", and "radio trade name R".

(6) *High profit test*—(i) *In general.* A profit and loss statement is material under the high profit test described in this paragraph (c)(6) if—

(A) The statement reflects the profit or loss of the related party group attributable to the group's provision of U.S.-connected products or services within a single industry segment (as defined in paragraph (c)(7)(ii) of this section);

(B) The amount of gross revenue earned by the group from the provision of U.S.-connected products or services within such industry segment is $100 million or more in the taxable year; and

(C) The return on assets test described in paragraph (c)(6)(ii) of this section is satisfied with respect to the products and services attributable to such segment.

Accordingly, a significant industry segment (as determined under paragraph (c)(5) of this section) must be divided into any narrower industry segments that meet the high profit test of this paragraph (c)(6), even if such narrower segments would not, standing alone, meet the significant industry segment test of paragraph (c)(5) of this section.

(ii) *Return on assets test.* An industry segment meets the return on assets test if the rate of return on assets earned by the related party group on its worldwide operations within this industry segment exceeds 15 percent, and is at least 200 percent of the return on assets earned by the group in all industry segments combined. For purposes of this paragraph, the rate of return on assets earned by an industry segment is determined by dividing that segment's operating profit (as defined in paragraph (c)(7)(v) of this section) by its identifiable assets (as defined in paragraph (c)(7)(iv) of this section).

(iii) *Additional rules.* The rules in paragraphs (c)(5)(ii) through (iv) of this section describing the application of the significant industry segment test shall apply in a similar manner for purposes of the high profit test.

(7) *Definitions.* The following definitions apply for purposes of paragraphs (c)(2)(ii), (c)(5), and (c)(6) of this section.

(i) *U.S. connected products or services.* The term "U.S.-connected products or services" means products or services that are imported to or exported from the United States by transfers between the reporting corporation and any of its foreign related parties.

(ii) *Industry segment.* An industry segment is a segment of the related party group's combined operations that is engaged in providing a product or service or a group of related products or services (as defined in paragraph (c)(7)(vii) of this section) primarily to customers that are not members of the related party group.

(iii) *Gross revenue of an industry segment.* Gross revenue of an industry segment includes receipts (prior to reduction for cost of goods sold) both from sales to customers outside of the related party group and from sales or transfers to other industry segments within the related party group (but does not include sales or transfers between members of the related party group within the same industry segment). Interest from sources outside the related party group and interest earned on trade receivables between industry segments is included in gross revenue if the asset on which the interest is earned is included among the industry segment's identifiable assets, but interest earned on advances or loans to other industry segments is not included.

(iv) *Identifiable assets of an industry segment.* The identifiable assets of an industry segment are those tangible and intangible assets of the related party group that are used by the industry segment, including assets that are used exclusively by that industry segment and an allocated portion of assets used jointly by two or more industry segments. The value of an identifiable asset may be determined using any

reasonable method (such as book value or fair market value) applied consistently. Any allocation of assets among industry segments must be made on a reasonable basis, and a description of such basis must be provided. Assets of an industry segment that transfers products or services to another industry segment shall not be allocated to the receiving segment. Assets that represent part of the related party group's investment in an industry segment, such as goodwill, shall be included in the industry segment's identifiable assets. Assets maintained for general corporate purposes (that is, those not used in the operations of any industry segment) shall not be allocated to industry segments.

(v) *Operating profit of an industry segment.* The operating profit of an industry segment is its gross revenue (as defined in paragraph (c)(7)(iii) of this section) minus all operating expenses. None of the following shall be added or deducted in computing the operating profit of an industry segment: revenue earned at the corporate level and not derived from the operations of any industry segment; general corporate expenses; interest expense; domestic and foreign income taxes; and other extraordinary items not reflecting the ongoing business operations of the industry segment.

(vi) *Product.* The term "product" means an item of property (or combination of component parts) that is the result of a production process, is primarily sold to unrelated parties (or incorporated by the related party group into other products sold to unrelated parties), and performs a specific function.

(vii) *Related products or services.* The term "related products or services" means groupings of products and types of services that reflect reasonable accounting, marketing, or other business practices within the industries in which the related party group operates.

(viii) *Model.* The term "model" means a classification of products that incorporate particular components, options, styles, and any other unique features resulting in product differentiation. Examples of models are electronic products that are sold or accounted for under a single model number and automobiles sold under a single model name.

(ix) *Product line.* The term "product line" means a group of products that are aggregated into a single classification for accounting, marketing, or other business purposes. Examples of product lines are groups of products that perform similar functions; products that are marketed under the same trade names, brand names, or trademarks; and products that are related economically (that is, having similar rates of profitability, similar degrees of risk, and similar opportunities for growth).

(8) *Example.* The application of the rules for determining material profit and loss statements under paragraphs (c)(4) through (7) of this section is illustrated by the following example.

Example. (i) *Facts.* A multinational enterprise manufactures 50 different agricultural and chemical products that are sold through Subl, its wholly owned U.S. subsidiary, and other subsidiaries located in foreign countries. The parent company of the enterprise, P, is a foreign corporation. The corporations participating in the enterprise form a related party group, and Subl is a reporting corporation for purposes of section 6038A. Under the facts and circumstances of this case, an analysis of the group's worldwide profit attributable to its products sold in the U.S. is relevant for determining an arm's length consideration under section 482 for the transfers of goods between Subl and its foreign affiliates.

(ii) *Existing records test.* For management purposes, the group prepares profit and loss statements that are segmented by sales in different geographic markets. One of these statements shows the combined worldwide profitability of the group. Another statement shows the profitability of the group attributable to its North American sales. Both of these profit and loss statements reflect aggregate figures that include sales to unrelated parties of products that have been transferred from P and other group members to Subl (that is, the group's "U.S.-connected products"). The two statements meet the existing records test described in paragraph (c)(4) of this section.

(iii) *Significant industry segments.* The group's worldwide gross revenue in all industry segments is $2 billion. An analysis of the group's 50 products demonstrates that they are reasonably grouped into eight industry segments (each of which earns roughly $250 million in worldwide gross revenue). Segments 1 through 6 relate to agricultural products and Segments 7 and 8 relate to other chemical products. More specific categories would result in groupings that generate less than 10 percent of the group's worldwide gross revenue (that is, less than $200 million each); these narrower categories would thus fail the gross revenue percentage test of paragraph (c)(5)(i)(B) of this section. The gross revenue in each of the eight segments from the sale to unrelated parties of U.S.-connected products is as follows: $180 million for Segment 1; $30 million for Segment 2; and less than $25 million for each of Segments 3 through 8. Under the $25 million threshold test of paragraph (c)(5)(i)(C) of this section, the group's significant industry segments are thus limited to Segments 1 and 2. In addition, the combined operations of the group related to agricultural products (encompassing Segments 1 through 6 on an aggregated basis), constitute a single significant industry segment.

(iv) *High profit test.* One highly profitable product line within Segment 1, HPPL, accounts for $120 million gross revenue from Sub1's domestic sales of U.S.-connected products (and thus exceeds the $100 million gross revenue threshold in paragraph (c)(6)(i)(B) of this section). The return on the identifiable assets attributable to the HPPL product line is 85 percent, which is more than 15 percent and more than twice the return on assets earned by the group from its worldwide operations in its combined industry segments. The group's industry segment for HPPL thus meets the high profit test described in paragraph (c)(6) of this section.

(v) *Material Profit and Loss Statements.* The group's material profit and loss statements consist of statements for combined worldwide sales and North American sales (under the existing records test); Segment 1, Segment 2, and aggregated Segments 1–6 (under the significant industry segment test); and HPPL (under the high profit test). Under paragraph (c) of this section, Subl is required to retain the combined worldwide sales and North American sales profit and loss statements and to maintain sufficient records so that it can compile and supply upon request statements of the group's profitability from sales of its U.S.-connected products within Segment 1, Segment 2, aggregated Segments 1–6, and HPPL. These records need not be in the possession of Subl and may be kept under the control of and produced by P or any third party. The statements for Segment 1, Segment 2, aggregated Segments 1–6, and HPPL do not require tracing of actual costs to the U.S.-connected products; rather, these statements may be prepared by using any reasonable method to allocate a portion of the industry segment's overall operating costs to the sales of U.S.-connected products within that segment.

(d) *Liability for certain partnership record maintenance.* A reporting corporation to which transactions engaged in by a partnership are attributed under § 1.6038A–1 (e)(2) is subject to the record maintenance requirements of this section to the extent of the transactions so attributed.

(e) *Agreements with the District Director*—(1) *In general.* The District Director who has audit jurisdiction over the reporting corporation may negotiate and enter into an agreement with a reporting corporation that establishes the records the reporting corporation must maintain or cause another to maintain, how the records must be maintained, the period of retention for the records, and by whom the records must be maintained in order to satisfy the reporting corporation's obligations under this section.

(2) *Content of agreement*—(i) *In general.* The agreement may include provisions relating to the authorization of agent requirement, the record maintenance requirement, and the

production and translation time periods that vary the rules contained in these regulations under section 6038A. The District Director will generally require a reporting corporation to maintain only those records specified under the safe harbor provisions of paragraph (c) of this section that permit an adequate audit of the income tax return of the reporting corporation and to provide such authorizations of agent that permit adequate access to such records. In most instances, required record maintenance for a particular reporting corporation under a negotiated agreement will be less than the broad range of records described under the safe harbor provisions. Additionally, a provision specifying the effective date and the expiration date of the agreement that may vary the effective date of the regulations may be included.

(ii) *Significant industry segment test.* A District Director may determine which industry segment profit and loss statements are material for purposes of requiring the maintenance of records (under either paragraph (a)(1) of this section or the safe harbor described in paragraph (a)(2) of this section). The industry segments that the District Director determines are material need not be the industry segments that meet the significant industry segment test under paragraph (c)(5) of this section or the high profit test under paragraph (c)(6) of this section. For this purpose, a reporting corporation will be required to maintain only those records from which profit and loss statements for the related party group may be constructed with respect to industry segments identified by the District Director. To the extent that existing profit and loss statements are similar in scope and level of detail to statements for industry segments that would otherwise be described under the tests of paragraphs (c)(5) and (6) of this section, the District Director shall accept the existing statements instead of the statements that would otherwise be required under paragraphs (c)(5) and (6) of this section.

(iii) *Example.* The following example illustrates the rules of paragraph (e)(2)(ii) of this section.

Example. The District Director determines that RC, a reporting corporation that is a manufacturer of related chemical products, has two industry segments, Segment 1 and Segment 2. While both industry segments meet the significant industry segment test of paragraph 3(c)(5) of this section, Segment 1 has a relatively low volume of sales to foreign related parties. Additionally, Segment 1 consists of products that produce only a small profit margin because the product is generic and other companies also sell the product. The District Director enters into an agreement with RC that requires only records from which a profit and loss statement for the related party group can be constructed for Segment 2. Therefore, RC is not required to maintain records for Segment 1 from which a profit and loss statement for the related party group can be constructed. The other record maintenance requirements under this section apply, however.

(3) *Circumstances of agreement.* The District Director generally will enter into an agreement under this paragraph (e) upon request by the reporting corporation when the District Director believes that the District has or can obtain sufficient knowledge of the business or industry of the reporting corporation to limit the record maintenance requirement to particular documents.

(4) *Agreement as part of APA process.* An agreement with a reporting corporation under this paragraph (e) may be entered into as a part of the Advance Pricing Agreement (APA) process at any time during the APA process, insofar as the agreement relates to the subject matter of the APA.

(f) *U.S. maintenance*—(1) *General rule.* Records that must be maintained under this section must be maintained within the United States, unless the conditions described in paragraph (f)(2) of this section are met.

(2) *Non-U.S. maintenance requirements.* A reporting corporation may maintain outside the United States records not ordinarily maintained in the United States but required to be maintained in the United States under this section. However, the reporting corporation must either:

(i) Deliver to the Service the original documents (or duplicates) requested within 60 days of the request by the Service for such records and provide translations of such documents within 30 days of a request for translations of specific documents; or

(ii) Move the original documents (or duplicates) requested to the United States within 60 days of the request of the Service for such records; provide the Service with an index to the requested records, the name and address of a custodian located within the United States having control over the records, and the address where the records are located within 60 days of the Service's request for the records; and continue to maintain the records within the United States throughout the period of retention described in paragraph (g) of this section. For summons procedures with respect to records that have been moved to the United States, see sections 6038A(e), 7602, 7603, and 7604.

With respect to any material profit and loss statements required to be created (either under paragraph (c) of this section or under an agreement with the District Director), unless otherwise specified, "120 days" shall be substituted for "60 days" in this paragraph (f)(2), and labels and text with respect to such statements must be in the English language.

(3) *Prior taxable years.* The non-U.S. maintenance requirements described in paragraph (f)(2) of this section apply to records located outside the United States that were in existence on or after March 20, 1990, without regard to the taxable year to which such records relate.

(4) *Scheduled production for high volume or other reasons.* Upon a written request, for good cause shown, the District Director may grant an extension of the time for the production or translation of the requested documents. Such requests should be made within 30 days of the request for records by the Service. If an extension is needed because of the volume of records requested or the amount of translation requested, the District Director may allow production or translation to be scheduled over a period of time so that not all records need be produced or translated at the same time.

(5) *Required U.S. maintenance.* The District Director (with the concurrence of the Assistant Commissioner (International)), may require, for cause, the maintenance within the United States of any records specified in paragraph (f)(1) of this section. Such a requirement will be imposed only if there exists a clear pattern of failure to maintain or timely produce the required records. The assessment of a monetary penalty under section 6038A(d) and § 1.6038A–4 for failure to maintain records is not necessarily sufficient to require the maintenance of records within the United States.

(g) *Period of retention.* Records required to be maintained by section 6038A(a) and this section shall be kept as long as they may be relevant or material to determining the correct tax treatment of any transaction between the reporting corporation and a related party, but in no case less than the applicable statute of limitations on assessment and collection with respect to the taxable year in which the transaction or item to which the records relate affects the U.S. tax liability of the reporting corporation. *See* section 6001 and the regulations thereunder.

(h) *Application of record maintenance rules to banks and other financial institutions.* [Reserved].

(i) *Effective dates.* For effective dates for this section, see § 1.6038A–1(n).

§ 1.6038A–4 Monetary penalty.

(a) *Imposition of monetary penalty*—(1) *In general.* If a reporting corporation fails to furnish the information described in § 1.6038A–2 within the time and manner prescribed in § 1.6038A–2 (d) and (e), fails to maintain or cause another to maintain records as required by § 1.6038A–3, or (in the case of records maintained outside the United States) fails to meet the non-U.S. record maintenance requirements within the applicable time prescribed in § 1.6038A–3(f), a penalty of $10,000 shall be assessed for each taxable year with respect to which such failure occurs. Such a penalty may be imposed by the District Director or the Director of the Internal Revenue Service Center where the Form 5472 is filed. The filing of a substantially incomplete Form 5472 constitutes a failure to file Form 5472. Where, however, the information described in § 1.6038A–2 (b)(3) through (5) is not required to be reported, a Form 5472 filed without such information is not a substantially incomplete Form 5472.

(2) *Liability for certain partnership transactions.* A reporting corporation to which transactions engaged in by a partnership are attributed under § 1.6038A–1(e)(2) is subject to the rules of this section to the extent failures occur with respect to the partnership transactions so attributed.

(3) *Calculation of monetary penalty.* If a reporting corporation fails to maintain records as required by § 1.6038A–3 of transactions with multiple related parties, the monetary penalty may be assessed for each failure to maintain records with respect to each related party. The monetary penalty, however, shall be imposed on a reporting corporation only once for a taxable year with respect to each related party for a failure to furnish the information required on Form 5472, for a failure to maintain or cause another to maintain records, or for a failure to comply with the non-U.S. maintenance requirements described in § 1.6038A–3(f). An additional penalty for another failure may be imposed, however, under the rules of paragraph (d)(2) of this section. Thus, unless such failures continue after notification as described in paragraph (d) of this section, the maximum penalty under this paragraph with respect to each related party for all such failures in a taxable year is $10,000. The members of a group of corporations filing a consolidated return are jointly and severally liable for any monetary penalty that may be imposed under this section.

(b) *Reasonable cause*—(1) *In general.* Certain failures may be excused for reasonable cause, including not timely filing Form 5472, not maintaining or causing another to maintain records as required by § 1.6038A–3, and not complying with the non-U.S. maintenance requirements described in § 1.6038A–3(f). If an affirmative showing is made that the taxpayer acted in good faith and there is reasonable cause for a failure that results in the assessment of the monetary penalty, the period during which reasonable cause exists shall be treated as beginning on the day reasonable cause is established and ending not earlier than the last day on which reasonable cause existed for any such failure. Additionally, the beginning of the 90-day period after mailing of a notice by the District Director or the Director of an Internal Revenue Service Center of a failure described in paragraph (d) of this section shall be treated as not earlier than the last day on which reasonable cause existed.

(2) *Affirmative showing required*—(i) *In general.* To show that reasonable cause exists for purposes of paragraph (b)(1) of this section, the reporting corporation must make an affirmative showing of all the facts alleged as reasonable cause for the failure in a written statement containing a declaration that it is made under penalties of perjury. The statement must be filed with the District Director (in the case of failure to maintain or furnish requested information permitted to be maintained outside the United States within the time required under § 1.6038A–3(f) or a failure to file Form 5472) or the Director of the Internal Revenue Service Center where the Form 5472 is required to be filed (in the case of failure to file Form 5472). The District Director or the Director of the Internal Revenue Service Center where the Form 5472 is required to be filed, as appropriate, shall determine whether the failure was due to reasonable cause, and if so, the period of time for which reasonable cause existed. If a return has been filed as required by § 1.6038A–2 or records have been maintained as required by § 1.6038A–3, except for an omission of, or error with respect to, some of the information required or a record to be maintained, the omission or error shall not constitute a failure for purposes of section 6038A(d) if the reporting corporation that filed the return establishes to the satisfaction of the District Director or the Director of the Internal Revenue Service Center that it has substantially complied with the filing of Form 5472 or the requirement to maintain records.

(ii) *Small corporations.* The District Director shall apply the reasonable cause exception liberally in the case of a small corporation that had no knowledge of the requirements imposed by section 6038A; has limited presence in and contact with the United States; and promptly and fully complies with all requests by the District Director to file Form 5472, and to furnish books, records, or other materials relevant to the reportable transaction. A small corporation is a corporation whose gross receipts for a taxable year are $20,000,000 or less.

(iii) *Facts and circumstances taken into account.* The determination of whether a taxpayer acted with reasonable cause and in good faith is made on a case-by-case basis, taking into account all pertinent facts and circumstances. Circumstances that may indicate reasonable cause and good faith include an honest misunderstanding of fact or law that is reasonable in light of the experience and knowledge of the taxpayer. Isolated computational or transcriptional errors generally are not inconsistent with reasonable cause and good faith. Reliance upon an information return or on the advice of a professional (such as an attorney or accountant) does not necessarily demonstrate reasonable cause and good faith. Similarly, reasonable cause and good faith is not necessarily indicated by reliance on facts that, unknown to the taxpayer, are incorrect. Reliance on an information return, professional advice or other facts, however, constitutes reasonable cause and good faith if, under all the circumstances, the reliance was reasonable. A taxpayer, for example, may have reasonable cause for not filing a Form 5472 or for not maintaining records under section 6038A if the taxpayer has a reasonable belief that it is not owned by a 25-percent foreign shareholder. A reasonable belief means that the taxpayer does not know or has no reason to know that it is owned by a 25-percent foreign shareholder. For example, a reporting corporation would not know or have reason to know that it is owned by a 25-percent foreign shareholder if its belief that it is not so owned is consistent with other information reported or otherwise furnished to or known by the reporting corporation. A taxpayer may have reasonable cause for not treating a foreign corporation as a related party for purposes of section 6038A where the foreign corporation is a related party solely by reason of § 1.6038A–1(d)(3) (under the principles of section 482), and the taxpayer had a reasonable belief

that its relationship with the foreign corporation did not meet the standards for related parties under section 482.

(c) *Failure to maintain records or to cause another to maintain records.* A failure to maintain records or to cause another to maintain records is determined by the District Director upon the basis of the reporting corporation's overall compliance (including compliance with the non-U.S. maintenance requirements under § 1.6038A–3(f)(2)) with the record maintenance requirements. It is not an item-by-item determination. Thus, for example, a failure to maintain a single or small number of items may not constitute a failure for purposes of section 6038A(d), unless the item or items are essential to the correct determination of transactions between the reporting corporation and any foreign related parties. The District Director shall notify the reporting corporation in writing of any determination that it has failed to comply with the record maintenance requirement.

(d) *Increase in penalty where failure continues after notification*—(1) *In general.* If any failure described in this section continues for more than 90 days after the day on which the District Director or the Director of the Internal Revenue Service Center where the Form 5472 is required to be filed mails notice of the failure to the reporting corporation, the reporting corporation shall pay a penalty (in addition to the penalty described in paragraph (a) of this section) of $10,000 with respect to each related party for which a failure occurs for each 30-day period during which the failure continues after the expiration of the 90-day period. Any uncompleted fraction of a 30-day period shall count as a 30-day period for purposes of this paragraph (d).

(2) *Additional penalty for another failure.* An additional penalty for a taxable year may be imposed, however, if at a time subsequent to the time of the imposition of the monetary penalty described in paragraph (a) of this section, a second failure is determined and the second failure continues after notification under paragraph (d)(1) of this section. Thus, if a taxpayer fails to file Form 5472 and is assessed a monetary penalty and later, upon audit, is determined to have failed to maintain records, an additional penalty for the failure to maintain records may be assessed under the rules of this paragraph if the failure to maintain records continues after notification under this paragraph.

(3) *Cessation of accrual.* The monetary penalty will cease to accrue if the reporting corporation either files Form 5472 (in the case of a failure to file Form 5472), furnishes information to substantially complete Form 5472, or demonstrates compliance with respect to the maintenance of records (in the case of a failure to maintain records) for the taxable year in which the examination occurs and subsequent years to the satisfaction of the District Director. The monetary penalty also will cease to accrue if requested information, documents, or records, kept outside the United States under the requirements of § 1.6038A–3(f) and not produced within the time specified are produced or moved to the United States under the rules of paragraph (f)(2)(ii) of this section.

(4) *Continued failures.* If a failure under this section relating to a taxable year beginning before July 11, 1989 occurs, and if the failure continues following 90 days after the notice of failure under this paragraph is sent, the amount of the additional penalty to be assessed under this paragraph is $10,000 for each 30-day period beginning after November 5, 1990, during which the failure continues. There is no limitation on the amount of the monetary penalty that may be assessed after November 5, 1990.

(e) *Other penalties.* For criminal penalties for failure to file a return and filing a false or fraudulent return, see sections 7203 and 7206 of the Code. For the penalty relating to an underpayment of tax, see section 6662.

(f) *Examples.* The following examples illustrate the rules of this section.

Example 1—Failure to file Form 5472. Corp X, a U.S. reporting corporation, engages in related party transactions with FC. Corp X does not timely file a Form 5472 or maintain records relating to the transactions with FC for Year 1 or subsequent years. The Service Center with which Corp X files its income tax return imposes a $10,000 penalty for each of Years 1, 2, and 3 under section 6038A (d) and this section for failure to provide information as required on Form 5472 and mails a notice of failure to provide inrormation. Corp X does not file Form 5472. Ninety days following the mailing of the notice of failure to Corp X an additional penaly of $10,000 is imposed. On the 135th day following the mailing of the notice of failure, Corp X files Form 5472 for Years 1, 2, and 3. The total penalty owed by Corp X for Year 1 is $30,000. ($10,000 for not timely filing Form 5472, $10,000 for the first 30-day period following the expiration of the 90-day period, and $10,000 for the fraction of the second 30-day period). The penalty for Years 2 and 3 for the failure to file Form 5472 is also $30,000 for each year, calculated in the same manner as for Year 1. The total penalty for failure to file Form 5472 for Years 1, 2, and 3 is $90,000.

Example 2—Failure to maintain records. Assume the same facts as in *Example 1.* In Year 5, Corp X is audited for Years 1 through 3. Corp X has not been maintaining records relating to the transactions with FC. The District Director issues a notice of failure to maintain records. Corp X has already been subject to the monetary penalty of $10,000 for each of Years 1, 2, and 3 for failure to file Form 5472 and, therefore, a monetary penalty under paragraph (a) of this section for failure to maintain records is not assessed. However, an additional penalty is assessed after the 90th day following the mailing of the notice of failure to maintain records. Corp X develops a record maintenance system as required by section 6038A and § 1.6038A–3. On the 180th day following the mailing of the notice of failure to maintain records, Corp X demonstrates to the satisfaction of the District Director that the newly developed record maintenance system will comply with the requirements of § 1.6038A–3 and the increase in the monetary penalty after notification ceases to accrue. The additional penalty for failure to maintain records is $30,000. An additional penalty of $30,000 per year is assessed for each of years 2 and 3 for the failure to maintain records for a total of $90,000.

(g) *Effective dates.* For effective dates for this section, see § 1.6038A–1(n).

§ 1.6038A–5 Authorization of agent.

(a) *Failure to authorize.* The rules of § 1.6038A–7 shall apply to any transaction between a foreign related party and a reporting corporation (including any transaction engaged in by a partnership that is attributed to the reporting corporation under § 1.6038A–1(e)(2)), unless the foreign related party authorizes (in the manner described in paragraph (b) of this section) the reporting corporation to act as its limited agent solely for purposes of sections 7602, 7603, and 7604 with respect to any request by the Service to examine records or produce testimony that may be relevant to the tax treatment of such a transaction or with respect to any summons by the Service for such records or testimony. The fact that a reporting corporation is authorized to act as an agent for a foreign related party is to be disregarded for purposes of determining whether the foreign related party either has a trade or business in the United States for purposes of the Code or a permanent establishment or fixed base in the United States for purposes of an income tax treaty.

(b) *Authorization by related party*—(1) *In general.* Upon request by the Service, a foreign related party shall authorize as its agent (solely for purposes of sections 7602, 7603, and 7604) the reporting corporation with which it engages in transactions. The authorization must be signed by the foreign related party or an officer of the

foreign related party possessing the authority to authorize an agent for purposes of Rule 4 of the Federal Rules of Civil Procedure. The reporting corporation will accept this appointment by providing a statement to that effect, signed by an officer of the reporting corporation possessing the authority to accept such an appointment. The agency shall be effective at all times. For taxable years beginning after July 10, 1989, the authorization and acceptance must be provided to the Service within 30 days of a request by the Service to the reporting corporation for such an authorization. The authorization must contain a heading and statement as set forth below. A foreign government is not subject to the authorization of agent requirement.

AUTHORIZATION OF AGENT

"[Name of foreign related party] hereby expressly authorizes [name of reporting corporation] to act as its agent solely for purposes of sections 7602, 7603, and 7604 of the Internal Revenue Code with respect to any request to examine records or produce testimony that may be relevant to the U.S. income tax treatment of any transaction between [name of the above-named foreign related party] and [name of reporting corporation] or with respect to any summons for such records or testimony.

Signature of or for [name of foreign related party]

(Title)

(Date)

(If signed by a corporate officer, partner, or fiduciary on behalf of foreign related party: I certify that I have the authority to execute this authorization of agent to act on behalf of [name of foreign related party]).

Type or print your name below if signing for a foreign related party that is not an individual.

[Name of reporting corporation] accepts this appointment to act as agent for [name of foreign related party] for the above purpose.

Signature for [Name of Reporting Corporation]

(Title)

(Date)

I certify that I have the authority to accept this appointment to act as agent on behalf of [name of foreign related party] and agree to accept service of process for the above purposes.

Type or print your name below.

(2) *Authorization for prior years.* A foreign related party shall authorize a reporting corporation to act as its agent with respect to taxable years for which a Form 5472 is required to be filed prior to the date on which the final regulations under section 6038A are published by providing the above executed authorization of agent within 30 days of a request by the Service for such an authorization.

(c) *Foreign affiliated groups*—(1) *In general.* A foreign corporation that has effective legal authority to make the authorization of agent under paragraph (b) of this section on behalf of any group of foreign related parties may execute such an authorization for any members of the group. A single authorization may be made on a consolidated basis. In such a case, the common parent must attach a schedule to the authorization of agent stating which members of the group would otherwise be required to separately authorize the reporting corporation as agent. The schedule must provide the name, address, relationship to the reporting corporation, and U.S. taxpayer identification number, if applicable, of each member.

(2) *Application of noncompliance penalty adjustment.* In circumstances where a consolidated authorization of agent has been executed, if the agency authorization for any member of the group is not legally effective for purposes of sections 7602, 7603, and 7604, the noncompliance penalty adjustment under section 6038A(e) and § 1.6038A–7 shall apply.

(d) *Legal effect of authorization of agent.* The legal consequences of a foreign related party authorizing a reporting corporation to act as its agent for purposes of sections 7602, 7603, and 7604 of the Code are as follows.

(1) *Agent for purposes of commencing judicial proceedings.* A reporting corporation that is authorized by a foreign related party to act as its agent for purposes of sections 7602, 7603, and 7604 (including service of process) is also the agent of the foreign related party for purposes of—

(i) The filing of a petition to quash under section 6038A(e)(4)(A) or a petition to review an Internal Revenue Service determination of noncompliance under section 6038A(e)(4)(B), and

(ii) The commencement of a judicial proceeding to enforce a summons under section 7604, whether commenced in conjunction with a petition to quash under section 6038A(e)(4)(A) or commenced as a separate proceeding in the federal district court for the district in which the person to whom the summons is issued resides or is found.

(2) *Foreign related party found where reporting corporation found.* For any purposes relating to sections 7602, 7603, or 7604 (including service of process), a foreign related party that authorizes a reporting corporation to act on its behalf under section 6038A(e)(1) and this section may be found anywhere where the reporting corporation has residence or is found.

(e) *Successors in interest.* A successor in interest to a related party must execute the authorization of agent as described in paragraph (b) of this section.

(f) *Deemed compliance*—(1) *In general.* In exceptional circumstances, the District Director may treat a reporting corporation as authorized to act as agent for a related party for purposes of sections 7602, 7603, and 7604 in the absence of an actual agency appointment by the foreign related party, in circumstances where the actual absence of an appointment is reasonable. Factors to be considered include—

(i) If neither the reporting corporation nor the other party to the transaction knew or had reason to know that the two parties were related at the time of the transaction, and

(ii) The extent to which the taxpayer establishes to the satisfaction of the District Director that all transactions between the reporting corporation and the related party were on arm's length terms and did not involve the participation of any known related party.

(2) *Reason to know.* Whether the reporting corporation or other party had reason to know that the two parties were related at the time of the transaction will be determined by all the facts and circumstances.

(3) *Effect of deemed compliance.* If a reporting corporation is deemed under this paragraph (f) to have been authorized to act as an agent for a foreign related party for purposes of sections 7602, 7603, and 7604, such deemed compliance is applicable only for that particular transaction and other reportable transactions entered into prior to the time when the reporting corporation knew or had reason to know that the related party, in fact, was related. The noncompliance rule of § 1.6038A–7 shall apply to any transaction subsequent to that time with the same related party, unless the related party actually authorizes the reporting corporation to act as its agent under paragraph (a) of this section. In addition, the record maintenance requirements of § 1.6038A–3 will apply to all subsequent transactions and, with respect to prior transactions, will apply to relevant records in existence at the time the relationship was discovered.

(g) *Effective dates.* For effective dates for this section, see § 1.6038A–1(n).

§ 1.6038A–6 Failure to furnish information.

(a) *In general.* The rules of § 1.6038A–7 may be applied with respect to a transaction between a foreign related party and the reporting corporation (including any transaction engaged in by a partnership that is attributed to the reporting corporation under § 1.6038A–1(e)(2)) if a summons is issued to the reporting corporation to produce any records or testimony, either directly or as agent for such related party, to determine the correct treatment under Title 1 of the Code of such a transaction between the reporting corporation and the related party; and if—

(1)(i) The summons is not quashed in a proceeding, if any, begun under section 6038A(e)(4) and is not determined to be invalid in a proceeding, if any, begun under section 7604 to enforce such summons; and

(ii) The reporting corporation does not substantially and timely comply with the summons, and the District Director has sent by certified or registered mail a notice under section 6038A(e)(2)(C) to the reporting corporation that it has not so complied; or

(2) The reporting corporation fails to maintain or to cause another to maintain records as required by § 1.6038A–3, and by reason of that failure, the summons is quashed in a proceeding under section 6038A(e)(4) or in a proceeding begun under section 7604 to enforce the summons, or the reporting corporation is not able to provide the records requested in the summons.

(b) *Coordination with treaties.* Where records of a related party are obtainable on a timely and efficient basis under information exchange procedures provided under a tax treaty or tax information exchange agreement (TIEA), the Service generally will make use of such procedures before issuing a summons. The absence or pendency of a treaty or TIEA request may not be asserted as grounds for refusing to comply with a summons or as a defense against the assertion of the noncompliance penalty adjustment under § 1.6038A–7. For purposes of this paragraph, information is available on a timely and efficient basis if it can be obtained within 180 days of the request.

(c) *Enforcement proceeding not required.* The District Director is not required to begin an enforcement proceeding to enforce the summons in order to apply the rules of § 1.6038A–7.

(d) *De minimis failure.* Where a reporting corporation's failure to comply with the requirement to furnish information under this section is *de minimis,* the District Director, in the exercise of discretion, may choose not to apply the noncompliance penalty. Thus, for example, in cases where a particular document or group of documents is not furnished upon request or summons, the District Director (in the District Director's sole discretion), may choose not to apply the noncompliance penalty if the District Director deems the document or documents not to have significant or sufficient value in the determination of the correctness of the tax treatment of the related party transaction.

(e) *Suspension of statute of limitations.* If the reporting corporation brings an action under section 6038A(e)(4)(A) (proceeding to quash) or (e)(4)(B) (review of secretarial determination of noncompliance), the running of any period of limitation under section 6501 (relating to assessment and collection of tax) or under section 6531 (relating to criminal prosecutions) for the taxable year or years to which the summons that is the subject of such proceeding relates shall be suspended for the period during which such proceeding, and appeals therein, are pending. In no event shall any such period expire before the 90th day after the day on which there is a final determination in such proceeding.

(f) *Effective dates.* For effective dates for this section, see § 1.6038A–1(n).

§ 1.6038A–7 Noncompliance.

(a) *In general.* In the case of any failure described in § 1.6038A–5 or § 1.6038A–6, the rules of this § 1.6038A–7 apply to the reporting corporation. In such a case—

(1) The amount of the deduction allowed under subtitle A for any amount paid or incurred by the reporting corporation to the related party in connection with such transaction, and

(2) The cost to the reporting corporation of any property acquired in such transaction from the related party or transferred by such corporation in such transaction to the related party, may be determined by the District Director.

(b) *Determination of the amount.* The amount of the deduction or the cost to the reporting corporation shall be the amount determined by the District Director (in the District Director's sole discretion) from the District Director's own knowledge or from such information as the District Director may choose to obtain through testimony or otherwise. The District Director shall consider any information or materials that have been submitted by the reporting corporation or a foreign related party. The District Director, however, may disregard any information, documents, or records submitted by the reporting corporation or the related party if (in the District Director's sole discretion) the District Director deems that they are insufficiently probative of the relevant facts.

(c) *Separate application.* If the noncompliance penalty of this section applies with respect to transactions with a related party of the reporting corporation, it will not be applied with respect to any other related parties of the reporting corporation solely upon the basis of that failure. Thus, for example, if a reporting corporation engages in transactions with related party A and related party B, and the reporting corporation does not respond to a summons for records related to the transactions between the reporting corporation and related party A, the noncompliance penalty imposed as a result of such failure will not apply to the transactions between the reporting corporation and related party B. If a separate summons is issued for records relating to the transactions between the reporting corporation and related party B and the reporting corporation does not produce such records, the noncompliance penalty may be applied to those transactions.

(d) *Effective dates.* For effective dates for this section, see § 1.6038A–1(n).

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority for part 602 continues to read as follows:

Par. 5. The table of OMB Control Numbers in § 602.101(c) is amended by removing the entry for § 1.6038A–1 and adding the following entries to read as follows:

"§ 1.6038A–2.....1545–1191"
"§ 1.6038A–3.....1545–1191"

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Approved:

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 91–14459 Filed 6–14–91; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1949

Office of Training and Education: Tuition Fees

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: This rule revises the regulation governing the payment of tuition by private sector students attending training provided by the Occupational Safety and Health Administration (OSHA) Training Institute by adding categories of private sector students who are exempt from the payment of tuition. The revision sets forth the conditions under which OSHA may waive tuition fees for private sector students.

EFFECTIVE DATE: July 1, 1991.

FOR FURTHER INFORMATION CONTACT: James Foster, Director of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 523–8148.

SUPPLEMENTARY INFORMATION: On August 10, 1984, OSHA published part 1949 of title 29, Code of Federal Regulations, entitled "Office of Training and Education, Occupational Safety and Health Administration." This part provides regulations for the charging of tuition to private sector students in training courses offered by the OSHA Training Institute.

Since the rule was published, it has become the practice for the OSHA Training Institute to waive tuition for certain private sector students in the overall interest of furthering the aims of the occupational safety and health program. The purpose of this document is to specify these exemptions in the regulations.

Exemptions will be made for the following classes of students.

(a) Associate members of Field Federal Safety and Health Councils. These private sector individuals assist Federal managers and employees in the planning and implementation of occupational safety and health programs at Federal worksites. Their services are voluntary and unpaid. They are selected in accordance with 29 CFR 1960.88, which governs the membership of Field Federal Safety and Health Councils. They attend courses offered by the OSHA Training Institute at the request of, and for the benefit of, Federal Agencies. Since these individuals are attending the training in the capacity of unpaid volunteers, tuition will be waived in recognition of the benefit of their services to the Federal government.

(b) Students who are representatives of a foreign government. The OSHA Training Institute accepts students from foreign countries. The majority of these students attend courses as a result of cooperative efforts between the United States Government and the government of the student's country. In the interest of extending appropriate courtesy to such foreign governments, tuition will be waived for foreign students who are representatives of their governments.

(c) Private sector students attending courses which are required by OSHA for these individuals to maintain their status as certified outreach trainers. In 1972, OSHA instituted a train-the-trainer program whereby private sector individuals could attend courses for either construction or general industry and become certified by OSHA to teach 10- and 30-hour construction or general industry safety and health courses to managers and employees. The training performed by these trainers is a vital part of OSHA's program for training managers and employees in the recognition and avoidance of hazards in the workplace. In 1987, OSHA restricted this certification by requiring all certified outreach instructors to take a refresher course once every three years to maintain certification. Because these certified outreach instructors contribute to OSHA's program of safety and health education, tuition will be waived for refresher courses required for maintaining certification.

In addition to these specific waivers, the Director of the OSHA Training Institute will be given authority to grant additional waivers. Requests for these waivers must be written. For a waiver, the persons who will not pay tuition must be employed by a nonprofit organization and the waiver of tuition must be for reasons which benefit the occupational safety and health program. This provision is intended to enable OSHA to waive tuition for unforseen circumstances not covered in this regulation.

Because this rule is a statement of agency policy within the meaning of 5 U.S.C. 553(b)(A), OSHA had determined that it is unnecessary to publish it as a proposal.

List of Subjects in 29 CFR Part 1949

Intergovernmental relations, grant programs, occupational safety and health.

Authority

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

It is issued pursuant to section 21(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 670) and 31 U.S.C. 9701 (a) and (b).

Signed at Washington, DC, this thirteenth day of June, 1991.

Gerard F. Scannell,

Assistant Secretary of Labor.

Part 1949 of Title 29 of the Code of Federal Regulations is amended as follows:

PART 1949—OFFICE OF TRAINING AND EDUCATION, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

1. The authority citation for part 1949 continues to read as follows:

Authority: Secs. 8, 26, Occupational Safety and Health Act of 1970 (29 U.S.C. 657, 670); 31 U.S.C. 9701; Secretary of Labor's Order No. 9–83 (48 FR 35736).

2. Section 1949.1 is revised to read as follows:

§ 1949.1 Policy regarding tuition fees.

(a) The OSHA Training Institute shall charge tuition fees for all private sector students attending Institute courses.

(b) The following private sector students shall be exempt from the payment of tuition fees.

(1) Associate members of Field Federal Safety and Health Councils.

(2) Students who are representatives of foreign governments.

(3) Students attending courses which are required by OSHA for the student to maintain an existing designation of OSHA certified outreach trainer.

(c) Additional exemptions may be made by the Director of the OSHA Training Institute on a case by case basis if it is determined that the students exempted are employed by a nonprofit organization and the granting of an exemption from tuition would be in the best interest of the occupational safety and health program. Individuals or organizations wishing to be considered for this exemption shall make application to the Director of the OSHA Training Institute in writing stating the reasons for an exemption from payment of tuition.

[FR Doc. 91–14590 Filed 6–18–91; 8:45 am]

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DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 636

Motor Vehicle Traffic Supervision (Specific Installations)

AGENCY: Department of the Army, DOD.

ACTION: Final rule.

SUMMARY: This part establishes motor vehicle supervision regulations specific to Fort Stewart/Hunter Army Airfield, Georgia as required by the Commanding General, Fort Stewart and implemented by the Fort Stewart Office of the Provost Marshal and Office of the Staff Judge Advocate. This regulation is applicable to all personnel serving, visiting, traveling through, desiring access to, or employed on the Fort Stewart/Hunter Army Airfield installations and all other individuals subject to motor vehicle registration and driver records requirements in 32 CFR 634. The requirements of this 32 CFR part 636 are supplement to and support 32 CFR part 634, Motor Vehicle Traffic Supervision (AR 190–5). This final rule affects all personnel resident upon, employed upon or who are in transit through the military reservation consisting of Fort Stewart/Hunter Army Airfield. Military violators may be subject to administrative action, or may be prosecuted under the Uniform Code of Military Justice. Civilian violators may be subject to administrative action, or may be prosecuted under title 18, U.S.C.; or title 40, Official Code of Georgia Annotated.

EFFECTIVE DATE: June 19, 1991.

FOR FURTHER INFORMATION CONTACT: Captain Stark, the Administrative Law Branch, Office of the Staff Judge Advocate, 24th Infantry Division (Mechanized) and Fort Stewart, ATTN: AFZP–PM, Fort Stewart, Georgia 31314–5000, (912) 767–2953/2954 or AUTOVON 870–2955/2953.

SUPPLEMENTARY INFORMATION: This regulation is punitive in nature and is in addition to the regulations in 32 CFR part 634. Military violators of its provisions may be subject to administrative action, or may be prosecuted under the Uniform Code of Military Justice. Civilian violators may be subject to administrative action, or may be prosecuted under title 18, U.S.C.; or title 40, Official Code of Georgia Annotated.

Executive Order 12291

This final rule has been reviewed under Executive Order 12291 and the Secretary of the Army has classified this action as nonmajor. The effect of the final rule on the economy will be less than $100 million.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 and the Secretary of the Army has certified that this action does not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

This final rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget under the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

List of Subjects in 32 CFR Part 636

Alcohol and alcoholic beverages, Drug Traffic control, Federal buildings and facilities, Motor vehicle safety, Traffic regulations.

Accordingly, 32 CFR part 636 is added to read as follows:

PART 636—MOTOR VEHICLE TRAFFIC SUPERVISION (SPECIFIC INSTALLATIONS)

Sec.

636.0 Scope of this part.

Subpart A—Fort Stewart, Georgia

636.1 Responsibilities.
636.2 Program objectives.
636.3 Suspension or revocation of driving privileges.
636.4 Administrative due process for suspensions and revocations.
636.5 Army administrative actions against intoxicated drivers.
636.6 Remedial driver training program.
636.7 Extensions of suspensions and revocations.
636.8 Registration policy.
636.9 Registration requirement.
636.10 Hunter Army Airfield vehicle registration.
636.11 Installation traffic codes.
636.12 Traffic accident investigation.
636.13 Traffic accident investigation reports.
636.14 Parking.
636.15 Traffic violation reports.
636.16 Detection, apprehension, and testing of intoxicated drivers.
636.17 Compliance with State laws.
636.18 Driving records.
636.19 Point system application.
636.20 Point system procedures.
636.21 Obedience to official traffic control devices.
636.22 Speed regulations.
636.23 Turning movements.
636.24 Driving on right side of roadway; use of roadway.
636.25 Right-of-way.
636.26 Pedestrian's rights and duties.
636.27 Regulations for bicycles.
636.28 Special rules for motorcycles/mopeds.
636.29 Go-carts, minibikes, and All Terrain Vehicles (ATV's).
636.30 Stopping, standing and parking.
636.31 Abandoned vehicles.
636.32 Miscellaneous instructions.
636.33 Vehicle safety inspection criteria.
636.34 Restraint systems.
636.35 Headphones and earphones.
636.36 Alcoholic beverages.
636.37 Use of "Denver boot" device.
636.38 Impounding privately owned vehicles (POVs).

Appendix A to Part 636—References
Appendices B and C to Part 636 [Reserved]
Appendix D to Part 636—Glossary

Authority: 10 U.S.C. 30112(g); 5 U.S.C. 2951; Pub. L. 89–564; 89–670; 91–605; and 93–87.

§ 636.0 Scope of this part.

This part contains regulations which are in addition to the motor vehicle supervision regulations contained in 32 CFR part 634. Each subpart in this part contains additional regulations specific to the named installation.

Subpart A—Fort Stewart, Georgia

§ 636.1 Responsibilities.

In addition to the responsibilities described in § 634.4 of this subchapter, Unit Commanders will:

(a) Monitor and control parking of military and privately owned vehicles within the unit's area, to include motor pools and assigned training areas.

(b) Establish a program in accordance with 24th Infantry Division (Mechanized) and Fort Stewart Regulation 755–2 to identify abandoned privately owned vehicles in the unit's area and coordinate with the Military Police for impoundment.

(c) In coordination with the Military Police, identify problem drivers in the unit and take appropriate action to improve their driving habits.

(d) Ensure that the contents of this part are explained to all newly assigned personnel, including personnel on temporary duty with their unit for 10 days or more.

(e) Identify unit member's vehicles which have obvious safety defects (see § 636.33) and take appropriate action to have the defect corrected. Commanders who cause a vehicle to be removed from the installation without the consent of the owner could be found liable for subsequent damage done to the vehicle provided that the damage was the result of negligence on the part of the government personnel.

(f) Identify those individuals required to attend the Defensive Driving Course (DDC) or Motorcycle Defensive Driving Course (MDDC) and ensure their attendance at the course.

§ 636.2 Program objectives.

In addition to the requirements of § 634.5 of this subchapter:

(a) The entry of motor vehicles on the Fort Stewart/Hunter Army Airfield reservation is permitted by the Commanding General under the conditions prescribed by this part. Upon entering the military reservation, the driver subjects himself and his vehicle to reasonable search. The authority to search vehicles on post is subject to the provisions of AR 190–22 and AR 210–10. This part is not applicable to vehicle safety inspections and spot checks conducted primarily for purposes of safety.

(b) The Military Police may:

(1) Inspect any vehicle operated on the reservation for mechanical condition.

(2) Impound, exclude, or remove from the reservation any vehicle used as an instrument in a crime, suspected of being stolen, abandoned, inoperable, unregistered, or being operated by a person under the influence of intoxicants or drugs. No vehicle will be impounded unless the impoundment meets the requirements of AR 190–5, paragraph 6–2 (32 CFR 634.50) and § 636.38 of this subpart. In the event a vehicle is impounded as an instrument of crime (particularly in the transport of illegal drugs or weapons), coordination will be made with the appropriate civilian law enforcement agencies.

(3) Subsequent to a lawful apprehension, seize for administrative forfeiture proceedings all conveyances which are used, or are intended to be used to transport, sell or receive, process or conceal illegal drugs or drug paraphernalia, or in any way facilitate the foregoing. A conveyance is defined as any mobile object capable of transporting objects or people (e.g., automobile, truck, motorcycle, boat, airplane, etc.).

(c) The Commander or other persons designated authority by the Commander may suspend or revoke the installation driving privileges of any person as authorized by part 634 of this subchapter and this section.

(d) Unit commanders may request temporary suspension of an assigned member's installation driving privilege for cause (e.g., continued minor driving infractions, numerous parking violations, etc.). Such requests will be submitted in writing to the Commander, 24th Infantry Division (Mechanized) and Fort Stewart, ATTN: AFZP–PM, Fort Stewart, Georgia 31314–5000. Reasons for such requests will be explained. Unit commanders retain the authority to suspend a soldier's military vehicle driving privileges in accordance with AR 385–55.

§ 636.3 Suspension or revocation of driving privileges.

In addition to the requirements of § 634.10 of this subchapter:

(a) Administrative suspension or revocation of installation driving privileges applies to the operation of a motor vehicle on Fort Stewart/Hunter Army Airfield.

(b) Installation driving privileges will be suspended for up to 6 months for drivers who accumulate 12 traffic points within 12 consecutive months, or 18 traffic points within 24 consecutive months.

(c) The Garrison Commander and Deputy Garrison Commander are designated as suspension/revocation authorities for:

(1) Suspension of driving privileges should the evidence indicate that a charge of driving under the influence is warranted or;

(2) The suspension/revocation for accumulation of 12 traffic points within 12 months or 18 points within 24 consecutive months.

§ 636.4 Administrative due process for suspensions and revocations.

In addition to the requirements of § 634.11(a) of this subchapter:

(a) The Provost Marshal or his designee will provide the written notice of pending action and offer of an administrative hearing using AFZP Form Letter 316, Suspension of Installation Driving Privileges.

(b) The Garrison Commander and Deputy Garrison Commander are designated as reviewing authorities to conduct administrative hearings.

(c) Individuals who desire an administrative hearing to review a decision to impose immediate suspension, or to appeal the decision of the administrative hearing officer, will adhere to the following procedures. A request for an administrative hearing will be forwarded through their supervisory chain of command. Requests from family members or non-employee civilians can be forwarded to the Provost Marshal's Administrative Section at Fort Stewart or Hunter Army Airfield and can either be delivered or post marked within ten days of notification of the suspension action.

(d) Individuals who were initially charged with driving under the influence (DUI) based in part on a blood alcohol content (BAC) test which has not subsequently been invalidated and who are found not guilty of DUI may request a hearing to determine if their driving privileges should be restored. Such requests shall be forwarded through their chain of command to arrive at the Provost Marshal's Office (AFZP–PMA for Fort Stewart or AFZP–PM–H for Hunter Army Airfield) not later than ten working days after the date of court action.

§ 636.5 Army administrative actions against intoxicated drivers.

For this installation, in violation of State law referenced in § 634.12(a)(3) of this subchapter, means a blood alcohol content of 0.10 percent or higher as set forth in Official Code of Georgia Annotated 40–6–392(b)(3).

§ 636.6 Remedial driver training program.

For this installation remedial driving training program referenced in § 634.12(b) of this subchapter is operated by the Installation Safety Office. Driving privileges may be withheld beyond expiration of the sanction to complete remedial driving or alcohol and drug rehabilitation programs in accordance with AR 190–5, paragraphs 2–12c and d, and 5–4f (32 CFR 634.17(c) and (d) and 634.17(f)).

§ 636.7 Extensions of suspensions and revocations.

In addition to the requirements in § 634.17(a) of this subchapter, for each subsequent violation of the suspension period, an additional five years will be added to the suspension period for this installation (see Table 634.46 in § 634.46 of this subchapter).

§ 636.8 Registration policy.

In addition to the requirements of § 634.19(a) of this subchapter, motor vehicles which are owned and/or operated by a person who resides, performs duty, is employed on, or "frequently uses" the facilities of Hunter Army Airfield will be registered in accordance with the requirements of § 634.20 of this subchapter. Frequent users include but are not limited to family members, retirees, and civilians whose normal route of travel between home and work takes them through the installation.

§ 636.9 Registration requirement.

In addition to the requirements of § 634.20 of this subchapter:

(a) The Military Police will cite violators on DD Form 1408 (Warning Citation) for observed safety defects. On a periodic basis, Military Police will conduct vehicle safety inspection operations using the criteria in § 636.33.

(b) An individual possessing a valid USAREUR privately owned vehicle (POV) license may operate a motor vehicle in the State of Georgia for a

period not to exceed 30 days. After the 30 day period the individual must obtain a valid license from the State of Georgia or another state to operate a motor vehicle in the State of Georgia.

(c) An individual returning a vehicle to Continental United States (CONUS) has 30 days from date of entry or 10 days after reporting for military duty to register that vehicle in the State of Georgia or another state. A temporary pass will be issued until this requirement has been met.

(d) *Liability and no-fault insurance requirements.* (1) All personnel operating vehicles on Fort Stewart/Hunter Army Airfield will obtain and maintain, at least, the minimum amount of liability and no-fault insurance required by the State of Georgia. The amounts are as follows:

(i) Liability:

(A) $15,000.00 per person per accident for bodily injury.

(B) $30,000.00 per incident for bodily injury.

(C) $10,000.00 per accident for property damage.

(ii) No-Fault—$5,000.00.

(2) Proof of this insurance will be required at the time of registration.

(e) Vehicle safety inspections are not required in the State of Georgia, however, vehicles operated on Fort Stewart/Hunter Army Airfield must be in safe operating condition and be able to pass spot vehicle safety equipment checks conducted by the Military Police. Safety criteria is set forth in § 636.33 of this subpart.

§ 636.10 Hunter Army Airfield vehicle registration.

Personnel assigned or employed at Hunter Army Airfield are required to register their privately owned vehicles within five days after arrival to the installation. Requirements for registration are listed in AR 190–5 and this part.

(a) Temporary passes may be issued to personnel not assigned to the installation but requiring temporary access to the installation. These include personnel employed by construction and material handling vehicles requiring on post access. Personnel requesting temporary passes must meet the same requirements as do personnel requiring decals.

(1) Temporary passes will not exceed 45 days. Renewal of temporary passes is prohibited except upon approval of the Installation Commander or his/her designee.

(2) Temporary passes will be conspicuously placed on the left side of the vehicle dashboard between the dashboard and the front windshield. Nothing will be placed so as to obscure the view of the temporary pass from the exterior of the vehicle. The pass will remain in this position during the entire time the vehicle is on the installation. Failure to conspicuously display the temporary pass could result in the vehicle being removed from the installation.

(3) Temporary passes will remain with the vehicle for which they were issued and not be transferred to other vehicles.

(4) Each person driving a vehicle on the installation must individually meet the drivers license requirement of the installation as well as sign the temporary pass.

(5) Temporary passes will be returned to the Vehicle Registration section when they have expired or area no longer needed.

(b) Decals are to be issued to all military and civilian employees of Hunter Army Airfield, military retirees, and contractors/vendors doing extended business on the installations. Requirements outlined in AR 190–5 (32 CFR part 634) and this part must be met before decals are issued.

(c) Personnel requiring permanent decals, who do not meet the requirements outlined in AR 190–5 (32 CFR part 634) and this part, will be issued temporary passes not to exceed 45 days. Registration requirements will be met as soon as possible after issuance of the temporary pass. A decal may then be issued.

(d) DOD decals (DD Form 2220) will be utilized for vehicle registration. Additional installation name and expiration month and year decals will be utilized with sizes and coloration as prescribed in AR 190–5 (32 CFR part 634).

(e) Decals will be permanently affixed to the vehicles for which they are registered in one of two places:

(1) Exterior, front windshield lower left corner.

(2) Front, left bumper of the vehicle, conspicuously displayed. Decals will not be affixed to the front spoilers or any other area which obscures the viewing of the decal.

(3) Installation decals will be placed directly beneath and centered on the DOD decal. Expiration decals will be placed on each side and level with the DOD decal with the month on the left and the year on the right.

(4) Decals will not be affixed to any other portion of the vehicle other than listed in § 636.10(e) (1) through (3).

§ 636.11 Installation traffic codes

In addition to the requirements in § 634.25(d) of this subchapter, on-post violations offenders will be cited under the appropriate Georgia Traffic Code as assimilated by 18 U.S.C. 13 (for civilians) and Art 134c, Uniform Code of Military Justice (UCMJ) (for military). If no Georgia Code is appropriate for a specific offense, civilians will be cited under 40 U.S.C. 318a and military personnel will be cited under Art 92, UCMJ. The Fort Stewart/Hunter Army Airfield installation traffic code conforms to the State of Georgia Traffic Law.

§ 636.12 Traffic accident investigation.

In addition to the requirements in § 634.28 of this subchapter, Military Police at Fort Stewart/Hunter Army Airfield installation will investigate reportable motor vehicle accidents involving government owned or privately owned vehicles.

§ 636.13 Traffic accident investigation reports.

In addition to the requirements in § 634.29 of this subchapter:

(a) Military Police at Fort Stewart/Hunter Army Airfield installations will record traffic accident investigations on DA Form 3946 (Military Police Traffic Accident Report) and DA Form 3975 (Military Police Report).

(b) All privately owned motor vehicle accidents on Fort Stewart or Hunter Army Airfield will be immediately reported to the Military Police for investigation. Unless an emergency situation exists, vehicle(s) involved in an accident will only be moved on order of the Military Police.

§ 636.14 Parking.

In addition to the requirements in § 634.31 of this subchapter:

(a) Military Police will enforce parking in handicapped and Commanding General reserved parking spaces at Fort Stewart/Hunter Army Airfield soldier service facilities and assess points in accordance with Table 634.46 in § 634.46 of this subchapter and Table 636.19 in § 636.19. Vehicles may be towed for such violations as parking in handicapped parking spaces and parking on a yellow curb among others.

(b) Reserved parking spaces in areas under the control of units or staff sections may be designated by the commander or staff section chief who is also responsible to control the use of these spaces.

(c) Parking spaces for tactical vehicles at the Main Exchange/Commissary area will be designated at the end of rows, farthest from the facilities. Only those vehicles properly authorized by unit commanders will be parked at the Main Exchange/Commissary area.

§ 636.15 Traffic violation reports.

In addition to the requirements in § 634.32 of this subchapter:

(a) The Provost Marshal in coordination with the Staff Judge Advocate will determine what traffic offenses will be referred to the U.S. Magistrate Court by means of DD Form 1805.

(b) Of the four available actions on the back of the DD Form 1408, supervisors of civilian employees may take one of the following two actions.

(c) No action taken: A finding of not guilty. There must be an explanation of the reason for no action taken.

(d) Administration: A finding of guilty. This includes, but is not limited to, such actions as a written warning, letter of reprimand, or suspension. Supervisors should coordinate with CPO, MER branch before taking adverse action.

(e) Reports of Commander's action taken will be forwarded to the Provost Marshal Office through the appropriate major subordinate commander.

§ 636.16 Detection, apprehension, and testing of intoxicated drivers.

In addition to the requirements in § 634.36 of this subchapter, the standard field sobriety test used by the Military Police may include the following tests:

(a) Horizontal gaze nystagmus.

(b) Walk and turn.

(c) One leg stand.

§ 636.17 Compliance with State laws.

In addition to the requirements of § 634.42 of this subchapter, the Provost Marshal will conduct necessary coordination with civil enforcement agencies to ensure receipt of information and assistance as required. The Directorate of Logistics will secure any necessary permits for military movement on public roads and highways.

§ 636.18 Driving records.

In addition to the requirements in § 634.44 of this subchapter, the Provost Marshal Office will maintain driver records.

§ 636.19 Point system application.

TABLE 636.19

Violation: Parking in a handicap zone Points assessed: 3
Violation: Parking against a yellow curb Points assessed: 3
Violation: Parking within 10 feet of a fire hydrant Points assessed: 3
Violation: Impeding the flow of traffic Points assessed: 3
Violation: Other parking violations Points assessed: 2

§ 636.20 Point system procedures.

In addition to the requirements of § 634.47 of this subchapter:

(a) Reports of parking violations recorded on DD Form 1408 or DD Form 1805 will serve as a basis for determining point assessment.

(b) The instructions in paragraph (a) of this section also apply to the receipt of a DD Form 1408 (Armed Forces Traffic Ticket) for a parking violation.

§ 636.21 Obedience to official traffic control devices.

(a) All drivers will obey the instructions of official signs, unless directed to do otherwise by the Military Police.

(b) Official traffic control devices, such as traffic cones or barricades, are presumed to have been placed by proper authority.

§ 636.22 Speed regulations.

(a) Georgia state speed limits apply unless otherwise specified by this part.

(b) Drivers will operate their vehicles at a reasonable and prudent speed based on traffic and road conditions, regardless of posted speed limits.

(c) The speed limit on the installation is 30 miles per hour unless otherwise posted or if it falls within one of the special speed limit situations (see paragraph (d) of this section).

(d) The following special speed limits apply:

(1) When passing troop formations, 10 miles per hour.

(2) The authorized speed limit in the school zones is 15 miles per hour when any of the following conditions are present:

(i) A school crossing attendant is present.

(ii) Children are present in the area.

(iii) The flashing, yellow, caution lights are in operation.

(3) Fort Stewart housing areas, 20 miles per hour. Hunter Army Airfield housing areas, 15 miles per hour.

(4) Tactical vehicle drivers will obey posted speed limits; however, drivers will not exceed 40 miles per hour on paved roads and 25 miles per hour on unpaved roads and tank trails. Commercial Utility Cargo Vehicles (CUCV's) are tactical vehicles and will obey the following off-road driving speeds:

Day Driving: Trails, 16 MPH Cross County, 6 MPH
Night Driving: Trails, 5 MPH (with headlights) Cross Country, 5 MPH
Night Driving: Trails, 4 MPH (Black-out Drive) Cross County, 2.5 MPH

(5) Parking lots, 10 miles per hour.

(6) The authorized maximum speed limit for rough terrain forklifts when operated on hard surface roads will not exceed 15 miles per hour. These vehicles will also bear the Triangular Symbol to alert trailing vehicles as required by the Occupational Safety and Health Administration (OSHA) (29 CFR 1910.145).

§ 636.23 Turning movements.

(a) U-turns are prohibited on all streets in the cantonment area.

(b) Right-turns will be made from a position as close to the right edge or right curb of the roadway as possible.

(c) Left-turns will be made from a position as close to the center line as possible or from a left turn lane, if available.

(d) All turns will be signaled continuously beginning not less than 100 feet prior to the turn.

§ 636.24 Driving on right side of roadway; use of roadway.

(a) All drivers will use the right side of roadways, except:

(1) When passing a vehicle proceeding in the same direction.

(2) When an obstruction is blocking all or part of the right lane of the roadway.

(3) When driving on a one-way street.

(b) Drivers proceeding in opposite directions will pass to the right, each using one-half of the roadway.

(c) Drivers passing another vehicle traveling in the same direction will exercise the utmost caution and safety and will abide by all applicable traffic laws.

(d) Drivers of vehicles being passed will give way to the right and not increase their vehicle's speed.

(e) Drivers will allow a sufficient distance between their vehicle and the vehicle in front to allow a safe stop under all conditions.

§ 636.25 Right-of-way.

(a) When two vehicles enter an intersection from different highways at the same time, the driver of the vehicle on the left will yield right-of-way. When entering an intersection without traffic control devices from a highway which terminates at the intersection, that driver will yield right-of-way.

(b) Drivers turning left within an intersection will yield right-of-way to vehicles approaching from the opposite direction.

(c) Drivers approaching a stop sign will stop at the marked stop line, if present, or before entering the crosswalk, if present, or at a point nearest the intersecting roadway where the driver will yield the right-of-way, if required.

(d) Drivers approaching yield signs will slow down to a speed not exceeding 10 miles per hour and yield the right-of-way to any approaching vehicles, coming to a stop if necessary.

(e) Drivers entering or crossing a roadway from any place other than another roadway will yield the right-of-way to vehicles on the roadway.

(f) Upon the immediate approach of an authorized emergency vehicle identified as such, all drivers will yield the right-of-way to the emergency vehicle.

§ 636.26 Pedestrian's rights and duties.

(a) Pedestrians will obey all traffic control devices and regulations, unless directed to do otherwise by the Military Police.

(b) When traffic-control signals are not in place or not in operation, the driver of a vehicle will yield the right of way, by slowing down or stopping, when a pedestrian is in a crosswalk on the same side of the road as the driver's vehicle, or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger.

(c) Pedestrians will not suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close to the crosswalk that it is impractical for the driver to stop.

(d) Pedestrians crossing a roadway, at a point other than a crosswalk, will yield the right-of-way.

(e) Pedestrians will not cross any intersection diagonally unless clearly authorized to do so.

(f) Every driver will exercise due care to avoid colliding with any pedestrian upon any roadway and will exercise proper precaution upon observing any child or any obviously confused, incapacitated, or intoxicated person.

(g) A person who is under the influence of intoxicating liquor or any drug to a degree which renders himself a hazard will not walk upon any roadway.

(h) Pedestrians will use sidewalks, where provided, rather than walking upon the roadway. When sidewalks are not provided, pedestrians will walk the shoulder of the roadway as far from the edge of the roadway as possible. When neither sidewalks nor a shoulder are available, pedestrians will walk on the extreme edge of the roadway, facing traffic, and will yield to all oncoming traffic.

(i) Individuals will not stand in or beside the roadway to solicit rides (hitch-hike).

(j) Individuals will not stand in or beside the roadway to solicit business, employment, or contributions from the occupant of any vehicle.

(k) Pedestrians will yield to all authorized emergency vehicles using an audible signal and/or a visual signal.

(l) The wearing of headphones or earphones by pedestrians or joggers while walking or jogging on roadways or on the shoulders of roadways is prohibited.

§ 636.27 Regulations for bicycles.

(a) Parents will not knowingly allow their children to violate any of the provisions of this section.

(b) Traffic laws and regulations in this part apply to persons riding bicycles. Bicycle riders are granted all the rights and are subject to all duties of motorized vehicle operators, except those which logically do not apply.

(c) Bicycles will be parked against the curb or in a rack, provided for that purpose, and will be secured.

(d) Bicycle riders will not attach the bicycle or themselves to any motorized vehicle operating upon the roadway.

(e) Bicycles will be ridden upon the roadway in single-file.

(f) Bicycles operated between dusk and dawn will utilize a headlight visible for a minimum of 300 feet and a rear reflector or red light visible for 300 feet to the rear.

(g) Bicycles will not be ridden without an operable brake system.

(h) Bicycles will not be ridden if the pedal, in its lowermost position, is more than 12 inches above the ground.

(i) If a bicycle/pedestrian path or sidewalk is present, bicyclists will use the patch or sidewalk instead of the roadway.

(j) Certain roadways have been designated and marked as being off-limits to bicyclists. Bicyclists will use an alternate roadway or a bicycle path rather than those roadways.

§ 636.28 Special rules for motorcycles/mopeds.

(a) Traffic laws and regulations in this part apply to persons riding motorcycles/mopeds. Motorcyle/moped operators are granted all the rights and are subject to all duties of motor vehicle operators, except those which logically do not apply.

(b) Motorcycles/moped operators will ride only while seated facing forward with one leg on either side of the vehicle on the permanent and regular seat of the vehicle. Passengers will not be carried unless the vehicle is designed to carry a passenger. Passengers will only be carried in a manner which neither interferes with the operation of the vehicle nor obstructs the operator's view. Operators will keep both hands on the vehicle's handlebars.

(c) Motorcycle/moped operators are entitled to the use of a full lane of traffic. Motorcycle/moped operators will not pass another vehicle using the same lane as the overtaken vehicle. Motorcycles/mopeds will not be operated between lanes of traffic or between adjacent lines or rows of vehicles.

(d) Motorcycles/moped headlights and tail lights will be illuminated at anytime the vehicle is being operated.

(e) Motorcycle/moped operators will not attach their vehicle or themselves to any other motorized vehicle operating upon the roadway.

(f) Footrests will be provided for passengers. Motorcycles/mopeds will not be operated with handlebars more than 15 inches above the seat which the operator occupies. No back rest attached to the motorcycle/moped will have a sharp point at its apex.

(g) All motorcycle/moped operators/passengers will comply with the following safety requirements:

(1) Wear the following protective equipment:

(i) Properly fastened (under the chin) DOT approved helmet.

(ii) Eye protection (clear goggles or a face shield attached to the helmet).

(iii) Full-fingered gloves.

(iv) Long trousers.

(v) Long-sleeved shirt or jacket (with sleeves rolled down).

(vi) Leather boots or over-the-ankle shoes.

(vii) High-visibility garments (bright color for day and retro-reflective for night).

(2) Motorcycle/moped headlights will be turned on at all times.

(3) Motorcycle/moped must have two rear-view mirrors (one mirror on each side of the handlebars).

(4) Use of headphones or earphones while driving is prohibited.

(h) Military personnel, civilian employees, and family member drivers of a privately or government-owned motorcycle/moped (two or three wheeled motor driven vehicles) are required to attend and complete an approved Motorcycle Defense Driving Course (MDDC) prior to operation of the motorcycle/moped on the installation. Upon completion of the course, personnel will be provided with a MDDC card. Personnel are authorized to operate their motorcycle/moped on the installation for the purpose of attending

the motorcycle safety course. Attendance may be verified by contacting the Installation Safety Office.

§ 636.29 Go-carts, minibikes, and all terrain vehicles (ATV's).

(a) Operators of "go-carts," "minibikes," and ATV's 16 years of age or older, must comply with applicable Georgia State Law and Fort Stewart traffic laws and regulations contained in this part.

(b) "Go-carts," "minibikes," and ATV's operated on installation roadways are required to meet the requirements of this part and the Georgia Traffic Code.

(c) Off-road vehicles will only be operated in areas specified by the DPCA. The DPCA will specify conditions for off-road operation.

(d) "Go-carts," "minibikes," and ATV's will only be operated during daylight hours and will not be operated during periods of inclement weather or reduced visibility.

(e) Operators and passengers of "go-carts," "minibikes," and ATV's must wear approved protective helmets, eye protection, and footwear (open-toed footwear is prohibited).

(f) Soldiers or sponsors of persons operating "go-carts," "minibikes," and ATV's are responsible for the safe operation of the vehicle.

§ 636.30 Stopping, standing and parking.

(a) Drivers will not stop, park, or leave standing their vehicle, whether attended or unattended, upon the roadway when it is possible to stop, park or leave their vehicle off the roadway. In any case, parking or standing the vehicle upon the roadway will only be done in an emergency.

(b) Vehicles, not clearly identified as operated by a handicapped individual, will not be parked in a handicapped parking space.

(c) Whenever Military Police find a vehicle parked or stopped in violation of this section, they may immediately move, or cause to be moved, the vehicle off the roadway. At the direction of the Provost Marshall, or his designee, vehicles parked in restricted or reserved parking spaces, may be moved.

(d) The Military Police may remove or cause to be removed, to a safe place, any unattended vehicle illegally left standing upon any highway or bridge or within 10 feet of any railroad track on the installation.

(e) As a crime prevention measure, the Military Police may pick up keys left in vehicles, secure the vehicle in place, and post a notice directing the owner to proceed to the MP station to claim his/her keys. The program will be adequately publicized and will only be invoked after a conscientious attempt to locate the owner.

(f) No driver will stop, stand, or park a vehicle:

(1) On the roadway side of any vehicle stopped or parked at the edge of a curb or a street.

(2) On a sidewalk.

(3) Within an intersection.

(4) On a crosswalk.

(5) Alongside or opposite any street excavation or obstruction when traffic would be obstructed.

(6) Upon a bridge or other elevated structure.

(7) On any railroad tracks or within 10 feet of any rail road track.

(8) On any controlled-access highway.

(9) Where prohibited by official signs.

(10) Alongside any roadway in any manner which obstructs traffic.

(g) No driver will stand or park a vehicle, whether occupied or not, except momentarily to pick up or discharge a passenger or passengers:

(1) In front of a public or private driveway.

(2) Within 10 feet of a fire hydrant.

(3) Within 20 feet of a crosswalk at an intersection.

(4) Within 20 feet upon the approach to any flashing signal, a stop sign, yield sign, or traffic control signal located at the side of a roadway.

(5) Within 20 feet of a driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within 75 feet of said entrance (when properly sign posted).

(6) At any place where official signs prohibit standing.

(7) Adjacent to any curb painted yellow or identified, by signs, as a "No Parking" area.

(8) Along a roadway against the flow of traffic.

(9) Within 20 feet of any building in what would reasonably be considered a "fire-lane" unless specified as a parking space.

(10) Parallel parking along the curb is authorized in housing areas unless otherwise posted.

(11) Parking is prohibited upon lawns or grassed (seeded) areas, unless specifically authorized by the Provost Marshal. This prohibition is not intended, however, to extend to those locations designated as bivouac sites, range areas, etc.

(12) No dual-wheeled or tandem-wheeled recreational vehicles and trailers will be stored at government quarters. All other recreational vehicles, to include campers, trailers, boats, pop-up campers, and camper shells may be parked in the driveway area or under the carport of individual quarters. To prevent injury to children playing on and around trailers, one tire on each side of the trailer will be chocked in front and back. Trailer tongues, without installed supports, will either be left on the ground or supported in such a manner as to preclude the support tipping over and allowing the trailer tongue to fall. If the vehicle creates a safety hazard or is an eyesore, personnel are encouraged to use the storage facilities available at the Outdoor Recreation Center, Holbrook Pond, Fort Stewart, or at the Private Vehicle Storage area at Hunter Army Airfield. House trailers are not authorized to be parked in the quarters area. Campers, camper trailers, and tents will not be approved for occupancy in the quarters area. Parking of recreational vehicles on the street will be limited to 24 hours for owners to load and unload the vehicle at the owner's quarters.

(h) No driver will use a parking lot, sidewalk, fire lane, or vacant property to drive on in order to avoid a traffic control device or alter the traffic flow plan unless authorized to do so by the Military Police or a traffic control device.

§ 636.31 Abandoned vehicles.

(a) Any MP or DOD police officer who finds or has knowledge of a motor vehicle which has been left unattended or abandoned on a street, road, highway, parking lot, or any other real property of the installation for a period of at least 72 hours may be authorized by the Provost Marshal or his designee to cause said motor vehicle to be moved to an impoundment lot for storage.

(b) Any MP or DOD police officer who, under the provisions of this section, causes any motor vehicle to be moved to an impoundment lot or other temporary place of safety is acting with proper authority and within the scope of that officer's employment, except that any wanton or intentional damage done to any motor vehicle by any MP or DOD police officer should not be within the scope of either that officer's authority or employment.

(c) Unit commanders, with knowledge of an abandoned vehicle in their unit area, should attempt to identify the owner and have them remove the vehicle. When owners cannot be identified or are no longer assigned to this command, unit commanders will notify the MP's to initiate impoundment procedures.

(d) Civilian vehicles left abandoned on the reservation will be towed to an impoundment lot for further disposition.

(e) Personnel experiencing motor vehicle trouble may authorize the MP desk to obtain the assistance of a civilian wrecker, but in doing so, the government assumes no liability of payment for such services or possible resulting damage.

§ 636.32 Miscellaneous instructions.

(a) All unattended motor vehicles will have the engine stopped and the ignition locked.

(b) Vehicles will not be operated when so loaded with passengers and/or goods that the driver's view is blocked or control over the driving mechanism is interfered with.

(c) Drivers, other than on official business, will not follow any emergency vehicle, operating under emergency conditions, closer than 500 feet or park closer than 500 feet to any emergency vehicle stopped for an emergency.

(d) No vehicle will be driven over a fire hose unless directed to do so by a fire official, or the Military Police.

(e) Ground guides will be posted, during backing, at the left rear of any ¾ ton or larger vehicle.

(f) All vehicles carrying a load will have the load secured and/or covered to prevent the load from blowing or bouncing off the vehicle.

(g) A red flag or red light, visible for at least 100 feet from the rear will be attached to any load protruding beyond the rear of any vehicle.

(h) Troop marches, physical training runs, etc., will not be conducted in a manner that will interfere with motor vehicle traffic on the Fort Stewart/Hunter Army Airfield reservation.

(1) Units participating in parades and related practices, road marches, etc., will not conduct such marches upon any hard surface road or traffic way unless coordination has been made with the Provost Marshal Office.

(2) Physical training runs, exercises, or tests will not be conducted upon any hard surface road or traffic way unless such is specifically allowed in 24th Infantry Division (Mechanized) and Fort Stewart Regulation 350–1.

(i) Congested housing areas on the installation require special precaution on the part of drivers and persons living in those areas.

(1) Parents can assist drivers in this regard by reminding their children that housing area streets are extremely dangerous and that playing in the street is prohibited.

(2) Bus stops are sites particularly prone to large numbers of children playing immediately adjacent to or actually in the roadway while awaiting arrival of the school bus.

(3) Complaints received by the MP desk, concerning children playing in the streets, must be investigated in the interest of safety. Repeated violations could result in further action by the chain of command.

(j) Vehicles and/or trailers will not be towed with a chain or rope (vehicles may be towed by another privately owned vehicle by use of a rigid tow bar).

(k) At entrances to Fort Stewart/Hunter Army Airfield where a gate guard is positioned, drivers are required to obey his/her instructions. During hours of darkness, headlights will be switched to parking lights upon approach to the gate.

(l) Motorists will drive with headlights illuminated at any time from a half hour after sunset to a half hour before sunrise and at any time when it is raining in the driving zone and at any other time when there is not sufficient visibility to render clearly discernible persons and vehicles on the highway at a distance of 500 feet ahead.

(m) Motor vehicles will not be operated if visibility to the front, rear, or side is rendered unsafe and improper from fogged or iced-over windows.

(n) Aircraft runways, taxiways, and aprons at Hunter Army Airfield and Wright Army Airfield and "OFF-LIMITS" to all privately owned vehicles.

(o) Extensive repairs to automobiles will not be undertaken in housing areas, parking lots, or other similar areas. Repairs extending over a 24 hour period will be considered extensive.

(p) Tactical vehicles will not be driven in housing areas. Post police or vehicles on similar details may drive in the housing areas as required.

(q) Active duty personnel residing on post are encouraged to have their privately owned bicycles, "go-carts," and "minibikes" registered with the Provost Marshal's Office (Registration Branch) in conjunction with the Installation Crime Prevention Program.

(r) All personnel operating a vehicle on Fort Stewart/Hunter Army Airfield will have proof of insurance for the vehicle, in the vehicle at all times.

§ 636.33 Vehicle safety inspection criteria.

(a) The vehicle safety inspection criteria listed in this paragraph (a) are general in nature; specific evaluation techniques for these criteria are contained in Georgia Traffic Law.

(1) Headlights—every vehicle, except motorcycles, will have at least two headlights, one on each side of the front of the vehicle, capable of illuminating 500 feet to the front. Motorcycles will have one headlight.

(2) Tail Lamps—every vehicle will have at least one red, self-illuminating lamp, on the rear of the vehicle, visible from 500 feet to the rear.

(3) Registration Plate Lamp—every vehicle will have a lamp designed to illuminate the registration plate with white light making the plate legible from a distance of 50 feet.

(4) Rear Reflectors—every vehicle, except motorcycles, will have two red reflectors on the rear. Motorcycles will have one red reflector.

(5) Stop Lamp—every vehicle will have at least one red or yellow stop lamp on the rear which will be actuated upon application of the foot brake.

(6) Turn Signals—every vehicle will be equipped with electrical or mechanical turn signals capable of indicating any intention to turn either to the right or to the left, and visible from the front and rear. This requirement does not apply to any motorcycle or motor-driven cycle manufactured prior to 1 January 1972.

(7) Brakes—every vehicle will be equipped with brakes adequate to control the movement of and to stop and hold such vehicle.

(8) Horn—every vehicle will be equipped with an operable horn, capable of emitting sound audible for at least 200 feet.

(9) Muffler—every vehicle will have a muffler in good working order and in constant operation.

(10) Mirror—every vehicle, from which the driver's view is obstructed, will be equipped with a mirror reflecting a view of the highway for a distance of at least 200 feet to the rear.

(11) Windows—the view through vehicle windows will not be obstructed by any sign, poster, or other nontransparent material. Windshields and rear windows will not have starburst or spider webbing effect greater than 3 inches by 3 inches. No opaque or solid material including, but not limited to cardboard, plastic, or taped glass will be employed in lieu of glass.

(12) Windshield Wipers—every vehicle, except motorcycles, will be equipped with operable windshield wipers.

(13) Tires—every vehicle will be equipped with serviceable rubber tires which will have a tread depth of at least two thirty-seconds of an inch.

(14) Suspension Systems—no vehicle will have its rear end elevated above the vehicle manufacturer's designated height (49 CFR 570.8).

(b) The criteria listed in paragraph (a) of this section are not necessarily an inclusive list. A vehicle may be deemed unsafe to operate when any part of the

vehicle is defective and renders the vehicle dangerous to others.

§ 636.34 Restraint systems.

(a) Restraint systems (seat belts) will be worn by all operators and passengers of U.S. Government vehicles on or off the installations.

(b) Restraint systems will be worn by all civilian personnel (family members, guests, and visitors) driving or riding in a private owned vehicle on the Fort Stewart/Hunter Army Airfield installations.

(c) Restraint systems will be worn by all soldiers and Reserve Component members on active Federal service driving or riding in a private owned vehicle whether on or off the installations.

(d) Infant/child restraint devices (car seats) are required in private owned vehicles for children 4 years old or under and not exceeding 45 pounds in weight.

(e) Restraint systems are required only in cars manufactured after model year 1966.

(f) The operator of a vehicle is responsible for ensuring the use of seat belts, shoulder restraints, and child restraining systems when applicable and may be cited for failure to comply (40 U.S.C. 318a).

(g) Passengers (over the age of 16) are responsible for ensuring that their seat belts/shoulder restraints are used when applicable and may be cited for failure to comply (40 U.S.C. 318a).

§ 636.35 Headphones and earphones.

The wearing of headphones or earphones is prohibited while driving a U.S. Government vehicle, POV, motorcycle, or other self-propelled two-wheel, three-wheel, or four-wheel vehicle powered by a motorcycle type engine. This does not negate the requirement for wearing hearing protection when conditions or good judgment dictate use of such protection.

§ 636.36 Alcoholic beverages.

(a) Consuming alcoholic beverages as an operator or passenger in or on U.S. Government or privately owned vehicles is prohibited.

(b) Consuming alcoholic beverages on any roadway, parking lot, or where otherwise posted is prohibited.

(c) Having open containers of alcoholic beverages in vehicles or areas not designated for the consumption of alcohol is prohibited.

§ 636.37 Use of "Denver Boot" device.

The "Denver Boot" device will be used by Military Police as an additional technique to assist in the enforcement of parking violations when other reasonably effective but less restrictive means of enforcement (such as warnings, ticketing, reprimands, suspensions, or revocations of on-post driving privileges) have failed, or immobilization of the private owned vehicle is necessary for safety.

(a) The use of booting devices will be limited to application by the Military Police under the following conditions:

(1) Immobilization of unsafe, uninspected, or unregistered vehicles.

(2) Immobilization of vehicles involved in criminal activity.

(3) For repeat offenders of the parking violations outlined in this supplement. Three or more parking violations within 6 months constitutes grounds to boot the vehicle.

(4) At the discretion of the Provost Marshal or his designee, on a case-by-case basis.

(b) Booted vehicle will be marked, for driver notification, by placing an orange in color notice on the vehicle windshield. The notice will contain information on why the vehicle was booted and instructions on how to have the booting device properly removed by the Military Police (see figure 636.37).

FIGURE 636.37. DRIVER BOOTING DEVICE NOTICE

1. Your vehicle is illegally parked and has been secured in place by the Military Police with a vehicle restraining device. Do not move this vehicle until the restraining device is properly removed by the Military Police.
2. Any movement, or attempted movement, of this vehicle could result in damage to the device and the vehicle. You will be responsible for any such damage to the vehicle and/or the restraining device.
3. Any removal, or attempted removal, of the device could result in you being charged with a criminal offense.
4. To have this device properly removed by the Military Police, contact the following:

Mon–Fri, 7: a.m.–5: p.m., Bldg 292,
Phone 767–2848/8659

Non-Duty Hours, Bldg 285, Phone 767–2822

NOTICE

§ 636.38 Impounding privately owned vehicles (POVs).

This section provides the standards and procedures for towing, inventorying, searching, impounding, and disposing of private owned vehicles.

(a) *Implied consent to vehicle impoundment.* Any person granted the privilege of operating a motor vehicle on the Fort Stewart/Hunter Army Airfield installations shall be deemed to have given his or her consent for the removal and temporary impoundment of the privately owned vehicle when it is parked illegally for unreasonable periods, interfering with operations, creating a safety hazard, disabled by accident, left unattended in a restricted or controlled area, or abandoned. Such vehicles will be towed by a contracted civilian wrecker service and placed in that service's storage lot. Such persons further agree to reimburse the civilian wrecker service for the cost of towing and storage should their vehicle be removed or impounded.

(b) *Standards of impoundment.* (1) Privately owned vehicles will not be impounded unless they clearly interfere with ongoing operations or movement of traffic, threaten public safety or convenience, are involved in criminal activity, contain evidence of criminal activity, or are stolen or abandoned.

(2) The impoundment of a privately owned vehicle is inappropriate when reasonable alternatives to impoundment exist.

(i) An attempt will be made to locate the owner of the privately owned vehicle and have the vehicle removed.

(ii) The vehicle may be moved a short distance to a legal parking area and temporarily secured until the owner is located.

(iii) Another responsible person may be allowed to drive or tow the privately owned vehicle with permission from the owner, operator, or person empowered to control the vehicle. In this case, the owner, operator, or person empowered to control the vehicle will be informed that the Military Police are not responsible for safeguarding the privately owned vehicle.

(3) Impounding of privately owned vehicle is justified when any of the following conditions exist:

(i) The privately owned vehicle is illegally parked—

(A) On a street or bridge, or is double parking and interferes with the orderly flow of traffic.

(B) On a sidewalk, within an intersection, or a cross-walk, on a railroad track, in a fire lane, or is blocking a driveway, so that the vehicle interferes with the operations or creates a safety hazard to other roadway users or the general public. An example would be a vehicle parked within 15 feet of a fire hydrant or blocking a properly marked driveway of a fire station or aircraft-alert crew facility.

(C) When blocking an emergency exit door of any public place (installation theater, club, dining facility, hospital, or other facility).

(D) In a "tow-away" zone that is so marked with proper signs.

(ii) The privately owned vehicle interferes with—

(A) Street cleaning operations and attempts to contact the owner have been unsuccessful.

(B) Emergency operations during a natural disaster or fire or must be removed from the disaster area during cleanup operations.

(iii) The privately owned vehicle has been used in a crime or contains evidence of criminal activity.

(iv) The owner or person in charge has been apprehended and is unable or unwilling to arrange for custody or removal.

(v) The privately owned vehicle is mechanically defective and is a menace to others using the public roadways.

(vi) The privately owned vehicle is disabled by a traffic incident and the operator is either unavailable or physically incapable of having the vehicle towed to a place of safety for storage or safekeeping.

(vii) Military Police reasonably believe the vehicle is abandoned.

(c) *Towing and storage.* (1) Impounded privately owned vehicles will be towed and stored by a contracted wrecker service.

(2) An approved impoundment area belonging to the contracted worker service will be used for the storage of impounded vehicles. This area will assure adequate accountability and security of towed vehicles. One set of keys to the enclosed area will be maintained by the Military Police.

(3) Temporary impoundment and towing of privately owned vehicles for violations of this supplement or involvement in criminal activities will be accomplished under the direct supervision of the Military Police.

(d) *Procedure for impoundment.* (1) Unattended privately owned vehicles.

(i) DD Form 2504 (Abandoned Vehicle Notice) will be conspicuously placed on privately owned vehicles considered unattended. This action will be documented by an entry in the Military Police desk journal.

(ii) The owner will be allowed three days from the date the privately owned vehicle is tagged to remove the vehicle before impoundment action is initiated. If the vehicle has not been removed after three days, it will be removed by a contracted civilian wrecker service. A DD Form 2505 (Abandoned Vehicle Removal Authorization) will be completed and issued to the contractor by the Military Police.

(iii) After the vehicle has been removed, the Military Police will complete DD Form 2506 (Vehicle Impoundment Report) as a record of the actions taken.

(A) An inventory listing personal property will be done to protect the owner, Military Police, the Contractor, and the Commander.

(B) The contents of a closed container such as a suitcase inside the vehicle need not be inventoried. Such articles should be opened only if necessary to identify the owner of the vehicle or if the container might contain explosives or otherwise present a danger to the public. Merely listing the container and sealing it with security tape will suffice.

(C) Personal property will be placed in the Military Police found property room for safe keeping.

(iv) DD Form 2507 (Notice of Vehicle Impoundment) will be forwarded by certified mail to the address of the last known owner of the vehicle to advise the owner of the impoundment action, and request information concerning the owner's intentions pertaining to the disposition of the vehicle.

(2) *Stolen privately owned vehicles or vehicles involved in criminal activity.* (i) When the privately owned vehicle is to be held for evidentiary purposes, the vehicle will remain in the custody of the Military Police or CID until law enforcement purposes are served.

(ii) Recovered stolen privately owned vehicles will be released to the registered owner, unless held for evidentiary purposes, or to the law enforcement agency reporting the vehicle stolen.

(iii) A privately owned vehicle held on request of other authorities will be retained in the custody of the Military Police or CID until the vehicle can be released to such authorities.

(e) *Search incident to impoundment based on criminal activity.* Search of a privately owned vehicle in conjunction with impoundment based on criminal activity will likely occur in one of the following general situations:

(1) The owner or operator is not present. This situation could arise during traffic and crime-related impoundments and abandoned vehicle seizures. A property search related to an investigation of criminal activity should not be conducted without search authority unless the item to be seized is in plain view or is readily discernible on the outside as evidence of criminal activity. When in doubt, proper search authority should be sought, during duty hours, through the Chief, Criminal Law Branch of the Office of Staff Judge Advocate and after duty hours from the Duty Judge Advocate, before searching.

(2) The owner or operator is present. This situation can occur during either a traffic or criminal incident, or if the operator is apprehended for a crime or serious traffic violation and sufficient probable cause exists to seize the vehicle. This situation could also arise during cases of intoxicated driving or traffic accidents in which the operator is present but incapacitated or otherwise unable to make adequate arrangements to safeguard the vehicle. If danger exists to the Military Police or public or if there is risk of loss or destruction of evidence, an investigative type search of the vehicle may be conducted without search authority.

(f) *Disposition of vehicles after impoundment.* (1) If a privately owned vehicle is impounded for evidentiary purposes, the vehicle can be held for as long as the evidentiary or law enforcement purpose exists. The vehicle must then be returned to the owner without delay unless directed otherwise by competent authority.

(2) If the vehicle is unclaimed after 45 days from the date notification was mailed to the last known owner or the owner released the vehicle by properly completing DD Form 2505, the vehicle will be disposed of by one of the following procedures:

(i) Release to the lienholder, if known.

(ii) Processed as abandoned property in accordance with DOD 4160.21–M.

Appendix A to Part 636—References

Publications and forms referenced in this part may be viewed at the Office of the Provost Marshall on any major Army installation or may be obtained from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

In addition to the related publications listed in appendix A to part 634 of this subchapter, the following publications provide a source of additional information:

FS Reg 190–7, Emergency Vehicle Operation
FS Reg 350–1, Active Component Training
FS Reg 385–14, Post Range Regulation
FS Reg 755–2, Lost, Abandoned, or Unclaimed Privately Owned Personal Property

In addition to the prescribed forms used in appendix A to part 634 of this subchapter, the following forms should be used:

AFZP Form Letter 316, Suspension of Driving Privileges
DA Form 3946, Military Police Traffic Accident Report
DA Form 3975, Military Police Report
DD Form 1920, Alcohol Influence Report
DD Form 2220, DOD Registered Vehicle
DD Form 2504, Abandoned Vehicle Notice
DD Form 2505, Abandoned Vehicle Removal Authorization
DD Form 2506, Vehicle Impoundment Report
DD Form 2507, Notice of Vehicle Impoundment

Other References

8 U.S.C. 13.
40 U.S.C. 318a.
Memorandum of Understanding, Subject: Seizure of Assets for Administrative Forfeiture in Drug Related Cases.

Appendices B and C to part 636—[Reserved]

Appendix D to part 636—Glossary

In addition to the terms listed in appendix D to part 634 of this subchapter, the following terms apply:

ATV—All Terrain Vehicles
CID—Criminal Investigation Division
CUCV—Commercial Utility Cargo Vehicle
DDC—Defensive Driving Course
DOD—Department of Defense
DPCA—Directorate of Personnel and Community Activities
DUI—Driving Under the Influence
DDC—Motorcycle Defensive Driving Course
MP—Military Police
NLT—not later than
USAREUR—United States Army—Europe

Kenneth L. Denton,

Alternate Army Federal Register Liaison Officer.

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BILLING CODE 3710-08-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MI2-1-5075; FRL-3966-2]

Approval and Promulgation of Implementation Plans; Michigan

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Notice of final rulemaking.

SUMMARY: USEPA is disapproving a site-specific revision to the Michigan State Implementation Plan (SIP) for ozone for the James River-KVP Plant in Kalamazoo County. The revision concerns volatile organic compounds (VOC) emissions from surface coating lines and would constitute an emissions trade (bubble) for the printing and coating lines, based upon multiple day "time averaging" of emissions and the extension of compliance dates. USEPA is disapproving this revision because it does not meet USEPA's policy requirements on bubbles, compliance date extensions, and extended averaging times.

EFFECTIVE DATE: This final rulemaking becomes effective on July 19, 1991.

ADDRESSES: Copies of the SIP revision request and other materials relating to this rulemaking are available for inspection at the following address: (It is recommended that you telephone Charles H. Hatten, at (312) 886-6031, before visiting the Region V office.) U.S. Environmental Protection Agency, Region V, Air Toxics and Radiation Branch (5AT-26), 230 South Dearborn Street, Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT: Charles H. Hatten, Air Toxics and Radiation Branch (5AT-26), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886-6031.

SUPPLEMENTARY INFORMATION: On January 27, 1984, the Michigan Department of Natural Resources (MDNR) submitted Consent Order Number 21-1983 for James River-KVP as a revision to its SIP. This revision concerns operations located at the James River-KVP Plant in Kalamazoo County, a "rural" county which has been designated as a nonattainment area for ozone. Michigan submitted additional information for James River-KVP on May 3, 1984, and May 25, 1984. On July 23, 1984, the State of Michigan submitted an "Alteration" to Consent Order No. 21-1983. Further information was submitted by the State on February 22, 1985.

The James River-KVP Plant has three types of emission sources to Michigan VOC regulations: A 55 parchment machine, a solvent coater, and a gravure graphic arts line consisting of six rotogravure presses. The parchment machines and solvent coater are regulated within the Michigan SIP by Rule 336.1610. The rotogravure printing and coating operations are regulated within the Michigan SIP by Rule 336.1624. The SIP revision seeks a bubble with multiple day "time averaging" and an extension of compliance dates for the James River-KVP emission sources.

Proposed Rulemaking Action

On May 10, 1989, USEPA proposed to disapprove the site-specific revision to the Michigan SIP for the James River-KVP Plant.[1] Comments on this notice of proposed rulemaking were received from counsel representing James River-KVP. However, the comments submitted by the commentor were not intended to refute the bases for USEPA's proposed disapproval. Instead, the commentor speculated on potential modifications to the proposed SIP revision which would address USEPA's objections. Because these comments do not deal with the underlying bases for USEPA's proposed disapproval of the current SIP revision, USEPA does not believe that these comments are relevant to the rulemaking currently before the Agency and is not responding to them in this rulemaking.[2]

Final Rulemaking Action

USEPA disapproves this requested SIP revision for the following reasons (as detailed in the May 10, 1989, **Federal Register** notice):

(1) The revision does not meet the requirements of the 1986 Emissions Trading Policy Statement (ETPS).

(2) The State did not demonstrate that the application of reasonably available control technology at James River-KVP is infeasible on a daily basis or that daily emissions cannot be determined.

(3) The State did not provide a demonstration that the use of long-term averaging (greater than 24-hour averaging) will not jeopardize either ambient standards attainment or the reasonable further progress (RFP) plan for the area.

(4) The Consent Order does not satisfy USEPA's compliance date extension policy.

Today's action makes final the action proposed at May 10, 1989 (54 FR 21053). As noted elsewhere in this notice, USEPA received no adverse public comment on the proposed action. As a direct result, the Regional Administrator has reclassified this action from a Table One to a Table Two action under the processing procedures established at 54 FR 2214. On January 6, 1989, the Office of Management and Budget waived Table Two SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of 2 years.

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

The Agency has reviewed this request for revision of the federally-approved SIP conformance with the provisions of the 1990 Amendments enacted on November 15, 1990, in addition to the 1977 Amendments of the Clean Air Act. The Agency has determined that this action does not conform with the statute as amended and must be disapproved. The Agency has examined the issue of whether this action should be reviewed

[1] For a discussion of the history of the variance, the current Michigan SIP requirements, the emission limits contained in Consent Order 21-1983 (as altered), USEPA's current bubble policy, USEPA's extended averaging time criteria, USEPA's compliance date extension criteria, and USEPA's evaluation of the James River-KVP revision, please refer to the May 10, 1989 (54 FR 20153), **Federal Register** and to Technical Support Documents (TSD) dated April 20, 1984, December 17, 1986, and March 17, 1987.

[2] James River-KVP has the option of submitting a new SIP revision to the State of Michigan, which it then may submit to USEPA as a revision to the Michigan SIP. However, USEPA can only act today on the proposed SIP that has been submitted by the MDNR.

only under the provisions of the law as it existed on the date of submittal to the Agency (i.e., prior to November 15, 1990) and has determined that the Agency must apply the new law to this revision.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 19, 1991. Filing a petition for reconsideration by the Administrator of this final rule does not effect the finality of this rule for the purpose of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Hydrocarbons, Intergovernmental relations, Ozone.

Dated: June 10, 1991.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 91–14497 Filed 6–18–91; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 180

[PP 0E3845 /R1110; FRL–3882–4]

RIN 2070–AB78

Pesticide Tolerance for Ethyl 3-Methyl-4-(Methylthio)Phenyl(1-Methylethyl) Phosphoramidate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a tolerance for residues of the nematicide ethyl 3-methyl-4-(methylthio)phenyl (1-methylethyl) phosphoramidate (also referred to in this document as fenamiphos) in or on the raw agricultural commodity bok choy. The regulation to establish a maximum permissible level for residues of the nematicide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: This regulation becomes effective June 19, 1991.

ADDRESSES: Written objections, identified by the document control number, [PP 0E3845/R1110], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (H-7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: rm. 716C, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2310.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 21, 1991 (56 FR 7003), EPA issued a proposed rule that gave notice that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition (PP) 0E3845 to EPA on behalf of the Agricultural Experiment Station of California.

The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose to establish tolerances for the residues of the nematicide fenamiphos (ethyl 3-methyl-4-(methylthio) phenyl (1-methylethyl) phosphoramidate) in or on the raw agricultural commodity bok choy at 0.5 part per million (ppm). The petitioner proposed that this use be limited to California based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after the date of publication in the **Federal Register**, file written objections and/or a request for a hearing with the Hearing Clerk at the address given above. The objections submitted must specify the provisions of the regulation deemed objectionable and the other grounds for the objections. If a hearing is granted, the objection must include a statement of the factual issue(s) on which a hearing is requested and the requestor's contentions on each such issue. A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: there is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the request would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 28, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.349(c), by adding and alphabetically inserting the raw agricultural commodity bok choy, to read as follows:

§ 180.349 Ethyl 3-methyl-4-(methylthio)phenyl (1-methylethyl) phosphoramidate; tolerances for residues.

* * * * *

(c) * * *

Commodity	Parts per million
* * * * *	
Bok choy	0.5
* * * * *	

[FR Doc. 91–14099 Filed 6–18–91; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 271

[FRL-3964-9]

Ohio: Final Authorization of State; Hazardous Waste Management Program: Response to Comments and Corrections

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule: Response to comments and corrections.

SUMMARY: This notice addresses two comments received in response to the April 8, 1991, **Federal Register** (56 FR 14203) regarding Ohio's provisions for the listing of K090 and K091 as hazardous waste found in Ohio Administrative Code 3745–51–32. Additionally, today's notice includes two provisions of Ohio's hazardous waste management program which were inadvertently left out of the April 8, 1991, **Federal Register.** Finally, today's notice corrects the table of authorities previously published in the **Federal Register** dated April 8, 1991, regarding final authorization of revisions to Ohio's hazardous waste management program.

DATES: Final authorization for Ohio's program revisions shall be effective August 19, 1991, unless EPA publishes a prior **Federal Register** action withdrawing this Immediate Final Rule. Public comments on the two omitted provisions will be accepted until the close of business, July 19, 1991.

ADDRESSES: These provisions were made available to the public for review during the public comment period for the original application and are still available at the organizations at the U.S. Environmental Protection Agency, Region V, Waste Management Division, Office of RCRA, Regulatory Development Section, 5HR–JCK–13, 230 South Dearborn, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Ms. Virginia Kroncke, (312) 353–4716 [FTS8–353–4716].

SUPPLEMENTARY INFORMATION:

I. Response to Comments

Two commenters suggested that Ohio should not be authorized for the Non-HSWA rule—Identification and Listing of Hazardous Waste; and Designation, Reportable Quantities, and Notification, 53 FR 35412, September 13, 1988. Both commenters cite *American Mining Congress* v. *U.S. EPA,* (AMC) 907 F2d 1179 (D.C. Cir. 1990) as authority to withhold authorizing Ohio for this rule. The commenters correctly point out that in AMC, the court remanded the Agency's decision for "fuller explanation of its decision to list K064, K066, and, in some respects, K090 and K091" at 907 F.2d 1191. However, this court order in no way removed these wastes from regulation as hazardous wastes under 40 CFR 261. Therefore, the State may apply for and receive authorization for its analog to 40 CFR 261.

Furthermore, the State programs are allowed to be "more stringent and broader in scope" than the Federal program as provided in 40 CFR 271.1(i)(1) and (2). Thus, even if these wastes are excluded from the Federal listing of hazardous waste, Ohio may still apply for authorization of a hazardous waste management program which lists these wastes as hazardous.

II. Additions

Two provisions of Ohio's hazardous waste management program were inadvertently left out of the April 8, 1991, **Federal Register**. These two provisions are listed here and can be found on the amended table of authorities printed below. On [insert date 60 days after publication] (unless EPA publishes a prior FR action withdrawing this immediate final rule), Ohio will be authorized to carry out, in lieu of the Federal program, these provisions of the State's program which are analogous to the following provisions of the Federal program (in addition to the provisions listed in the April 8, 1991, **Federal Register**): Location Standards for Salt Domes, Salt Beds, Underground Mines and Caves (FR 7/15/87), analogous state authority Ohio Administrative Code (OAC), chapter 3745, rules 54–18(C) and 65–18 effective 12/30/89; and Permit Life (FR 7/15/87), analogous State authority OAC rule 50–54(A) effective 3/4/85.

III. Corrections

One commenter pointed out that several corrections and additions to the table of authorities were necessary to reflect the current analogous State authority. EPA has amended the table of authorities with the corrected analogous sections reprinted below.

The following corrections are made to Volume 56, Number 67 Federal Register appearing on page 14203 and 14204, in the issue of April 8, 1991.

Federal requirement	Analogous state authority
★ Dioxin Waste Listing and Management Standards, 50 FR 1978–2006, January 14, 1985.	Ohio Administrative Code (OAC), Chapter 3745, rules 50–44(A)(7), 50–44(C)(2)(g), (3)(j), (4)(k), (5)(i), (7)(j), effective 8/3/90; Rules 51–31, appendix to rule 51–31, 51–33(F), appendix to rule 51–11, 55–75(C) & (D), effective 6/29/90; Rule 65–01, effective 4/1/90; Rules 51–05(E)(1) & (2), 51–07(B)(1) & (3), 51–20, 51–30(D), appendix to rule 51–30, 57–43(A), 68–83(A) & (B), effective 12/30/89; Rules 56–33(A) & (B), 56–60(A) & (B), 56–83(A) & (B), 57–18(A) & (B), and 68–52(A) & (B), effective 1/30/86;
★ Waste Minimization, 50 FR 28702, July 15, 1985	Rules 50–40(C), 50–58(J)(2), 52–41(A)(6)–(8), 54–70(B), 54–73(B)(9), effective 12/30/89;
★ Location Standards for Salt Domes, Salt Beds, Underground Mines and Caves, 50 FR 28702.	Rules 54–18(C), 65–18, effective 12/30/89;
★ Liquids in Landfills, 50 FR 28702, July 15, 1985	Rules 57–14, 68–14(A) & (D), effective 12/30/89;
★ Ground-Water Monitoring, 50 FR 28702, July 15, 1985	Rule 54–90(B), effective 12/30/89;
★ Cement Kilns, 50 FR 28702, July 15, 1985	Rule 51–06(A)(2), effective 12/30/89; Rule 51–33, effective 6/29/90; Rule 58–42(C), effective 5/28/87;
★ Permit Life, 50 FR 28702, July 15, 1985	Rule 50–54(A), effective 3/4/85;
★ Listing of TDI, DNT, and TDA Wastes, 50 FR 42936–42943, October 23, 1985	Rules 51–33(F), 51–11, effective 6/29/90; Rules 51–20, 51–30, 51–32, effective 12/30/89;

Federal requirement	Analogous state authority
★ Burning of Waste Fuel and Used Oil, Fuel in Boilers and Industrial Furnaces, 50 FR 49164–49212, November 29, 1985, (as amended on November 19, 1986, at 51 FR 41900–41904, and April 13, 1987, at 52 FR 11819–11822).	Rules 51–03(C)(2)(b)(ii), 51–05(B), 51–06(A)(2)(c), (3)(c) & (g)–(i), 58–45(A)–(E) & (G), 58–46, 58–50(A)–(E), 58–51(A) & (B), effective 12/30/89; Rules 58–53, 58–54, effective 12/8/88; Rules 57–40(A)(2), 58–40(A) & (B), 58–42(A) & (B), 58–43(A)–(C), 58–44, 58–52, 68–40, effective 5/28/87;
★ Listing of Four Spent Solvents, 51 FR 6541–6542, February 25, 1986	Rules 51–31, 51–33, appendix to rule 51–11, effective 6/29/90; Appendix to rules 51–20, 51–30, effective 12/30/89;
★ Standards for Hazardous Waste Storage and Treatment Tank Systems, 51 FR 25470–25486, July 14, 1986.	Rules 50–10(A)(2), (6), (14), (19), (31), (49), (53), (59), (67), (69), (95), (98), (107), (108), & (119), 50–44(A)(5) & (13), 50–44(C)(2), effective 8/3/90; Rules 51–04 (A)(8), 54–15(B)(4), 55–90, 66–90, 66–93, effective 6/29/90; Rules 52–34 (A)(1), (D)(2) & (3), 65–15(B)(4), effective 4/1/90; Rules 54–73 (B)(6), 65–13(B)(6), 65–73(B)(3) & (6), 66–95, 66–992, effective 12/30/89; Rules 55–10(B)(3), 55–40(B)(3), 55–91, 55–92, 55–93, 55–94, 55–95, 55–96, 55–97, 55–98, 55–99, 66–10(B)(3), 66–40(B), 66–91, 66–92, 66–94, 66–96, 66–97, 66–98, 66–99, 66–991, effective 12/8/88;
★ Listing of EBDC 51 FR 37725–37729 October 24, 1986	Rule 51–30, appendix II to rule 51–20, effective 12/30/89; Rule 51–32, effective 8/29/85;
★ Land Disposal Restrictions, 51 FR 40572–40654, November 7, 1986 (as amended on June 4, 1987, 52 FR 21010).	Rules 50–10, 50–44(A)(21), effective 8/3/90; Rules 51–04(c) & (D)(1), 59–41, 59–42(A) & (B), 59–43, effective 6/29/90; Rules 50–51(K)(5), 52–11(F), 54–01(H), 54–13(A)(1), (B)(6) & (7), 65–01(E), effective 4/1/90; Rules 51–01(A), 51–05(B), (C), (E), (F)(2), & (G)(2), 51–06(A)(3) & (C)(1), 51–07(A), 51–20, 53–12, 54–73(B)(3), & (10)–(14), 59–01(A)–(C), 59–02, 59–03, 59–04, 59–07, 59–30, 59–31, 59–40, 59–41, 59–44, 59–50, 65–13(A)(1), (B)(6) & (7), 65–73(B)(3) & (8)–(12), effective 12/30/89; Rule 49–031(A), effective 2/23/89; Rule 51–30(B), effective 4/15/81; Rule 50–01, effective 12/2/81;
★ Liability Requirements for Hazardous Waste Facilities; Corporate Guarantee, 52 FR 44314–44321, November 18, 1987.	Rules 55–47(G)(2) & (3), 55–51(H)(2), 66–47(G)(2) & (3), effective 6/29/90;
★ Technical Corrections; Identification and Listing of Hazardous Waste, 53 FR 13382–13393, April 22, 1988.	Rules 51–33(E) & (F), appendix to 51–11, effective 6/29/90;
★ Farmer Exemptions; Technical Corrections, 53 FR 27164–27165, July 19, 1988	Rules 52–10(B)(1) & (D), 54–01(G)(4), 65–01(C)(8), effective 4/1/90; Rules 50–45(C)(2), 59–01(C)(5), effective 12/30/89;
★ Land Disposal Restrictions for First Third Scheduled Wastes, 53 FR 31138–31222, August 17, 1988.	Rules 59–41(A), 59–42(A)(2), 59–43, effective 6/29/90; Rule 54–13(B)(7)(C), effective 4/1/90; Rules 54–73(B)(10)–(16), 58–30(B), 59–01(C)(3)–(5) & (D), 59–04(A)(2), 59–07, 59–08, 59–30(B) & (C), 59–31, 59–32(D)–(G), 59–33, 59–40(A) & (C), 59–50(D), 65–13(B)(7)(c), 65–73(B)(8)/(14), effective 12/30/89;
★ Hazardous Waste Management System; Standards for Hazardous Waste, Storage and Treatment Tank Systems, 53 FR 34079–34087, September 2, 1988.	Rules 50–10(A)(27), (28), (128) & (129), effective 8/3/90; Rules 55–14, 55–90, 66–90, 66–93(F)(3) & (G)(3)(c), effective 6/29/90; Rule 66–992(C)(3), effective 12/30/89; Rule 66–14, effective 02/23/89; Rules 55–93(F)(3), 55–96, 66–10(B)(2), 66–96, effective 12/8/88;

List of Subjects in 40 Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a) 3006, and 7004(b) of the Solid Waste Disposal Act as amended (42 U.S.C. 6912(a), 6926 and 6974(b).

Valdas V. Adamkus,

Regional Administrator.

FR Doc. 91–14205 Filed 6–18–91; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 281

[FRL–3966–9]

New Hampshire; Final Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination on New Hampshire's application for final approval.

SUMMARY: The State of New Hampshire has applied for final approval of its underground storage tank program under subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed New Hampshire's application and has reached a final determination that New Hampshire's underground storage tank program satisfies all the requirements necessary to qualify for final approval. Thus, EPA is granting final approval to the State of New Hampshire to operate its program.

EFFECTIVE DATE: Final approval for New Hampshire shall be effective at 1 p.m., July 19, 1991.

FOR FURTHER INFORMATION CONTACT: Susan Hanamoto, Office of Underground Storage Tanks, HPU–1, U.S. EPA, Region I, JFK Federal Building, Boston, MA 02203, 617/573–5748.

SUPPLEMENTARY INFORMATION:

A. Background

Section 9004 of RCRA enables EPA to approve state underground storage tank programs to operate in a state in lieu of the federal underground storage tank program. To qualify for final authorization, a state's program must: (1) Be "no less stringent" than the federal program, and (2) provide for

adequate enforcement (Section 9004 (a) and (b) of RCRA, 42 U.S.C. 6991c (a) and (b)).

On January 8, 1991, EPA acknowledged receiving from the State of New Hampshire a complete official application to obtain final approval to administer its underground storage tank program. On April 22, 1991, EPA published a tentative decision announcing its intent to grant New Hampshire final approval of its program. Further background on the tentative decision to grant approval appears at 56 FR 16276, April 22, 1991.

Along with the tentative determination, EPA announced the availability of the application for public comment and the date of a public hearing on the application. EPA requested advance notice for testimony and reserved the right to cancel for lack of public interest. Since there was no public request, the public hearing was canceled. No public comments were received regarding EPA's approval of New Hampshire's underground storage tank program.

B. Decision

I conclude that the State of New Hampshire's application for final approval meets all of the statutory and regulatory requirements established by subtitle I of RCRA. Accordingly, New Hampshire is granted final approval to operate its underground storage tank program. The State of New Hampshire now has the responsibility for managing all regulated underground storage tank facilities within its borders and carrying out all aspects of the federal underground storage tank program except with regard to Indian lands where EPA will have regulatory authority. New Hampshire also has primary enforcement responsibility, although EPA retains the right to conduct inspections under section 9005 of RCRA, 42 U.S.C. 6991d and to take enforcement actions under section 9006 of RCRA, 42 U.S.C. 6991e.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the approval will not have a significant economic impact on a substantial number of small entities. This approval effectively suspends the applicability of certain federal regulations in favor of the State of New Hampshire's program, thereby eliminating duplicative requirements for owners and operators of underground storage tanks within the State. It does not impose any new burdens on small entities. This rule, therefore, does not require flexibility analysis.

List of Subjects in 40 CFR Part 281

Administrative practice and procedure, Hazardous materials, State program approval and underground storage tanks.

Authority: Section 9004 of the Solid Waste Disposal Act as amended, 42 U.S.C. 6991c.

Paul G. Keough,

Acting Regional Administrator.

[FR Doc. 91–14621 Filed 6–18–91; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR PART 64

[Docket No. FEMA 7515]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register.**

EFFECTIVE DATE: The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646–2717, Federal Center Plaza, 500 C Street, Southwest, room 417, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR part 59 *et. seq.*) Accordingly, the communities will be suspended on the effective date in the fourth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register.** In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate (FIRM). The date of the FIRM if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain

management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance with the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance—floodplains.

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of Eligible Communities.

State and location	Community No.	Effective date authorization/ cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Regular Program Conversions				
Region IV				
Georgia: Gordon County, unincorporated areas	130094	July 10, 1975, Emerg.; July 2, 1991, Reg.; July 2, 1991, Susp.	July 2, 1991	July 2, 1991.
Tennessee: Benton County, unincorporated areas	470218	Oct. 4, 1989, Emerg.; July 2, 1991, Reg.; July 2, 1991, Susp.	July 2, 1991	Do.
Region V				
Illinois: Hamburg, village of, Calhoun County	170734	Dec. 6, 1973, Emerg.; Feb. 15, 1984, Reg.; July 2, 1991, Susp.	July 2, 1991	Do.
Region VI				
New Mexico: Valencia County, unincorporated areas	350086	April 13, 1979, Emerg.; July 2, 1991, Reg.; July 2, 1991, Susp.	July 2, 1991	Do.
Region VIII				
Wyoming: Cheyenne, city of, Laramie County	560030	Dec. 12, 1973, Emerg.; Sept. 30, 1977, Reg.; July 2, 1991, Susp.	July 2, 1991	Do.
Region IX				
California: Big Bear Lake, city of, San Bernardino County	060731	March 7, 1989, Emerg.; March 7, 1989, Reg.; July 2, 1991, Susp.	July 2, 1991	Do.
Region I				
Connecticut:				
Derby, City of, New Haven County	090075	Feb. 4, 1972, Emerg.; July 16, 1991, Reg.; July 16, 1991, Susp.	July 16, 1991	July 16, 1991.
Seymour, town of, New Haven County	090088	Dec. 18, 1974, Emerg.; July 3, 1978, Reg.; July 16, 1991, Susp.	April 16, 1991	Do.
Maine:				
Franklin, town of, Hancock County	230282	Feb. 4, 1976, Emerg.; July 16, 1991, Reg.; July 16, 1991, Susp.	July 16, 1991	Do.
North Haven, town of, Knox County	230228	April 2, 1976, Emerg.; July 16, 1991, Reg.; July 16, 1991, Susp.	July 16, 1991	Do.
Penobscot, town of, Hancock County	230290	June 14, 1976, Emerg.; July 16, 1991, Reg.; July 16, 1991, Susp.	July 16, 1991	Do.
Massachusetts: Russell, town of, Hampton County	250148	Aug. 8, 1975, Emerg.; Dec. 15, 1990, Reg.; July 16, 1991, Susp.	Dec. 15, 1990	Do.
New Hampshire: Tamworth, town of, Carroll County	330018	July 21, 1976, Emerg.; July 16, 1991, Reg.; July 16, 1991, Susp.	July 16, 1991	Do.
Vermont: Randolph, town of, Orange County	500073	Nov. 21, 1974, Emerg.; July 16, 1991, Reg.; July 16, 1991, Susp.	July 16, 1991	Do.
Region III				
Pennsylvania: Connellville, township of, Fayette County	421623	March 3, 1977, Emerg.; July 16, 1991, Reg.; July 16, 1991, Susp.	July 16, 1991	Do.
Region IV				
Florida:				
Baker County, unincorporated areas	120419	Nov. 2, 1979, Emerg.; July 16, 1991, Reg.; July 16, 1991, Susp.	July 16, 1991	Do.
Jefferson County, unincorporated areas	120331	April 21, 1978, Emerg.; July 16, 1991, Reg.; July 16, 1991, Susp.	July 16, 1991	Do.
Liberty County unincorporated areas	120148	May 19, 1978, Emerg.; July 16, 1991, Reg.; July 16, 1991, Susp.	July 16, 1991	Do.

State and location	Community No.	Effective date authorization/ cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
North Carolina:				
Martin County, unincorporated areas	370155	Dec. 18, 1975, Emerg.; July 16, 1991, Reg.; July 16, 1991, Susp.	July 16, 1991	Do.
Sampson County, unincorporated areas	370220	March 29, 1982, Emerg., July 16, 1991, Reg.; July 16, 1991, Susp.	July 16, 1991	Do.
Region VI				
New Mexico: Hobbs, city of, Lea County	350029	Sept. 20, 1976, Emerg.; July 16, 1991, Reg.; July 16, 1991, Susp.	July 16, 1991	Do.

Code for reading fourth column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

C.M. "Bud" Schauerte,
Administrator, Federal Insurance Administration.

[FR Doc. 91–14445 Filed 6–18–91; 8:45 am]
BILLING CODE 6718–21–M

44 CFR Part 65

[Docket No. FEMA–7025]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Interim rule.

SUMMARY: This rule lists communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations for new buildings and their contents and for second layer coverage on existing buildings and their contents.

DATES: These modified base flood elevations are currently in effect and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which he can request through the community that the Administrator reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Mr. William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2754.

SUPPLEMENTARY INFORMATION: Numerous changes made in the base (100-year) flood elevations on the FIRMs for each community make it administratively infeasible to publish, in this notice, all of the changes contained on the maps. However, this rule includes the address of the Chief Executive Officer of the community, where the modified base flood elevation determinations are made available for inspection.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) and are in accordance with the National Flood Insurance Act of 1968, as amended (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 65.4).

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management measures required by 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical revisions made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, floodplains.

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

§ 65.4 [Amended]

2. Section 65.4 is amended by adding, in alphabetic sequence, new entries to the table.

State and County	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama: Jefferson	Unincorporated Areas	May 10, 1991, May 17, 1991, *Birmingham News.*	The Honorable Mary Buckelew, President, Jefferson County Board of Commissioners, County Courthouse, room 211, Birmingham, Alabama 35263.	Apr. 29, 1991	010217
Colorado: Boulder	City of Boulder	May 24, 1991, May 31, 1991, *Daily Camera.*	The Honorable Leslie Durgin, Mayor, City of Boulder, P.O. Box 791, Boulder, Colorado 80306.	May 6, 1991	080024
Hawaii: Hawaii	Unincorporated Areas	May 17, 1991, May 24, 1991, *Hawaii Tribune Herald.*	The Honorable Lorraine R. Inouye, Mayor, Hawaii County, Hawaii County Office Building, 25 Aupuni Street, Hilo, Hawaii 96720.	May 14, 1991	155166
Mississippi: Rankin	City of Richland	June 5, 1991, June 12, 1991, *Rankin County News.*	The Honorable Lester Spell, Jr., Mayor, City of Richland, City Hall, P.O. Box 180127, Richland Mississippi 39218.	June 24, 1991	280299
Missouri: St. Louis	City of Cool Valley	May 15, 1991, May 22, 1991, *The St. Louis Post Dispatch.*	The Honorable Eileen H. McCartney, Mayor, City of Cool Valley, 100 Signal Hill Drive, Cool Valley, Missouri 63121.	Apr. 29, 1991	290342
Nevada: Independent City	City of Carson City (FEMA Docket No. 7014).	Feb. 12, 1991, Feb. 15, 1991, *Nevada Appeal.*	The Honorable Mary Teixeira, Mayor, City of Carson City, 2621 Northgate Lane, Carson City, Nevada 89706.	Feb. 5, 1991	320001
North Carolina: Craven	Town of Trent Woods	June 6, 1991, June 13, 1991, *New Bern Sun Journal.*	The Honorable Leroy H. Price, Mayor, Town of Trent Woods, P.O. Box 2392, New Bern, North Carolina 28561-2392.	June 24, 1991	370434
Tennessee: Shelby	City of Memphis	June 6, 1991, June 13, 1991, *Memphis Daily News.*	The Honorable Richard C. Hackett, Mayor, City of Memphis, 125 North Mid-America Mall, Memphis, Tennessee 38103.	June 24, 1991	470177

Issued: June 6, 1991.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 91-14442 Filed 6-18-91; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations will be used in calculating flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

EFFECTIVE DATE: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Mr. William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of modified base flood elevations for each community listed. These modified elevations have been published in newspaper(s) of local circulation and ninety (90) days have elapsed since that publication. The Administrator has resolved any appeals resulting from this notification.

Numerous changes made in the base (100-year) flood elevations on the FIRMs for each community make it administratively infeasible to publish, in this notice, all of the changes contained on the maps. However, this rule includes the address of the Chief Executive Officer of the community, where the modified base flood elevation determinations are made available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified base flood elevations shall be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical revisions made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, floodplains.

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

§ 65.4 [Amended]

2. Section 65.4 is amended by adding, in alphabetic sequence, new entries to the table.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona: Unincorporated Areas.	Pima County (FEMA Docket No. 7014).	February 15, 1991, February 22, 1991, *Daily Territorial.*	The Honorable Dan Eckstrom, Chairman, Pima County Board of Supervisors, 130 West Congress, Fifth Floor, Tucson, Arizona 85701.	Feb. 5, 1991.....	040073
Florida: Monroe (Docket No. FEMA-7014).	Unincorporated Areas.....	February 11, 1991, February 18, 1991, *The Key West Citizen.*	The Honorable Wilhelmina Harvey, Mayor, Monroe County, 310 Fleming Street, P.O. Box 93, Key West, Florida 33040.	Feb. 4, 1991.....	125129
Illinois: Kankakee (Docket No. FEMA-7014).	Village of Bourbonnais.....	February 12, 1991, February 19, 1991, *The Bourbonnais Herald.*	The Honorable Terry Vaughn, Mayor, Village of Bourbonnais, 700 Main Street, NW., Bourbonnais, Illinois 60914.	Feb. 1, 1991.....	170337
Illinois: Kankakee (Docket No. FEMA-7014).	Village of Bradley.....	February 12, 1991, February 19, 1991, *The Kankakee Daily Journal.*	The Honorable Kenneth P. Hayes, Mayor, Village of Bradley, 147 South Michigan Avenue, Bradley, Illinois 60915.	Feb. 1, 1991.....	170338
Indiana: Marion (Docket No. FEMA-7018).	City of Indianapolis.....	February 21, 1991, February 28, 1991, *Indianapolis Star.*	The Honorable William H. Hudnut III, Mayor, City of Indianapolis, 2501 City-County Building, Indianapolis, Indiana 46204.	Feb. 11, 1991....	180159
Nevada: Elko.....	City of Elko (FEMA Docket No. 7021).	February 7, 1991, and February 14, 1991, *Elko Daily Free Press.*	The Honorable D. George Corner, Mayor, City of Elko, 1751 College Avenue, Elko, Nevada 89801.	Jan. 31, 1991....	320010

Issued: June 6, 1991.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 91-14441 Filed 6-18-91; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

EFFECTIVE DATE: The date of issuance of the revised Flood Insurance Rate Map (FIRM) showing modified base flood elevations for the community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of modified base flood elevations for each community listed. These modified elevations have been published in newspaper(s) of local circulation and an opportunity for the community or individuals to appeal the proposed determination to or through the community for a period of ninety (90) days has been provided. The proposed modified elevations were also published in the **Federal Register.** The Administrator has resolved any appeals resulting from these notifications.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (title XIII of the Housing and Urban Development Act of 1968, (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR part 67.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies, for reasons set out in the proposed rule, that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been prepared. It does not involve any collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, floodplains.

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. The modified base flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited for each community.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) modified
ARKANSAS	
Baxter County (Unincorporated Areas) (FEMA Docket No. 7015)	
White River:	
Approximately 371 miles above confluence with Black River	*386
Approximately 381.5 miles above confluence with Black River	*408
Maps available for inspection at the Mountain Home City Hall, Mountain Home, Arkansas.	
Jonesboro (City), Craighead County (FEMA Docket No. 7008)	
Whiteman's Creek:	
At County Route 674	*231
Approximately 100 feet downstream of Union Pacific Railroad	*249
Approximately 317 feet upstream of Union Pacific Railroad	*251
Approximately 739 feet downstream of Caraway Road	*268
Moore's Ditch Lateral:	
At the confluence with Moore s Ditch	*237
Approximately 53 feet upstream of Union Pacific Railroad	*250
Butlers Ditch:	
At confluence with Little Bay Ditch	*232
Approximately .25 mile upstream of State Route 18	*235
Maple Slough Ditch:	
At the confluence with Gum Slough Ditch	*232

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) modified
At the State Route 18	*235
Christian Creek:	
At the confluence with Lost Creek	*267
At Oakhurst Street	*295
Approximately 422 feet downstream of Wood Springs Road	*314
Approximately 211 feet downstream of Covey Road	*339
Christian Creek Lateral:	
At the confluence with Cristian Creek	*288
Approximately 750 feet upstream of the confluence with Christian Creek	*290
At West Johnson Avenue	*293
Approximately 300 feet downstream of Clubhouse Street	*294
Turtle Creek:	
At the confluence with Whiteman's Creek	*248
At St. Louis Southwestern Railway	*267
At the downstream side of U.S. Route 49 and State Route 1	*297
Gum Slough Ditch:	
At a point approximately 150 feet downstream of County Route 51	*232
At a point approximately 450 feet upstream of County Route 51	*232
Viney Slough Ditch:	
Approximately .25 mile upstream of County Route 151	*232
At the confluence of Higginbottom Creek (County Route 143)	*247
Lateral No. 3:	
At the confluence with Little Bay Ditch	*232
At Commerce Drive	*236
Little Bay Ditch:	
Approximately .5 mile downstream of the confluence of Lateral No. 3	*232
Approximately .3 mile upstream of State Route 18	*236
Higginbottom Creek:	
At the confluence with Viney Slough Ditch	*247
Approximately 250 feet downstream of State Route 1 Bypass	*256
At Caraway Road	*264
Downstream of Parker Road	*282
Lost Creek:	
Approximately .2 mile downstream of U.S. Route 63	*283
Approximately .3 mile upstream of Clubhouse Road	*294
Approximately 800 feet upstream of Church Street	*299
County Road	*323
Turtle Creek Lateral:	
At the confluence with Turtle Creek	*269
Approximately 260 feet upstream of the confluence with Turtle Creek	*269
Maps available for inspection at the City Hall, 314 W. Washington, Jonesboro, Arkansas.	
Norfork (City), Baxter County (FEMA Docket No. 7015)	
White River:	
Approximately 374 miles above confluence with Black River	*392
Approximately 377 miles above confluence with Black River	*399
Maps available for inspection at the City Hall, Norfork, Arkansas.	
CALIFORNIA	
Mendota (City), Fresno County (Docket No. 7015)	
Panoche Creek:	
At the intersection of Sorensen and Holmes Avenues	*168
Maps are available for review at City Hall, 643 Quince Street, Mendota, California.	
CONNECTICUT	
West Hartford (Town), Hartford County (FEMA Docket No. 7015)	
Tumbledown Brook Tributary:	
At downstream corporate limits	*137
At upstream corporate limits	*147
Maps available for inspection at the Town Planner's Office, 50 South Main Street, West Hartford, Connecticut.	
GEORGIA	
Warner Robins (City), Houston County (FEMA Docket No. 7015)	
Sandy Run Creek:	
Just upstream of State Route 247	*270
About 3,600 feet upstream of confluence of Howard Branch	*313
Howard Branch:	
At mouth	*305
About 470 feet upstream of mouth	*305
Maps available for inspection at the City of Warner Robins, Engineering Department, Warner Robins, Georgia.	
MAINE	
Sanford (Town), York County (FEMA Docket No. 7015)	
Mousam River:	
At confluence with Estes Lake	*216
Approximately 1,100 feet upstream of State Route 109	*432
Estes Lake:	
At the Estes Lake Dam	*216
Approximately 7,300 feet upstream of Pool's Crossing	*217
Maps available for inspection at the Town Hall, 267 Main Street, Sanford, Maine.	
MARYLAND	
Frederick County (Unincorporated Areas) (FEMA Docket No. 7015)	
Unnamed Tributary to Hollow Creek:	
Approximately 450 feet downstream of Beech Tree Lane	*579
At downstream side of Beech Tree Drive	*607
Maps available for inspection at the Winchester Hall, 12 East Church Street, Frederick, Maryland.	
MASSACHUSETTS	
Harwich (Town), Barnstable County (FEMA Docket No. 7015)	
Pleasant Bay:	
At the northern corporate limits	*17
Muddy Creek:	
At the intersection of Sugar Hill Drive and Nickerson Road	*12
Maps available for inspection at the Engineering Department, Town Hall. 732 Main Street, Harwich, Massachusetts.	
Orleans (Town), Barnstable County (FEMA Docket No. 7015)	
Atlantic Ocean Shoreline:	
Sarah's Pond	*12
East of Little Pochet Island	*15
Little Pleasant Bay:	
Pilgrim Lake	*13
Meeting House Pond	*13
Namequoit River	*13
Paw Wah Pond	*14
Portanimicut Road extended	*17
Pleasant Bay:	
Northwest of intersection of Tar Kiln Road and State Route 28 (South Orleans Road)	*12
Eastern shoreline of Sipson Island	*17
Maps available for inspection at the Town Office, 19 School Road, R.R. #1, Orleans, Massachusetts.	
NEW JERSEY	
Ridgefield Park (Village), Bergen County (FEMA Docket No. 7015)	
Overpeck Creek:	
At Tidegate at New Jersey Turnpike (I–95)	*7
Approximately 1.2 miles upstream of U.S. Route 46	*7
Maps available for inspection at the Village Administrative Offices, 234 Main Street, Ridgefield Park, New Jersey.	
NEW YORK	
Northumberland (Town), Saratoga County (FEMA Docket No. 7015)	
Hudson River:	
At corporate limits	*101
At downstream side of Thomson Dam	*103
Champlain Canal:	
At corporate limits	*102
Approximately 500 feet downstream of Divergence with Hudson River	*108
Maps available for inspection at the Town Hall, Catherine Street, Ganseboort, New York.	
OKLAHOMA	
Henryetta (City), Okmulgee County (FEMA Docket No. 7015)	
Coal Creek:	
Approximately 450 feet upstream of confluence of Unnamed Creek	*654
Approximately .28 mile downstream of U.S. Highway 62 & 75	*656
Unnamed Creek:	
Approximately .03 mile downstream of U.S. Highway 62 & 75	*653
Approximately .075 mile downstream of U.S. Highway 62 & 75	*653
Dutch Creek:	
Approximately 230 feet downstream of Corporation Street	*691
Approximately 140 feet upstream of Corporation Street	*691
Maps available for inspection at the City Hall, 4th & Broadway, Henryetta, Oklahoma.	
Okmulgee (City), Okmulgee County (FEMA Docket No. 7015)	
North Okmulgee Creek:	
At downstream corporate limits	*674
Approximately .89 mile upstream of corporate limits	*680
Cussetah Creek Tributary:	
At downstream corporate limits	*645
Approximately .7 mile upstream of Mission Road	*667
South Okmulgee Creek:	
Approximately .78 mile downstream of corporate limits	*645
Approximately 1,900 feet upstream of corporate limits	*645
Maps available for inspection at the City Engineer's Office, 111 E. 4th, Okmulgee, Oklahoma.	
TEXAS	
Denton County (Unincorporated Areas) (FEMA Docket No. 7012)	
Timber Creek:	
At the upstream corporate limits of the Town of Double Oak	*628
Approximately 225 feet upstream of the upstream corporate limits of the Town of Double Oak	*628
Cottonwood Branch:	
Approximately 0.43 mile downstream of State Route 423	*539
Approximately 300 feet downstream of State Route 423	*544
Maps available for inspection at 110 West Hickory, Denton, Texas.	

Issued: June 6, 1991.

C. M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 91–14443 Filed 6–18–91; 8:45 am]

BILLING CODE 6718–03–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89–130; RM–6668; RM–6960]

Radio Broadcasting Services; Medical Lake and Davenport, Washington, and Sandpoint, ID

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Sunbrook Communications II, L.P. and Blue Sky Broadcasting: (1) Substitutes Channel 270C2 for Channel 237A at Medical Lake, Washington, and modifies the license of Station KAAR(FM) accordingly; (2) substitutes Channel 237C1 for Channel 237A at Sandpoint, Idaho, and modifies the license of Station KPND(FM) accordingly; and (3) substitutes Channel 247A for unoccupied but applied for Channel 273A at Davenport, Washington. See 54 FR 26219, June 22, 1989. The applicant for Channel 273A at Davenport may amend its application to specify Channel 247A without loss of cut-off protection. With this action, this proceeding is terminated. See Supplementary Information, *infra*.

EFFECTIVE DATE: July 29, 1991.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: Channel 270C2 can be allotted to Medical Lake in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.8 kilometers (9.2 miles) northwest to accommodate Sunbrook's desired transmitter site, at coordinates 47–41–30 and 117–46–00. Channel 237C1 can be allotted to Sandpoint with a site restriction of 34.6 kilometers (21.5 miles) northeast to avoid short-spacings to Station CBTA–FM, Channel 235C, Trail, British Columbia, Canada, to unoccupied and unapplied for Channel 239C at Trail, British Columbia, and to the pending application (BPH–900816ID) of Station KLER–FM for Channel 237C3, Orofino, Idaho, at coordinates 48–25–19 and 116–08–30. Channel 247A can be allotted to Davenport without the imposition of a site restriction at coordinates 47–39–06 and 118–09–06.

This is a synopsis of the Commission's Report and Order, MM Docket No. 89–130, adopted May 30, 1991, and released June 13, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Idaho, is amended by removing Channel 237A and adding Channel 237C1 at Sandpoint.

3. Section 73.202(b), the Table of FM Allotments under Washington, is amended by removing Channel 273A and adding Channel 247A at Davenport, and by removing Channel 237A and adding Channel 270C2 at Medical Lake.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–14492 Filed 6–18–91; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Parts 73 and 74

[MM Docket No. 90–263; FCC 91–155]

Settlement Agreements Among Applicants for Construction Permits

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: In responding to petitions for reconsideration and a request to defer the effective date, the Commission clarifies and modifies the rules adopted in its Report and Order (56 FR 373, January 4, 1991) in this proceeding. These rules limit payments that may be received by competing applicants for construction permits for new broadcast stations or modifications to facilities of existing stations. The Commission modified the settlement payment limits to permit recovery of expenses at any stage in the comparative hearing process. The Commission clarified that it will not apply the settlement limitations to settlement arrangements that are part of a *bona fide* merger of the settling applicants. This action is taken as part of the Commission's continuing effort to eliminate abuse of the Commission's licensing processes.

EFFECTIVE DATE: August 1, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Beverly McKittrick, Mass Media Bureau, Policy and Rules Division, (202) 632–5414.

SUPPLEMENTARY INFORMATION: Public reporting burden for § 73.3525 (3060–0213) is estimated to be 8 hours per respondent, 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 the burden, to the Federal Communications Commission, Office of Managing Director, Paperwork Reduction Project, Washington, DC 20554, and to the Office of Management and Budget, Paperwork Reduction Project (3060–0213), Washington, DC 20503.

This is a synopsis of the Commission's Memorandum Opinion and Order in MM Docket No. 90–263, adopted May 9, 1991, and released May 15, 1991. The complete text of this Memorandum Opinion and Order is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC, and also may be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1114 21st Street NW., Washington, DC.

Synopsis of Memorandum Opinion and Order

1. Through this decision, the Commission clarified and modified the rules adopted in the Report and Order in this proceeding to reflect its effort to eliminate abuse of Commission processes by limiting the payments that can be made to settle cases involving competing applications for construction permits for new broadcast stations or modifications to facilities of existing stations.

2. On reconsideration, the Commission was persuaded that an across-the-board limitation on settlement payments to expenses is sufficient to deter speculative

applications because it forecloses applicants from making a profit on settlements. While an absolute bar on settlement payments after the start of the trial would no doubt encourage earlier settlements, the Commission was concerned that this may prevent *bona fide* applicants with limited financial resources from prosecuting their applicants past the start of the trial. Moreover, by making it impossible for parties to fully recoup their expenses at later hearing stages, such a policy would discourage those that had decided against early settlement from settling at some later point. Therefore, the Commission concluded that, in the context of comparative proceedings involving applicants for new stations, the benefit of eliminating settlement payments after the trial starts, encouraging earlier settlements, was insufficient to outweigh the possible adverse consequences of such a prohibition. In light of the modification of our settlement policy, applicants will be able to recoup their expenses at any point in the comparative new proceeding.

3. The Commission clarified that its new rules would not apply to settlements by merger of applicants. The rules limiting settlement payments to legitimate expenses should not be applied in such a manner as to preclude or unduly hinder legitimate merger transactions involving competing applicants. The Commission noted that it will rely on the broad principles of case-by-case analysis outlined in Venton Corporation, 90 FCC 2d 307 (1982). In addition, the Commission intends to follow certain specified guidelines in reviewing merger proposals for legitimacy. First, it will examine with a heightened level of scrutiny any merger proposal where the dismissing applicant receives cash, either up-front or on a deferred basis, and the payment is guaranteed regardless of the outcome of the business venture. The Commission will accord similar scrutiny to any merger proposal that provides for cash or similar liquid asset payments to the dismissing applicant in excess of its out-of-pocket expenses. Finally, out of concern for the potential abuse of its processes that the merger exception may engender, the Commission will be inclined to disallow merger settlements that present a close question. To aid the Commission in its scrutiny of merger settlement agreements, the Commission will require applicants to submit a full explanation and justification of the parties' exchange of consideration in addition to the itemization of expenses required in non-merger settlements.

4. The Commission denied the request to defer the effective date of the settlement limits and to require applicants who pay their hearing fee on or before March 21, 1991, to serve notice of such payment of competing applicants. This deferral and notice requirement would provide a longer period for an applicant to offer unlimited settlement payments to other applicants after ascertaining, by payment of hearing fees, which of the other applicants intended to go forward and should be approached about settlement. The Commission pointed out that pending applicants have had ample notice of the Commission's intention to impose settlement limits and can settle without any limits before the effective date of the adopted rules.

5. The Commission affirmed its determination that the proposal to create a minority media ownership trust was beyond the scope of this proceeding because it implicates a board range of issues unrelated to the issues in this proceeding. It will be considered separately. The Commission rejected a proposal to create an exception for minorities to a general prohibition against third-party buyouts. The Commission noted that while it is interested in new and creative proposals to foster its longstanding goal of diversifying ownership of broadcast media, it cannot adopt policies that hold substantial potential for abuse of Commission processes.

Final Regulatory Flexibility Statement

6. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that the adopted rule will have a beneficial impact on entities of all sizes because it will reduce the number of competing applications filed in bad faith. As a result, hearings will likely be less complex in terms of numbers of parties and issues. This will be especially beneficial to small entities with limited financial resources.

7. Accordingly, *it is ordered,* That the Petition for Partial Reconsideration of the Federal Communications Bar Association *is granted.*

8. *It is further ordered,* That the Petition for Reconsideration filed by Hampton Broadcasting *et al. is granted* to the extent indicated above and *is denied* in all other aspects.

9. *It is further ordered,* That the Petition for Partial Reconsideration and Request for Deferral of Effective Date filed by Melanie Bruton *et al. is denied.*

10. *It is further ordered,* That the Petition for Reconsideration, or in the Alternative Petition for Rulemaking filed by the National Association for the Advancement of Colored People, *et al. is denied* to the extent indicated above.

11. *It is further ordered,* That the Motion for Partial Deferral of Effective Date filed by the Federal Communications Bar Association is Dismissed as Moot.

12. *It is further ordered,* That pursuant to the authority contained in sections 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154 and 303, parts 73 and 74 of the Commission's Rules, 47 CFR parts 73 and 74, *are amended* as set forth below, effective August 1, 1991, subject to Office of Management and Budget approval.

List of Subjects in 47 CFR Part 73 and 74

Radio broadcasting, Television broadcasting.

Amendatory Text

PART 73—[AMENDED]

Parts 73 and 74 of title 47 of the Code of Federal Regulations are amended as follows:

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

Authority: 47 U.S.C. Sections 154 and 303.

2. Section 73.3525 is revised to read as follows:

§ 73.3525 Agreements for removing application conflicts.

(a) Except as provided in § 73.3523 regarding dismissal of applications in comparative renewal proceedings, whenever applicants for a construction permit for a broadcast station enter into an agreement to procure the removal of a conflict between applications pending before the FCC by withdrawal or amendment of an application or by its dismissal pursuant to § 73.3568, all parties thereto shall, within 5 days after entering into the agreement, file with the FCC a joint request for approval of such agreement. The joint request shall be accompanied by a copy of the agreement, including any ancillary agreements, and an affidavit of each party to the agreement setting forth:

(1) The reasons why it is considered that such agreement is in the public interest;

(2) A statement that its application was not filed for the purpose of reaching or carrying out such agreement;

(3) A certification that neither the applicant nor its principals has received any money or other consideration in excess of the legitimate and prudent expenses of the applicant; *Provided* That this provision shall not apply to *bona fide* merger agreements;

(4) The exact nature and amount of any consideration paid or promised;

(5) An itemized accounting of the expenses for which it seeks reimbursement; and

(6) The terms of any oral agreement relating to the dismissal or withdrawal of its application.

(b) Whenever two or more conflicting applications for construction permits for broadcast stations pending before the FCC involve a determination of fair, efficient and equitable distribution of service pursuant to section 307(b) of the Communications Act, and an agreement is made to procure the withdrawal (by amendment to specify a different community or by dismissal pursuant to § 73.3568) of the only application or applications seeking the same facilities for one of the communities involved, all parties thereto shall file the joint request and affidavits specified in paragraph (a) of this section.

(1) If upon examination of the proposed agreement the FCC finds that withdrawal of one of the applications would unduly impede achievement of a fair, efficient and equitable distribution of radio servce among the several States and communities, then the FCC shall order that further opportunity be afforded for other persons to apply for the facilities specified in the application or applications to be withdrawn before acting upon the pending request for approval of the agreement.

(2) Upon release of such order, any party proposing to withdraw its application shall cause to be published a notice of such proposed withdrawal at least twice a week for 2 consecutive weeks within the 3-week period immediately following release of the FCC's order, in a daily newspaper of general circulation published in the community in which it was proposed to locate the station. However, if there is no such daily newspaper published in the community, the notice shall be published as follows:

(i) If one or more weekly newspapers of general circulation are published in the community in which the station was proposed to be located, notice shall be published in such a weekly newspaper once a week for 3 consecutive weeks within the 4-week period immediately following the release of the FCC's order.

(ii) If no weekly newspaper of general circulation is published in the community in which the station was proposed to be located, notice shall be published at least twice a week for 2 consecutive weeks within the 3-week period immediately following the release of the FCC's order in the daily newspaper having the greatest general circulation in the community in which the station was proposed to be located.

(3) The notice shall state the name of the applicant; the location, frequency and power of the facilities proposed in the application; the location of the station or stations proposed in the applications with which it is in conflict; the fact that the applicant proposes to withdraw the application; and the date upon which the last day of publication shall take place.

(4) Such notice shall additionally include a statement that new applications for a broadcast station on the same frequency, in the same community, with substantially the same engineering characteristics and proposing to serve substantially the same service area as the application sought to be withdrawn, timely filed pursuant to the FCC's rules, or filed, in any event, within 30 days from the last date of publication of the notice (notwithstanding any provisions normally requiring earlier filing of a competing application), will be entitled to comparative consideration with other pending mutually exclusive affidavits.

(5) Within 7 days of the last day of publication of the notice, the applicant proposing to withdraw shall file a statement in triplicate with the FCC giving the dates on which the notice was published, the text of the notice and the name and location of the newspaper in which the notice was published.

(6) Where the FCC orders that further opportunity be afforded for other persons to apply for the facilities sought to be withdrawn, no application of any party to the agreement will be acted upon by the FCC less than 30 days from the last day of publication of the notice specified in paragraph (b)(2) of this section. Any applications for a broadcast station on the same frequency in the same community, with substantially the same engineering characteristics and proposing to serve substantially the same service area as the application sought to be withdrawn, filed within the 30-day period following the last date of publication of the notice (notwithstanding any provisions normally requiring earlier filing of a competing application), or otherwise timely filed, will be entitled to comparative consideration with other pending mutually exclusive applications. If the application of any party to which the new application may be in conflict has been designated for hearing, any such new application will be entitled to consolidation in the proceeding.

(c) Except where a joint request is filed pursuant to paragraph (a) of this section, any applicant filing an amendment pursuant to § 73.3522(a) or a request for dismissal pursuant to § 73.3568(a) which would remove a conflict with another pending application; or a petition for leave to amend pursuant to § 73.3522 (b) or (c) which would permit a grant of the amended applcation or an application previously in conflict with the amended application; or a request for dismissal pursuant to § 73.3568(c), shall file with it an affidavit as to whether or not consideration (including an agreement for merger of interests) has been promised to or received by such applicant, directly or indirectly, in connection with the amendment, petition or request.

(d) Upon the filing of a petition for leave to amend or to dismiss an application for broadcast facilities which has been designated for hearing or upon the dismissal of such application on the FCC's own motion pursuant to § 73.3568(b), each applicant or party remaining in hearing, as to whom a conflict would be removed by the amendment or dismissal shall submit for inclusion in the record of that proceeding an affidavit stating whether or not he has directly or indirectly paid or promised consideration (including an agreement for merger of interests) in connection with the removal of such conflict.

(e) Where an affidavit filed pursuant to paragraph (c) of this section states that consideration has been paid or promised, the affidavit shall set forth in full all relevant facts, including, but not limited to, the material listed in paragraph (a) of this section for inclusions in affidavits.

(f) Affidavits filed pursuant to this section shall be executed by the applicant, permittee or licensee, if an individual; a partner having personal knowledge of the facts, if a partnership; or an officer having personal knowledge of the facts, if a corporation or association.

(g) Requests and affidavits which relate to an application which has not been designated for hearing shall bear the file number of such application. If the affiant is also an applicant, the affidavit shall also bear the file number of affiant's pending application(s). Requests and affidavits which relate to an application which is designated for hearing shall bear the file number of that application and the hearing docket number and will be acted on by the presiding officer.

(h) For the purposes of this section an application shall be deemed to be "pending" before the FCC and a party shall be considered to have the status of an "applicant" from the time an

application is filed with the FCC until an order of the FCC granting or denying it is no longer subject to reconsideration by the FCC or to review by any court.

(i) For purposes of this section, "legitimate and prudent expenses" are those expenses reasonably incurred by an applicant in preparing, filing, prosecuting, and settling its application for which reimbursement is being sought.

(j) For purposes of this section, "other consideration" consists of financial concessions, including, but not limited to the transfer of assets or the provision of tangible pecuniary benefit, as well as non-financial concessions that confer any type of benefit on the recipient.

(k) For purposes of this section, an "ancillary agreement" means any agreement relating to the dismissal of an application or settling of a proceeding, including any agreement on the part of an applicant or principal of an applicant to render consulting services to another party or principal of another party in the poroceeding.

Note: Although § 74.780 of the Rules makes this section generally applicable to low power TV, TV translators, and TV booster stations, paragraph (b) of this section shall not be applicable to such stations.

PART 74—[AMENDED]

1. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. Sections 154 and 303.

2. Section 74.780 is amended by revising the sentence that cross-references § 73.3525, to read as follows:

§ 74.780 Broadcast regulations applicable to translators, low power, and booster stations.

* * * * *

Section 73.3525—Agreements for removing application conflicts.

* * * * *

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-14490 Filed 6-18-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF ENERGY

48 CFR Parts 915, 917, 950 and 970

Acquisition Regulation

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: On February 7, 1991, the Department of Energy (DOE) published an Interim Final Rule which amended the Department of Energy Acquisition Regulation (DEAR) regarding its contracting practices and fee arrangements with its profit making and fee bearing (hereinafter referred to as "profit making") management and operating (M&O) contractors. 56 FR 5064. These amendments were made in order to clarify the responsibilities in the performance of these contracts while providing additional incentives to enhance the accountability of M&O contractors to DOE. In today's notice, DOE responds to significant comments on the interim final rule which raise new arguments.

This final rule adopts as final the interim final rule published in the **Federal Register** on February 7, 1991, with certain minor changes as indicated below.

EFFECTIVE DATES: July 19, 1991.

FOR FURTHER INFORMATION CONTACT:

Stephen D. Mournighan, Office of Policy, PR-12, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586-8182

Lawrence R. Oliver, Assistant General Counsel, for Procurement and Finance (GC-34), 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586-2440

OR

Mary Ann Masterson, Deputy Assistant General Counsel for Procurement and Finance, 1000 Independence Avenue, SW., Washington, D.C. 20585 (202) 586-1900

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Comments Received
III. Procedural Requirements

I. Background

1. Introduction

On February 7, 1991, DOE published a notice of interim final rulemaking with opportunity for public comment. The interim final rule amended DOE regulations regarding contracting practices and fee arrangements with profit making management and operating (M&O) contractors. 56 FR 5064. In the preamble, DOE provided an opportunity for public comment on the interim final rule (IFR). The principal purpose of today's notice is to respond to comments DOE received which raise new arguments or perspectives warranting a formal response. A secondary purpose is to make minor changes, in the nature of technical corrections and clarifications, to the IFR which do not alter the text substantively. Details regarding the procedural background of this rulemaking and previous responses to public comments appear in the preamble to the IFR.

2. Summary of IFR

In the administration of its profit making M&O contracts, the accountability portion of the rule clarified the responsibilities of the parties and provided additional incentives directed toward improved accountability of M&O contractors. One of DOE's objectives in implementing this new rule is to emphasize the importance it places on the responsibility and accountability of its M&O contractors for excellent performance, particularly in the areas of environment, health and safety, in managing and operating DOE facilities.

In addition, the structure and amounts of fees to be paid to its profit making M&O contractors were changed to compensate profit making M&O contractors for the increased financial exposure placed on M&O contractors by the accountability provisions of the final rule. First, an important purpose of the award fee provisions of the final rule is to provide another management tool to promote performance above expected levels by establishing a fee arrangement which provides strong financial incentives for contractor performance at substantially higher levels than those which were utilized under the old fee structure. In addition, contractors who perform at less than satisfactory levels will find a portion of their basic fee to be at risk. Second, the fee schedules which were included in the old DEAR provisions were issued in 1983 and have been updated to recognize the economic impacts of inflation since that time. Third, the techniques for establishing fees in award fee have been revised.

II. Discussion of Comments Received

Comments on the IFR were required to be received on or before April 8, 1991. DOE received comments from eight commenters in response to the IFR. DOE has reviewed and analyzed all of the comments received.

DOE's specific responses to issues raised by the commenters to the IFR are addressed to the extent that such comments differ from those provided in response to the RPR or the extent that different arguments have been advanced or facts provided in support of additional changes to the provisions contained in the IFR.

1. Insurance

Comment: One commenter raised the question whether "similar types of required insurance [which] remain an allowable cost" include DOE's retrospective-rated insurance plans, which in addition to covering Worker's

Compensation also cover Employer's Liability and General Liability coverage.

"[S]imilar types of required insurance" refers to insurance listed as an allowable cost in DEAR 970.5204–l3(d)(8)(ii) and 970.5204–14(d)(8)(ii). This clause generally covers legally required insurance, such as unemployment and workmen's compensation, and personnel related insurance plans, such as employee health and retirement plans. Employer and general liability insurance would not be covered. This type of coverage would be inconsistent with a fundamental principle of the final rule, which is not to reimburse contractors for insuring against the financial risk of incurring Avoidable Costs.

2. Liability Cap for Subcontractors

Comment: One commenter suggested that, with respect to financial guarantees required of subcontractors, the final rule should provide (1) that the guarantee remain in effect for a period of one year after expiration or termination of the subcontract and (2) that the same flexibility as to the form and amount of the required financial guarantee afforded the contractor's financial guarantee, including the option of retainage, should be provided to subcontractors.

DOE agrees with these comments and the necessary changes have been made to the final rule. These changes may be found at new DEAR subsection 970.5204–55(b) (2).

3. Subcontractors and Environmental Restoration Contractors

Comment: One commenter questioned the limitation on the financial obligations of fixed price subcontractors under subsection 970.5204–55(b) (1) to the fee or profit earned under the fixed price subcontract. The commenter believed that fixed price subcontractors should take all the financial risk of rework, losses, fines and penalties and damage to government property as they do now.

DOE is aware that, in most instances, fixed price subcontractors do bear substantially all of such financial risks. However, it is anticipated that there may be a number of subcontractors, including fixed price subcontractors, performing work in the future which may involve difficult, non-routine efforts, and some degree of uncertainty and risk. This may often be the case in environmental clean-up efforts in particular. In addition, not all fixed price contracts are the same with regard to the assumption of financial risks and/or with regard to the type of financial incentives provided. DOE has concluded that until it has had the opportunity to gain some experience with this process, the reasons for limiting the fixed price subcontractor's financial obligation provided in the IFR are more persuasive. No change has been made from the IFR.

4. Litigation Costs and Control

Comment: One commenter raised questions concerning the mechanics for the application of the litigation clause and whether current practices, including submission of pleadings for review to DOE counsel and other contacts with DOE counsel, should continue or whether the Contracting Officer must be contacted first to authorize this involvement.

The question whether and to what extent DOE counsel should review directly and/or control ongoing litigation will be decided on a case by case basis. Contractors should consult with the Contracting Officer to determine the appropriate course of action in each case.

5. Government Property

Comment: One commenter raised questions concerning the mechanics and application of property valuation for loss of or damage to government property and the basis on which a Contracting Officer could determine depreciated value to be the appropriate measure instead of replacement cost.

DOE is continuing to review the question of property valuation for lost, damaged or stolen government property and will be supplying additional guidance to Contracting Officers as part of its implementation of this final rule. However, resolution of questions concerning property valuation will necessarily vary depending on the circumstances and facts of each case.

6. Non-Profit Subcontractors of Profit-Making M&O Contractors

Comment: One commenter sought clarification on whether or not the accountability provisions apply to non-profit subcontractors of profit-making M&O contractors.

Non-Profit subcontractors of profit-making M&O contractors are exempt from the accountability provisions of the rule. To clarify this issue, language has been added to DEAR 970.5204–13, *Allowable costs and fixed-fee (Management and Operating contracts),* (36) (ii); as well as DEAR 970.5204–14(e), *Allowable costs and fixed-fee (Support contracts),* Items of unallowable costs, (34) (ii); and DEAR 950.7011, *General contract authority indemnity,* (c) (2).

7. Liability for Ordinary Negligence and Third Party Liability

Comment: One commenter asked for DOE's rationale for adopting an indemnification policy for non-nuclear damage which is perceived by the commenter to be inconsistent with the indemnification policy under the Price-Anderson Act.

A major public policy underlying the Price-Anderson Act is adequate protection, and compensation, of the public in the event of a nuclear accident. The policy underlying this Rulemaking is to enhance accountability of M&O contractors and provide incentives for improvement in the contractual performance of their non-nuclear related responsibilities. As the rationale for this rule is not the same as the Price-Anderson Act, there is no basis for treatment of these potential liabilities in the same manner. Holding M&O contractors responsible for their activities within their control and responsibility is consistent with the management responsibility these contractors would have in their non-governmental business operations, many of which involve high risks, and sound management practices generally. The Final Rule has not changed in this regard.

This final rule applies only to DOE's profit making M&O contractors and subcontractors.

III. Procedural Requirements

1. Review Under Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared prior to promulgation of a "major rule," and subject to certain exceptions, provides for submission of rules to the Office of Management and Budget (OMB) for formal regulatory review. The term "major rule" is defined by Executive Order 12291 to include "any regulation that is likely to result in: (1) An annual effect on the economy of $100 million or more; (2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) Significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets."

For reasons set forth in detail in the preamble to the IFR, DOE concluded that this rulemaking does not involve a "major rule". Today's notice does not affect that conclusion.

DOE submitted the IFR to OMB as described in the preamble to the IFR. OMB completed its review.

2. Review Under the Regulatory Flexibility Act

In the preamble to the IFR, DOE concluded that the rule would not have a significant economic impact on a substantial number of small entities and that no regulatory flexibility analysis was necessary. DOE reaffirms that conclusion.

3. Review Under the Paperwork Reduction Act

In the preamble to the IFR, DOE concluded that the rule did not contain new "information collection" requirements requiring clearance by OMB pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*). DOE reaffirms that conclusion.

4. Review Under the National Environmental Policy Act

It has been and continues to be DOE's policy that contractors comply with all applicable environmental requirements. DOE anticipates that the DEAR amendments adopted in today's Final Rule will act to encourage diligence in fulfilling this commitment. However, it is not possible at this time to speculate concerning specific actions, if any, which may be taken in response to the rule, or whether they would have significant environmental effects. Therefore, no meaningful NEPA analysis can be prepared in conjunction with promulgation of this rule. DOE will continue to examine individual actions to determine the appropriate level of NEPA review.

5. Review Under Executive Order 12612

Executive Order 12612, 52 FR 41285 (October 30, 1987) requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the national government and the States, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

Today's Final Rule will revise certain policy and procedural requirements. However, DOE has determined that none of the revisions will have a substantial direct effect on the institutional interests or traditional functions of States.

List of Subjects in 48 CFR Parts 915, 917, 950 and 970

Government contracts, DOE management and operating contracts.

Issued in Washington, DC on June 7, 1991.

Silas B. Fisher,

Director, Office of Procurement, Assistance and Program Management.

Accordingly, 48 CFR parts 915, 917, 950, and 970 are revised to read as follows:

PART 915—CONTRACTING BY NEGOTIATION

1. The authority citation for part 915 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

2. Section 915.971–5 is amended by revising paragraphs (d), (f), and (h) to read as follows:

915.971–5 Fee schedules.

* * * * *

(d) The following schedule sets forth the base for construction contracts:

CONSTRUCTION CONTRACTS SCHEDULE

Fee base (dollars)	Fee (dollars)	Fee (percent)	Incr. (percent)
100,000	5,400	5.40	5.30
300,000	16,000	5.33	5.00
500,000	26,000	5.20	4.80
1,000,000	50,000	5.00	3.55
3,000,000	121,000	4.03	3.00
5,000,000	181,000	3.62	2.62
10,000,000	312,000	3.12	2.38
15,000,000	431,000	2.87	2.01
25,000,000	632,000	2.53	1.79
40,000,000	900,000	2.25	1.58
60,000,000	1,216,000	2.03	1.43
80,000,000	1,502,000	1.88	1.29
100,000,000	1,759,000	1.76	1.15
150,000,000	2,333,000	1.56	0.99
200,000,000	2,829,000	1.41	0.73
300,000,000	3,563,000	1.19	0.63
400,000,000	4,188,000	1.05	0.52
500,000,000	4,706,000	0.94	
Over $500 million	4,706,000		[1] 0.52

[1] 0.52% excess over $500 million.

* * * * *

(f) The following schedule sets forth the base for construction management contracts:

CONSTRUCTION MANAGEMENT CONTRACTS SCHEDULE

Fee base (dollars)	Fee (dollars)	Fee (percent)	Incr. (percent)
100,000	5,400	5.40	5.30
300,000	16,000	5.33	5.00
500,000	26,000	5.20	4.80
1,000,000	50,000	5.00	3.55
3,000,000	121,000	4.03	3.00
5,000,000	181,000	3.62	2.62
10,000,000	312,000	3.12	2.38
15,000,000	431,000	2.87	2.01
25,000,000	632,000	2.53	1.79
40,000,000	900,000	2.25	1.58
60,000,000	1,216,000	2.03	1.43
80,000,000	1,502,000	1.88	1.29
100,000,000	1,759,000	1.76	
Over $100 million	1,759,000		[1] 1.29

[1] 1.29% excess over $100 million.

* * * * *

(h) The schedule of fees for consideration of special equipment purchases and for consideration of the subcontract program under a construction management contract is as follows:

SPECIAL EQUIPMENT PURCHASES/ SUBCONTRACT WORK SCHEDULE

Fee base (dollars)	Fee (dollars)	Fee (percent)	Incr. (percent)
100,000	1,500	1.50	1.50
200,000	3,000	1.50	1.50
400,000	6,000	1.50	1.50
600,000	9,000	1.50	1.50
800,000	12,000	1.50	1.50
1,000,000	15,000	1.50	1.00
2,000,000	25,000	1.25	0.85
4,000,000	42,000	1.05	0.70
6,000,000	56,000	0.93	0.65
8,000,000	69,000	0.86	0.60
10,000,000	81,000	0.81	0.56
15,000,000	109,000	0.73	0.48
25,000,000	157,000	0.63	0.43
40,000,000	222,000	0.56	0.40
60,000,000	301,000	0.50	0.36
80,000,000	372,000	0.47	0.34
100,000,000	439,000	0.44	0.25
150,000,000	566,000	0.38	0.21
200,000,000	670,000	0.34	0.12
300,000,000	793,000	0.26	
Over $300 million	793,000		[1] 0.12

[1] 0.12% excess over $300 million.

3. The introductory text to section 915.972(a) is revised to read as follows:

915.972 Special consideration for cost-plus-award-fee contracts.

(a) When a contract is to be awarded on a cost-plus-award-fee basis in accordance with 916.404–2, several special considerations are appropriate. Fee objectives for management and operating contracts, including those using the Construction or Construction Management fee schedules from section 915.971–5, shall be developed pursuant to the procedures set forth in section 970.1509–8. Fee objectives for other cost-plus-award-fee contracts shall be developed as follows:

* * * * *

PART 917—SPECIAL CONTRACTING METHODS

4. The Authority citation for part 917 continues to read as follows:

Authority: 42 U.S.C. 7254; 42 U.S.C. 2168.

917.605 [Amended]

5. Section 917.605 is amended by revising paragraph (b)(2)(iii) to read as follows:

(b) * * *

(2) * * *

(iii) Where the contract is a cost-plus-award-fee (CPAF) or similar arrangement, include a discussion of award fee experience since the date that the contract was last extended, showing the basic fee, award fee pool, award fee appraisals, and award fee earned.

* * * * *

PART 950—EXTRAORDINARY CONTRACTUAL ACTIONS

6. The authority citation for part 950 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

7. In section 950.7011 paragraph (c) is revised to read as follows:

950.7011 General contract authority indemnity.

* * * * *

(c) (1) While it is normally DOE policy to require its non-management and operating contractors to obtain insurance coverage against public liability for nonnuclear risks, there may be circumstances in which a contractual indemnity may be warranted to protect a DOE non-management and operating contractor against liability for uninsured nonnuclear risks.

(2) It is DOE policy that, except to the extent required by the direction of the Contracting Officer and in the case of Small Businesses and Small Disadvantaged Businesses and non-profit subcontractors, management and operating contractors shall not obtain reimbursement for bonds or insurance to cover otherwise unallowable Avoidable Costs. M&O contractors may only be reimbursed for insurance against nonnuclear risk above the liability ceiling provided in 970.5204–55, subject to the approval of the Contracting Officer.

* * * * *

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

8. The authority citation for part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), Sec. 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254), Sec. 201 of the Federal Civilian Employee and Contractor Travel Expenses Act of 1985 (41 U.S.C. 420) and Sec. 1534 of the Department of Defense Authorization Act, 1986, Pub. L. 99–145 (42 U.S.C. 7256a), as amended.

9. Section 970.1509–5 paragraph (b) is revised to read as follows:

970.1509–5. Limitations.

* * * * *

(b) The applicable schedules and maximum fees are:

PRODUCTION EFFORTS

Fee base (dollars)	Fee (dollars)	Fee (percent)	Incr. (percent)
Up to $1 Million			7.00
1,000,000	70,000	7.00	6.20
3,000,000	194,000	6.47	5.55
5,000,000	305,000	6.10	4.48
10,000,000	529,000	5.29	3.88
15,000,000	723,000	4.82	3.39
25,000,000	1,062,000	4.25	3.06
40,000,000	1,521,000	3.80	2.67
60,000,000	2,054,000	3.42	2.35
80,000,000	2,524,000	3.16	2.14
100,000,000	2,952,000	2.95	1.32
150,000,000	3,613,000	2.41	1.02
200,000,000	4,123,000	2.06	0.56
300,000,000	4,678,000	1.56	0.48
400,000,000	5,162,000	1.29	0.41
500,000,000	5,574,000	1.11	
Over $500 million	5,574,000		[1] 0.41

[1] 0.41% excess over $500 million.

RESEARCH AND DEVELOPMENT EFFORTS

Fee base (dollars)	Fee (dollars)	Fee (percent)	Incr. (percent)
25,000	2,500	10.00	10.00
50,000	5,000	10.00	10.00
100,000	10,000	10.00	8.00
200,000	18,000	9.00	8.00
400,000	34,000	8.50	7.50
600,000	49,000	8.17	7.00
800,000	63,000	7.88	7.00
1,000,000	77,000	7.70	6.40
3,000,000	205,000	6.83	6.25
5,000,000	330,000	6.60	5.68
10,000,000	614,000	6.14	5.22
15,000,000	875,000	5.83	4.43
25,000,000	1,318,000	5.27	3.86
40,000,000	1,897,000	4.74	3.38
60,000,000	2,572,000	4.29	2.99
80,000,000	3,170,000	3.96	2.46
100,000,000	3,662,000	3.66	1.54
150,000,000	4,434,000	2.96	1.04
200,000,000	4,955,000	2.48	0.61
300,000,000	5,561,000	1.85	0.53
400,000,000	6,095,000	1.52	0.46
500,000,000	6,556,000	1.31	
Over $500 million	6,556,000		[1] 0.46

[1] 0.46% excess over $500 million.

10. In section 970.1509–8 paragraphs (b), (c), (d) and (e) are revised to read as follows:

970.1509–8 Special considerations—award fee.

* * * * *

(b) In management and operating contracts, the basic fee portion of the fee negotiation objective shall be established equal to what would otherwise have been the applicable fixed fee established in accordance with 970.1509–4. This basic fee includes a 50% base fee and a 50% "at risk fee." No variations from this objective are authorized without the prior approval of the Procurement Executive. The basic fee shall be paid in equal monthly installments, in accordance with the clause at 970.5204–16, Payments and Advances. However, in the event the contractor's performance is judged by the Fee Determination Official to fall into the performance categories of Marginal or Unsatisfactory, as those terms are defined in subparagraph (d) of this section, the contractor shall be required to refund to the Government up to 50% of the basic fee paid for that evaluation period at a rate of 5% for each performance point below 76, as shown in the table in subparagraph (d) of this section.

(c) The award fee portion of the fee objective for a management and operating contract shall be established for each contract using the following formula:

Basic Fee Amount X (multiplied by the) Applicable Award Fee Factor. The applicable award fee factor shall be established according to the following category placements as set forth below:

Defense Facility—A

Defense Facility—B

Enrichment Plant

Miscellaneous

Individual DOE facilities which are operated under award fee arrangements will be assigned to each category by the Procurement Executive, whose designee shall distribute a list of such assignments to all Heads of Contracting Activities (HCAs). In assigning facilities to categories, the Procurement Executive will consider the factors listed below, to determine the risks—technical, management, and financial—which the contractor will assume in fulfilling the contract requirements. Contracts which involve higher levels of risks shall be placed in higher categories and be eligible for higher award fees. The Procurement Executive, or designee, shall review the category assignments on a regular basis or upon request by the HCA for a particular contract. Reassignments may be made based upon a change in contract requirements or changes in any of the following factors:

(1) Placement of the facility on the EPA's National Priority List (NPL). Facilities which are listed on the NPL

shall be considered to involve higher risks.

(2) Nature of the contractor's work at the facility. Contracts involving the management of facilities listed on the NPL or requiring the environmental restoration of NPL sites, shall be considered to involve higher risks, whereas contracts involving unrelated work may be considered of lesser risk, regardless of NPL designations.

(3) Size of the facility in relationship to the areas of risk. Management of a large facility with a minor site designated on the NPL would be considered a lesser risk than management of a small facility which includes several major sites listed on the NPL.

(4) Quantity, complexity and type of Government property for which the contractor is responsible. Contracts requiring control over large quantities of sensitive Government property shall be considered of higher risk than those involving relatively small quantities.

(5) Exposure to Third-Party Liability. Contract activities which expose the contractor to the risk of third-party liability will be considered, and such risk assessed accordingly.

(6) The extent to which the work at the facility presents health and safety risks to the workers at the facility and the public.

In considering the above factors, any risks which are indemnified by the Government (for example, by the Price-Anderson Act) will not be considered as risk to the contractor. Where a single contract involves multiple facilities falling into different categories, the basic fee amount shall be divided into amounts applicable to the operation of each facility before applying the award fee pool factor. The following potential award fees shall apply in each category (percent is stated as a percentage of the otherwise applicable maximum fixed fee amount) which is now the basic fee:

Category	Basic fee (percent)	Potential award fee (percent)	Potential maximum total (percent)
Defense Facility—A	100	200	300
Defense Facility—B	100	150	250
Enrichment Plant	100	150	250
Miscellaneous	100	100	200

(d) All management and operating contracts awarded on an award fee basis shall incorporate the following performance grading and fee conversion system into the contract, by including the system in the Performance Evaluation Plan required by the contract clause at 970.5204–54. The performance grading and fee conversion system consists of a set of adjectival grades defined in a narrative form, in terms of performance points, and the percentage of available award fee earned as follows:

FEE CONVERSION TABLE

[The contractor's performance shall be evaluated by the Fee Determination Official at the end of each evaluation period, and graded in accordance with the scale below]

Performance score	Percent of award fee earned
Outstanding	
Any score in the Outstanding category will earn 100% of the available award fee	
96 and above	100.0
Good	
95	94.0
94	88.0
93	82.0
92	75.0
91	68.0
90	60.0
89	51.0
88	43.0
87	36.0
86	30.0
85	25.0
84	20.0
83	15.0
82	10.0
81	5.0
Satisfactory	
80	0.0
79	0.0
78	0.0
77	0.0
76	0.0
Performance score	**Percent of basic fee refunded**
Marginal	
75	5.0
74	10.0
73	15.0
72	20.0
71	25.0
70	30.0
69	35.0
68	40.0
67	45.0
66	50.0
Unsatisfactory	
Below 65	50.0

Performance scores should be rounded to the nearest tenth of a point and the percent of award fee determined accordingly (e.g., a score of 88.4 equals 46.2% of award fee earned).

Narrative Description of Performance Adjectives

Adjective	Definition (performance description)
Outstanding	Performance substantially exceeds expected levels of performance. Several significant or notable achievements exist. No notable deficiencies in performance.
Good	Performance exceeds expected levels and some notable achievements exist. Although some notable deficiences may exist, no significant deficiencies exist.
Satisfactory	Performance meets expected levels. Minimum standards are exceeded and "good practices" are evident in contract operations. Notable achievements or notable deficiencies may or may not exist.
Marginal	Performance is less than expected. No notable achievements exist; however, some notable deficiencies exist, or any notable achievements which exist are more than offset by significant or notable deficiencies.
Unsatisfactory.	Performance is below minimum acceptable levels. Significant deficiencies causing severe impacts on mission capabilities exist. Performance at this level in any area mentioned in the Performance Evaluation Plan may result in a decision by the Fee Determination Official to withhold all award fees for the period.

Definitions

Significant: This term indicates a major event or sustained level of performance which, due to its importance, has a substantial positive or negative impact on the contractor's ability to carry out its mission.

Notable: This term indicates an event or sustained level of performance which is of lesser importance than a "significant" event, but nonetheless deserves positive or negative recognition.

(e) Prior approval of the Procurement Executive, is required for total fee (basic plus award fee pool) exceeding the guidelines in paragraph (d), of this section. Additionally, in the event use of the award fee guidelines in paragraph (d), of this section, result in total fees which exceed or are expected to exceed the statutory limitations imposed by 10 U.S.C. 2306(d) and 41 U.S.C. 254(b), prior

approval of the Procurement Executive shall be obtained.

* * * * *

11. Section 970.3102–21 is revised as follows:

970.3102–21 Fines and penalties.

(a) It is DOE policy to reimburse nonprofit management and operating contractors for fines and penalties that are incurred in the performance of their contracts. Any such reimbursement for fines and penalties incurred under the contract will be made as long as such fines and penalties are not the result of the willful misconduct or lack of good faith on the part of the contractor's officers, directors or supervising representatives.

(b)(1) It is DOE policy not to reimburse profit making management and operating contractors for fines and penalties that are incurred in the performance of their contracts where such fines or penalties are incurred as a result of contractor negligence or willful misconduct where the breach of the contractor's legal duty giving rise to such a fine or penalty involves an area of responsibility clearly placed on the contractor.

(2) For purposes of this section the phrase "fines and penalties" means a sum of money the payment of which Federal or state law or regulation exacts as punishment for or deterrence against doing some act which is prohibited, or not doing some act which is required by law or regulation. The assessment is imposed by statute or regulation as a consequence of the commission of an offense or act of omission, and the payment is intended as a punishment or deterrent. The fine or penalty may be imposed in a civil enforcement action or result from a criminal conviction. A fine or penalty shall not be construed as an assessment which is imposed as damages on the basis of civil litigation or which is imposed on the basis of strict liability, that is, without regard to the fault or negligence of the party involved.

(3) In assessing any claim for payment by the contractor for a fine or penalty as an allowable cost under the contract the Contracting Officer shall, among other factors, consider the following:

(i) Whether the act which resulted in the fine or penalty was a result of negligence, willful misconduct, or strict liability on the part of personnel of the contractor or a subcontractor, at any tier or level; and

(ii) All of the factors specified at 970.3102–22.

These are only some of the factors to be considered and do not represent all factors which may be pertinent in each case. Criminal fines and penalties which represent the judicial determination beyond a reasonable doubt that the contractor acted wrongfully are generally not considered to be an allowable cost and will not be considered by the Contracting Officer for reimbursement except under extraordinary circumstances. Any final decision to reimburse a criminal fine or penalty shall be made by the Procurement Executive and shall only be made with the concurrence of the General Counsel.

(c) It is DOE's policy not to reimburse any profit making contractor for civil or criminal penalties assessed under the Price-Anderson Amendments Act of 1988, Public Law 100–408, 42 U.S.C. 2273, 2282, and for the costs of litigation relating to such assessments, except as may be specifically provided in regulations implementing those civil and criminal penalties provisions.

12. Section 970.3102–22 is added to read as follows:

970.3102–22 Avoidable Costs for Profit Making Contractors.

In determining whether a cost is an "Avoidable Cost" for profit making contractors as specified in 970.5204–13 (e)(12) and (e)(17)(iv), 970.5204–14 (e)(10) and (e)(15)(iv), 970.5204–21(j) and 970.5204–31, the Contracting Officer, shall, among other factors, consider:

(a) Whether the contractor's conduct resulted from compliance with written direction from the Contracting Officer.

(b) Whether the contractor's conduct occurred after specific instances of noncompliance were reported by the contractor to the Contracting Officer and necessary funding or authorization to correct the conditions were unavailable.

(c) Whether the act or failure to act resulted from a violation of a formal DOE regulation or order. The Contracting Officer will also assess the completeness, efficiency and effectiveness of the contractor's internal control systems and procedures (e.g., operational, maintenance, security), as well as determine whether, in the case of damage to, destruction of, or loss of Government property, the contractor has faithfully implemented the DOE-approved property management system, whether proper training and instruction were provided to employees, whether all reasonable precautions were taken, whether problems were promptly identified and reported to DOE and whether adequate corrective actions were taken to preclude future occurrences.

(d) Whether the contractor voluntarily informed the Contracting Officer in a timely good faith manner of the condition or activity which later resulted in the incurrence of Avoidable Costs. The period of time that the contractor was aware or should have been aware of the problem prior to reporting it is also pertinent.

(e) Whether the contractor was newly selected to manage the facility and whether it had sufficient time to discern the problem and report it prior to the incurrence of Avoidable Costs.

These considerations will also be used to determine whether all or a portion of the Avoidable Cost, which would otherwise be totally nonreimbursable, may be reimbursed because of the presence of the mitigating factors described above. This decision will be made by the Contracting Officer.

13. Section 970.5204–13 is amended by revising (e)(12), and by adding new paragraphs (e)(17)(iv) and (e)(36) as follows:

§ 970.5204–13 Allowable costs and fixed fee (management and operating contracts).

* * * * *

(e) * * *

(12) *Fines and penalties.*

Note 1: In contracts with nonprofit contractors, use the following clause:

Fines and penalties, including assessed interest, resulting from violations of, or failure of the contractor to comply with, Federal, state, local or foreign laws and regulations, except when incurred as a result of compliance with the scope of work, specific terms and conditions, or other provisions of the contract or written instructions from the contracting officer authorizing in advance such payments. Civil or criminal penalties assessed under the Price-Anderson Amendments Act of 1988, 42 U.S.C. 2273, 2282, and the costs of litigation resulting from such assessments, are unallowable except as may be specifically provided in regulations implementing those civil and criminal penalty provisions.

Note 2: In contracts with profit making contractors, use the following clause:

Fines and penalties, including assessed interest and cost of litigation, that are incurred as a result of contractor and/or subcontractor negligence or willful misconduct where the breach of the legal duty of the contractor and or its subcontractor giving rise to such fine or penalty involves an area of responsibility clearly placed on the contractor and/or the subcontractor. Civil or criminal penalties assessed under the Price-Anderson Amendments Act of 1988, 42

U.S.C. 2273, 2282, and the costs of litigation resulting from such assessments are also unallowable except as may be specifically provided in regulations implementing those civil or criminal penalty provisions.

* * * * *

(17) * * *

(iv) **Note:** In contracts with profit making contractors, add the following paragraph:

or, are direct costs which are avoidable that are incurred by the contractor and/or subcontractor, at any tier or level, without any fault of DOE, exclusively as a result of the negligence or willful misconduct on the part of any of the contractor's and/or its subcontractor's personnel, at any tier or level, in performing work under the contract.

(A) Such direct costs may include, for example, additional programmatic expenses for research and development or production activities, and third party claims against the contractor, but shall not include scrap, waste and other routine damages or losses which occur as part of the cost of doing business and are reasonably anticipated and shall not include consequential damages.

(B) Costs of litigation incurred by the contractor or subcontractor in bringing or defending claims relating to these costs are also unallowable.

* * * * *

(36) **Note:** In contracts with profit making contractors, add the following clauses:

(i) Notwithstanding any other provision of this contract, the costs of bonds and insurance are unallowable to the extent they are incurred to protect and indemnify the contractor and/or subcontractor against otherwise unallowable Avoidable Costs, such as fines and penalties, third party claims, negligently or willfully caused damage to, destruction of, or loss of Government property and theft or unauthorized use of government property, except and only to the extent that such insurance or bond is required by the specific written direction of the Contracting Officer.

(ii)(A) The unallowable costs provisions of subparagraph (e)(17)(iv) dealing with avoidable costs and subparagraph (i) of this clause, the profit making provision of the clause set forth at 970.5204–13(e)(12), the clause set forth at 970.5204–21(j), and the profit making provision of the clause set forth at 970.5204–31 are not applicable to Small Businesses and Small Disadvantaged Businesses as defined in the clause of this contract entitled "Utilization of Small Business Concerns and Small Disadvantaged Business Concerns." All costs resulting from the actions or inactions of Small Businesses and Small Disadvantaged Businesses which would otherwise be determined to be Avoidable Costs are allowable costs to the contractor.

(B) The above cited provisions in subparagraph (ii)(A) are also not applicable to Non-profit subcontractors of profit-making contractors and profit making subcontractors of non-profit contractors. All costs resulting from the actions or inactions of non-profit subcontractors which would otherwise be determined to be Avoidable Costs are allowable costs to the contractor.

14. Section 970.5204–14(e) is amended by revising paragraph (e)(10), and by adding new paragraphs (e)(15)(iv) and (e)(34) as follows:

970.5204–14 Allowable costs and fixed fee (support contracts).

* * * * *

(e) * * *

(10) Fines and penalties.

Note 1: In contracts with non-profit contractors, use the following clauses:

Fines and penalties, including assessed interest, resulting from violations of, or failure of the contractor to comply with Federal, state, local or foreign laws and regulations, except when incurred as a result of compliance with the scope of work, specific terms and conditions, or other provisions of the contract or written instructions from the contracting officer authorizing in advance such payments. Civil or criminal penalties assessed under the Price-Anderson Amendments Act of 1988, 42 U.S.C. 2273, 2282, and the costs of litigation resulting from such assessments, are also unallowable except as may be specifically provided in regulations implementing those civil and criminal penalty provisions.

Note 2: In contracts with profit making contractors, use the following clause:

Fines and penalties, including assessed interest and costs of litigation, that are incurred as a result of contractor and/or subcontractor negligence or willful misconduct where the breach of the legal duty of the contractor and or subcontractor giving rise to such fine or penalty involves an area of responsibility clearly placed on the contractor and or subcontractor. Civil or criminal penalties assessed under the Price-Anderson Amendments Act of 1988, 42 U.S.C. 2273, 2282, and the costs of litigation resulting from such assessments are unallowable except as may be specifically provided in regulations implementing those civil or criminal penalty provisions.

* * * * *

(15) * * *

(iv) **Note:** In contracts with profit making contractors, add the following paragraph:

or, are direct costs which are avoidable that are incurred by the contractor and/or subcontractor, at any tier or level, without any fault of DOE, exclusively as a result of the negligence or willful misconduct on the part of any of the contractor's and/or its subcontractor's personnel, at any tier or level, in performing work under the contract.

(A) Such direct costs may include, for example, additional programmatic expenses for research and development or production activities, and third party claims against the contractor, but shall not include scrap, waste, and other routine damages or losses which occur as part of the cost of doing business and are reasonably anticipated and shall not include consequential damages.

(B) Costs of litigation incurred by the contractor and or subcontractor in bringing or defending claims relating to these costs are also unallowable.

* * * * *

(34) **Note:** In contracts with profit making contractors, add the following clauses:

(i) Notwithstanding any other provision of this contract, the costs of bonds and insurance are unallowable to the extent they are incurred to protect and indemnify the contractor and/or subcontractor against otherwise unallowable Avoidable Costs, such as fines and penalties, third party claims, negligently or willfully caused damage to, destruction of, or loss of government property and theft or unauthorized use of government property, except and only to the extent such insurance or bond is required by the specific written direction of the Contracting Officer.

(ii)(A) The unallowable costs provisions of subparagraph (e)(15)(iv) dealing with Avoidable Costs and subparagraph (i) of this clause, the profit making provision of the clause set forth at 970.5204–14(e)(10), the clause set forth at 970.5204–21(j), and the profit making provision of the clause set forth at 970.5204–31 are not applicable to Small Businesses and Small Disadvantaged Businesses as defined in the clause of this contract entitled "Utilization of Small Business Concerns and Small Disadvantaged Business Concerns." All costs resulting from the actions or inactions of Small Business and Small Disadvantaged Businesses which would otherwise be determined to be Avoidable Costs are allowable costs to the contractor.

(B) The above cited provisions in subparagraph (ii)(A) are also not applicable to nonprofit subcontractors

of profit making contractors and profit making subcontractors of non-profit contractors. All costs resulting from the actions or inactions of non-profit subcontractors which would otherwise be determined to be Avoidable Costs are allowable costs to the contractor.

15. Section 970.5204–16 is amended by revising the heading of the clause and revising Note 2 and paragraph (a) to read as follows:

970.5204–16 Payments and advances.

Payments and Advances (January, 1991)

* * * * *

Note 2: When award-fee provisions in this clause are used, in lieu of paragraph (a), use the following text:

(a) Payment of Basic Fee and Award Fee. The basic fee shall become due and payable in equal monthly installments, *Provided,* However, that the contractor shall refund to the Government a portion of the basic fee if its performance during an evaluation period falls below the level of acceptable performance, i.e., a performance score of 75 or less. Such refund shall be at the rate of 5% of the basic fee allocated to the evaluation period in question for each performance point below 76, as assigned by the Government Fee Determination Official (FDO), provided that no more than 50% of the basic fee shall be required to be refunded under this provision. Award fees earned shall become due and payable following the issuance by the FDO of a Determination of Award Fee Earned, in accordance with the clause of this contract entitled "Basic Fee and Award Fee."

* * * * *

16. Section 970.5204–18 is added as follows:

970.5204–18 Definition of nonprofit and profit making management and operating contractors and subcontractors.

For purposes of subsections 970.5204–13(e)(12) and (e)(17)(iv), 970.5204–14(e)(10) and (e)(15)(iv), 970.5204–21(j) and 970.5204–31, a nonprofit management and operating contractor or subcontractor is one which receives no fee and is considered nonprofit under the laws of the jurisdiction where it is incorporated. A subsidiary may be a nonprofit contractor or subcontractor if all entities above it in the corporate structure are considered nonprofit under the laws of the incorporating jurisdiction. A profit making subcontractor of a nonprofit contractor is a nonprofit subcontractor for the purpose of the applicability of the subsections specified in this paragraph. A non-profit subcontractor of a profit making contractor is also a non-profit subcontractor for purposes of the applicability of the subsections specified in this paragraph. A Contracting Officer may also treat as nonprofit a contractor whose particular corporate organization or circumstances, in the judgment of the Contracting Officer, warrants such consideration. All other management and operating contractors are considered profit making.

17. Section 970.5204–21 is amended by adding a new paragraph (j):

970.5204–21 Property.

* * * * *

(j) *Additional responsibility for risk of loss of government property.* The following paragraph (j) shall be added in contracts with profit making contractors:

Notwithstanding the limitation of liability described in paragraph (f) of this section, the contractor and/or subcontractor shall be liable, respectively, for direct costs and expenses resulting from damage to, destruction of, or loss of Government property as a direct result of contractor and/or subcontractor negligence or willful misconduct where the costs which are to be borne by the contractor and/or subcontractor are those incurred in effecting the repairs to, or replacement of, Government property. These Avoidable Costs do not include scrap, waste and other routine damages or losses which occur as part of the cost of doing business and are reasonably anticipated. Costs which shall not be reimbursable are the result of circumstances: (1) Clearly within the contractor's and/or subcontractor's sole and exclusive control and (2) resulting from acts or omissions of the contractor and/or subcontractor, in which the exercise of reasonable care would have avoided the loss or destruction or damage. In the event that such direct costs and expenses resulting from loss, or destruction of, or damage to Government property are also in part caused by third parties, other than DOE, such costs and expenses will not be reimbursed by DOE. The allocation of financial responsibility between the contractor and such third party should be determined by the parties involved. In addition, the contractor shall be liable for direct damage to, destruction of, or loss of Government property stemming from theft, embezzlement, unauthorized use, or any other ultra vires activity by any contractor or subcontractor personnel at any level. Under these circumstances the contractor shall be required to bear the cost of repairing or replacing the damaged, destroyed or lost government property. For purposes of this clause, negligence is the failure to exercise that standard of care which a reasonable and prudent person would exercise under the same or similar circumstances in an identical or similar environment.

18. Section 970.5204–31 is revised to read as follows:

970.5204–31 Litigation and claims.

(a) *Initiation of litigation.* The contractor may, with the prior written authorization of the Contracting Officer, and shall, upon the request of the Government, initiate litigation against third parties, including proceedings before administrative agencies, in connection with this contract. The contractor shall proceed with such litigation in good faith and as directed from time to time by the Contracting Officer.

(b) *Defense and settlement of claims.*

Note 1: In contracts with nonprofit contractors, add the following clause:

The contractor shall give the Contracting Officer immediate notice in writing (1) of any action, including any proceeding before an administrative agency, filed against the contractor arising out of the performance of this contract, and (2) of any claim against the contractor, the cost and expense of which is allowable under the clause entitled "Allowable Costs and Fixed-Fee." Except as otherwise directed by the Contracting Officer, in writing, the contractor shall furnish immediately to the Contracting Officer copies of all pertinent papers received by the contractor with respect to such action or claim. To the extent not in conflict with any applicable policy of insurance, the contractor may, with the Contracting Officer's approval, settle any such action or claim; shall effect, at the Contracting Officer's request, an assignment and subrogation in favor of the Government of all of the contractor's rights and claims (except those against the Government) arising out of such action or claim against the contractor; and, if required by the Contracting Officer, shall authorize representatives of the Government to settle or defend any such action or claim and to represent the contractor in, or to take charge of, any action. If the settlement or defense of an action or claim against the contractor is undertaken by the Government, the contractor shall furnish all reasonable assistance in effecting a settlement or asserting a defense. Where an action against the contractor is not covered by a policy of insurance, the contractor shall, with the approval of the Contracting Officer, proceed with the defense of the action in good faith and in such event the defense of the

action shall be at the expense of the Government, *Provided, however,* That the Government shall not be liable for such expense to the extent that it would have been compensated for by insurance which was required by law or by the written direction of the Contracting Officer, but which the contractor failed to secure or maintain through its own fault or negligence.

Note 2: In contracts with profit making contractors, add the following clause:

(1) The contractor shall give the Contracting Officer immediate notice in writing of any action, including any proceeding before an administrative agency, filed against the contractor arising out of the performance of this contract, and of any claim against the contractor the costs and expense of which the contractor would propose to submit as a claim for allowable costs under the terms of the clause entitled "Allowable Costs and Fixed-Fee."

(2) Except to the extent prohibited by the Major Fraud Act of 1988, 41 U.S.C. 256, the Contracting Officer may choose to instruct the contractor to proceed in good faith with the defense of the claim subject to the direction of the Government. Except as otherwise directed by the Contracting Officer in writing, the contractor shall furnish immediately to the Contracting Officer copies of all pertinent papers received by the contractor with respect to such action or claim. The contractor may, with the Contracting Officer's approval, settle any such action or claim. The contractor shall effect, at the Contracting Officer's request, an assignment and subrogation in favor of the Government of all of the contractor's rights and claims (except those against the Government) arising out of or related to such action or claim against the contractor, and, if required by the Contracting Officer, shall authorize representatives of the Government to settle or defend any such action or claim and to represent the contractor in, or to take charge of, any action. If the settlement or defense of an action or claim against the contractor is undertaken by the Government, the contractor shall furnish all reasonable assistance in effecting a settlement or asserting a defense. If an adverse judgment is entered against the contractor in a case where the Contracting Officer has approved and/or directed the defense as provided in this paragraph, the costs of litigation and liability for any resulting claim or damages shall be at the expense of the Government, *Provided, however,* That the Government shall not be liable for such expenses to the extent that they would have been compensated for by insurance which was required by law or by the written direction of the Contracting Officer, but which the contractor failed to secure or maintain through its own fault or negligence.

(3) Should the Contracting Officer not choose to approve or direct the defense of the litigation as provided in paragraph (2), the Government has no liability for the costs of litigation except as provided in paragraphs (4) and (5). The contractor may request that the Contracting Officer assume direction of the litigation at any point when new facts on the matter would so warrant; *Provided, however,* That the Contracting Officer may assume direction of the litigation or direct settlement, without a request from the contractor, at any time during the litigation process when the Contracting Officer determines that it is in the best interest of the Government to do so, in which case the liability for any resulting claims or damages shall be at the expense of the Government.

(4) The contractor must inform the Contracting Officer of any proposed settlement agreement. The notification shall be supported by all information available to the contractor which is pertinent to the settlement.

(i) Except to the extent prohibited by the Major Fraud Act of 1988, 41 U.S.C. 256, the Contracting Officer has the option of accepting the settlement reached by the contractor. If the settlement is accepted, the Contracting Officer and the contractor shall negotiate the Government's share of the settlement and litigation expenses. Any agreement reached at this point shall be under the authority, and subject to the restrictions, of FAR 33.210.

(ii) If the contractor proceeds without, or otherwise does not obtain, Contracting Officer approval of the settlement agreement, the cost of the agreement and all related costs of litigation shall be at the contractor's own risk and expense.

(5)(i) If the contractor has suffered a final judgment, a claim for reimbursement of the costs of litigation or any resulting damages or both may be made to the Contracting Officer. Except to the extent prohibited by the Major Fraud Act of 1988, 41 U.S.C. 256, the Contracting Officer is authorized, in his discretion, to negotiate a settlement with the contractor.

(ii) Reimbursement of costs of litigation and judgments under subparagraph (5)(i) may be paid by the Government notwithstanding the prohibitions contained in subsections 970.5204–13(e)(12) and (17)(iv), subsections 970.5204–14(e)(10) and (15)(iv) and section 970.5204–21(j) and section 970.5204–31.

(6) *Certification of costs.* The Contracting Officer may not accept any settlement or otherwise authorize reimbursement of costs and/or damages where the contractor has not certified, in the form required by the clause of this contract entitled "Disputes," the facts known by the contractor, at the time the matter is submitted for review, which form the basis upon which the contractor seeks reimbursement of these costs.

(c) *Costs of Litigation.*

"Costs of Litigation" as used herein, includes, but are not limited to, administrative and clerical expenses; the cost of legal services, whether performed by in-house or private counsel; the costs of the services of accountants, consultants, or others retained by the contractor to assist it; all elements of compensation, related costs, and expenses of employees, officers, and directors; and any similar costs incurred before, during, and after commencement of a judicial or administrative proceeding which bear direct and substantial relationship to the proceedings.

19. Section 970.5204–32 is revised to read as follows:

970.5204–32 Required bond and insurance-exclusive of Government property.

Note 1: In contracts with nonprofit contractors use the following clause:

The contractor shall procure and maintain such bonds and insurance as are required by law or by the written direction of the Contracting Officer. The terms and conditions of such bonds and insurance shall conform to the directions of the Contracting Officer. In view of the provisions of section 970.5204–21, "Property," the contractor shall not procure or maintain for its own protection any insurance covering loss or destruction of, or damage to, Government property.

Note 2: In contracts with profit makingcontractors use the following clause:

The contractor shall procure and maintain such bonds and insurance as required or approved in writing by the Contracting Officer. The terms and conditions of any such bonds and insurance shall conform to the directions of the Contracting Officer. In view of the provisions of 970.5204–21, "Property," the contractor may, at its own expense and not as an allowable cost, procure for its own protection insurance covering loss or destruction of, or damage to, Government property to compensate the contractor for any

unallowable or nonreimbursable costs incurred in connection with such property.

20. Section 970.5204–54 is revised to read as follows:

970.5204–54 Basic fee and award fee.

(a) Basic Fee and Award Fee. It is herewith agreed that a basic fee and an award fee, to be determined in accordance with the provisions of this clause, are available for payment in accordance with the clause of this contract entitled Payments and Advances.

(b) Fee Negotiations. Prior to the beginning of each fiscal year under this contract, or other appropriate period as mutually agreed upon, the contracting officer and contractor shall enter into negotiation of a basic and award fee. This contract shall be modified at the conclusion of each negotiation to reflect the negotiated amount for the basic fee and to identify the available award fee amount. It is herein agreed the award fee amount shall be assigned to evaluation periods six months in duration. If the parties are unable to agree on a reasonable fee, the contracting officer shall unilaterally determine the basic fee and the available award fee, subject to the clause of this contract entitled Disputes.

(c) Determination of Award Fee Earned.

(1) The Government shall, at the conclusion of each specified evaluation period, evaluate the contractor's performance for a determination of award fee earned.

(2) For this contract, the Government Fee Determination Official (FDO) will be (insert title of FDO). The contractor agrees that the determination as to the amount of award fee earned will be made by the Government FDO and such determination is binding on both parties and shall not be subject to appeal under the "Disputes" clause or any other appeal clause.

(3) The evaluation of contractor performance shall be in accordance with the Performance Evaluation Plan described in subparagraph (d), below. The contractor shall be promptly advised in writing of the determination, and the reasons why the award fee was or was not earned. While it is recognized that the basis for determination of the fee shall be the evaluation by the Government, in accordance with the Performance Evaluation Plan, the FDO may also consider any information available to him or her which relates to the contractor's performance of contract requirements. In the event that the contractor's performance is considered unacceptable in any area of contract performance which is specified in the Performance Evaluation Plan, even if no weight or fee is specifically assigned to the particular performance area, the FDO may at his/her discretion determine the contractor's overall performance to be unacceptable, and accordingly may withhold the entire award fee for the evaluation period.

(4) An award fee cycle usually consists of two six-month award fee periods in a single fiscal year. Unearned award fee may be carried over within a single fiscal year, or other two-period fee negotiation cycle, as may have been agreed upon. The FDO may, at his/her sole discretion, specify in a fee determination that award fee not earned during the first evaluation period of a two-period fee cycle may be allocated to the second fee period in that fee cycle. The contractor shall not, however, be entitled to earn any of this "carry-over" fee if its overall performance in the latter evaluation period does not reflect an improvement over the prior evaluation period. Overall performance evaluations in the second period which are equal to or the same as those in the first period shall not be considered as improvements providing entitlement to the carry-over portion of the award fee pool. If the single negotiation of a basic and the resulting award fee amount (fee cycle) will be for more than two evaluation periods, unearned award fees in any one of the evaluation periods established by that negotiation may be carried over only to the next period covered by that negotiation. Fees unearned under one fee cycle may not be carried forward to another fee cycle.

(d) Performance Evaluation Plan. (1) The Government shall establish unilaterally a Performance Evaluation Plan upon which the determination of the amount of award fee earned shall be based. Such Plan shall include the criteria to be considered under each area evaluated and the percentage of award fee available for each area. A copy of the Plan shall be provided to the contractor thirty (30) calendar days prior to the start of an evaluation period.

(2) The Performance Evaluation Plan will set forth the criteria upon which the contractor will be evaluated for performance relating to any technical, schedule, management, and/or cost objectives selected for evaluation.

(3) The Performance Evaluation Plan may, consistent with the contract statement of work, be revised unilaterally by the Government at any time during the period of performance. Notification of such changes shall be provided to the contractor at least thirty (30) calendar days prior to the start of the evaluation period to which the change will apply.

(e) Contractor Self-Assessment. Following each evaluation period, the contractor shall submit a self-assessment within (Insert Number) calendar days after the end of the period. This self-assessment shall address both the strengths and weaknesses of the contractor's performance during the evaluation period. Where deficiencies in performance are noted, the contractor shall describe the actions planned or taken to correct such deficiencies and avoid their recurrence. The FDO will review the contractor's self-assessment as part of his/her evaluation of the contractor's management during the period. An unrealistic self-assessment will result in lower award fee determinations. The contractor will not be penalized for a realistic self-assessment, although deficiencies noted by the contractor may be reflected in the Government's evaluation. The self-assessment itself will not be the basis for the award fee determination.

(f) Schedule for Award Determinations. The FDO shall issue the final award fee determination in accordance with a schedule set forth in the Performance Evaluation Plan. However, a determination must be made within sixty (60) calendar days after the receipt by the contracting officer of the contractor's self-assessment discussed in paragraph (e), above. If the determination is delayed beyond that date, the contractor shall be entitled to interest on the determined award fee amount at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the payment date. This rate is referred to as the "Renegotiation Board Interest Rate," and is published in the **Federal Register** semiannually on or about January 1 and July 1. The interest on any late award fee determination amount will accrue daily and be compounded in 30-day increments inclusive from the first day after the schedule determination date through the actual date the determination is issued. That is, interest accrued at the end of any 30-day period will be added to the determined amount of award fee and be subject to interest if not paid in the succeeding 30-day period.

21. Sections 970.5204–55 and 970.5204–56 are added as follows:

970.5204–55 Ceiling on certain liabilities for profit making contractors.

(a) The profit making contractor's potential financial obligations under the

unallowable Avoidable Cost provisions contained in 970.5204–13(e)(12) and (e)(17)(iv), 970.5204–14(e)(10) and (e)(15)(iv), 970.5204–21(j), and 970.5204–31, (including (1) noncriminal fines and penalties, (2) losses which are avoidable losses or other third party claims including the costs of defense of such litigation, (3) additional programmatic expenses which are Avoidable Costs, and (4) the costs of contractor responsibility for lost or damaged Government property) shall be limited to the amount of the actual award fee earned and the actual basic fee earned under the contract (or the amount of 6-months of fixed fee in the case of cost-plus-fixed fee contracts) in the evaluation period when the event or events which led to the imposition of the incurrence of costs or liabilities or the imposition of fines and penalties occurred. This limitation or ceiling does not apply to any other categories of unallowable costs, nor shall any other unallowable costs be utilized in the calculation of that ceiling for any evaluation period. In the case of continuing activities of the contractor which occur over a number of evaluation periods and result in costs or liabilities described above, the potential financial obligation of the contractor shall be limited to the amount of the actual award fee earned and the actual basic fee earned in the single evaluation period when the incident(s) or event(s) (the negligent act(s)) giving rise to the contractor's disallowed cost or expense took place. If it is not possible to relate or reasonably allocate particular activities to individual evaluation periods, the financial obligation of the contractor shall be limited to the amount of the actual award fee earned and actual basic fee earned in the evaluation period when the amount of such nonreimbursable costs or liabilities were finally determined. If the determination as to which award fee period(s) the incident or activity occurred resulting in the unallowable avoidable costs is made following the expiration of the contract, or the contractor is otherwise replaced, the actual award fee earned and the actual basic fee earned for the last evaluation period that the contract was in effect shall be utilized after deducting disallowed Avoidable Costs that were previously charged to the contractor during that period.

(b)(1) The financial obligations of a subcontractor, at any tier or level, under the profit making contractor's and subcontractor's unallowable Avoidable Cost provisions contained in 970.5204–13(e)(12) and (e)(17)(iv), 970.5204–14(e)(10) and (e)(15)(iv), 970.5204–21(j), and 970.5204–31, (including (i) noncriminal fines and penalties, (ii) losses which are avoidable losses or other third party claims including the costs of defense of such litigation, (iii) additional programmatic expenses which are Avoidable Costs, and (iv) the costs of subcontractor responsibility for lost or damaged Government property) shall be limited to the cumulative amount of the fee or profit actually earned under the subcontract, whether cost-plus or fixed-price, during the six-month contractor evaluation period when the event or events which were caused by the subcontractor led to the incurrence of costs or liabilities or the imposition of fines and penalties occurred, *Provided, however,* If the contractor cannot reasonably determine the amount of profit earned, the amount of profit earned shall be deemed to be 15% of the subcontract price, prorated to the applicable six-month award fee period, which shall be the liability cap for such period. This limitation or ceiling does not apply to any other categories of unallowable costs. In the case of continuing activities of the subcontractor which occur over a number of contract evaluation periods and result in costs or liabilities described above, the potential financial obligation of the subcontractor shall be limited to the amount of the fee or profit earned in the single contractor evaluation period when the incident(s) or event(s) (the negligent act(s)) giving rise to the subcontractor's disallowed cost or expense took place. If it is not possible to relate or reasonably allocate particular activities to individual contractor evaluation periods, the financial obligation of the subcontractor shall be limited to the amount of the actual fee or profit earned, or the percentage of the subcontract price designated by the Contracting Officer during the evaluation period when the amount of such nonreimbursable costs or liabilities were finally determined. If the determination as to which award fee period(s) the incident or activity occurred resulting in the unallowable avoidable costs is made following the expiration of the contract, or the subcontractor is otherwise replaced, the actual fee or profit earned, or the percentage of the contract price designated by the Contracting Officer for the last contractor evaluation period that the subcontract was in effect shall be utilized, after deducting disallowed Avoidable Costs that were previously charged to the subcontractor during that period.

(2) The contractor shall cause all subcontractors to be responsible for all costs and liabilities described in this paragraph (b), up to the amount of the actual fee or profit earned in the pertinent contractor evaluation period. The contractor shall cause all subcontractors to agree to provide a reasonable financial guarantee to assure that the subcontractor will have sufficient resources to satisfy all costs and liabilities up to the amount of the actual fee or profit earned based upon the highest amount of profit or fee received by the subcontractor during the last two contractor evaluation periods. Alternatively, at the election of the subcontractor, at the end of each evaluation period the contractor may retain a percentage of the fee or profit earned as reasonably determined to be sufficient by the contractor to protect the interests of the Government. With respect to new subcontracts or subcontracts that have been in effect for less than one year (or two six-month evaluation periods), the guarantee shall be in an amount that the contractor reasonably determines to be in the best interest of the Government, but not to exceed the amount of fee or profit available for the upcoming evaluation period. The financial responsibility of the subcontractor and the guarantee or retainage of the subcontractor shall remain in effect for one year after the termination or expiration of the subcontract, at which time any financial guarantee, including retainage, shall be returned to the subcontractor.

(3) Where the amount of fee or profit earned by a subcontractor during the contractor's evaluation period is not sufficient to pay in full all Avoidable Costs incurred during that period, the excess amount of these costs will be reimbursed or otherwise treated as allowable costs to the contractor by DOE; *Provided, however,* That the contractor shall be responsible for the payment of such Avoidable Costs in excess of the subcontractor's ceiling if such costs and/or damages were caused in whole or in part by the negligence of the contractor; *Provided, further,* That, in any case, the contractor's obligation to pay Avoidable Costs incurred by the negligence of the subcontractor is limited to the extent that (i) the subcontractor's profit for that evaluation period was insufficient to pay the Avoidable Costs in full and (ii) the contractor's ceiling on Avoidable Costs liabilities specified in this subsection and in subparagraph (a) of this section has not been reached for that evaluation period. The contractor shall not require a subcontractor, at any tier or level, to

provide financial guarantees for the payment of Avoidable Costs beyond the profit or fee earned by the subcontractor in the relevant contractor's six-month evaluation period.

(4) The contractor shall cause appropriate provisions to implement the subcontractor liability ceiling and financial responsibility obligation contained in this subparagraph (b) to be inserted in every subcontract, at any tier or level, entered into with the contractor or subcontractor on, before or after the effective date of this contract, *Provided, however,* That such subcontracts shall provide that to the extent that Avoidable Costs incurred by the negligence of the subcontractor are reimbursed by the Government to the contractor, the contractor shall reimburse its subcontractor for all such costs to the extent that such subcontractor has already paid, or incurred without reimbursement, such costs; *Provided further* That all of such subcontracts shall provide that the financial guarantees provided by subcontractors to contractors shall remain in effect for not more than one year after termination or expiration of such subcontracts.

(c) The contractor shall be responsible for all costs and liabilities described in subparagraphs (a) and (b) of this section, up to the amount of the actual award fee earned and the actual basic fee earned in the pertinent evaluation period. The contractor agrees to provide, in such form and amount as shall be satisfactory to the Contracting Officer, a financial guarantee to assure that the contractor will have sufficient resources to satisfy all costs and liabilities up to the amount of the actual award fee earned and the actual basic fee earned for a period based upon the highest amount of fee received over the last four evaluation periods. Alternatively, at the election of the contractor, at the end of each evaluation period the Contracting Officer may retain a percentage of the award fee and basic fee as determined to be sufficient by the Contracting Officer to protect the interests of the Government. With respect to new contracts or contracts that have been in effect for less than two years (or four six-month evaluation periods), the guarantee shall be in an amount that the Contracting Officer determines to be in the best interest of the Government, but not to exceed the amount of award fee and basic fee available for the upcoming evaluation period. The financial responsibility of the contractor and the guarantee or retainage of the contractor shall remain in effect for one year after the termination or expiration of the contract, at which time any financial guarantee, including retainage, shall be returned to the subcontractor. Any costs or liabilities to third parties beyond the limitations described above would be reimbursed subject to the other provisions of the contract governing cost reimbursement. The contractor's potential financial risk for proceedings costs under the Major Fraud Act of 1988, 41 U.S.C. 256, or the civil or criminal penalties provisions of the Price-Anderson Amendments Act of 1988, 42 U.S.C. 2273, 2282, will not be limited except as provided in regulations implementing those provisions.

970.5204-56 Determining avoidable costs.

(a)(1) Avoidable Costs are those costs specified in 970.5204-13(e)(12) and (e)(17)(iv), 970.5204-14(e)(10) and (e)(15)(iv), 970.5204-21(j), and 970.5204-31 which are incurred by the contractor and/or its subcontractors, in carrying out the terms and conditions of the contract when:

(i) The work is clearly within the sole and exclusive control of the contractor and/or subcontractor personnel at any tier or level; and

(ii) The increased costs or expenses result from the negligence or wilful misconduct of the contractor or subcontractor personnel at any tier or level; and

(iii) DOE is not responsible in any way for the act or omission which resulted in the additional costs.

(2) The cost and expenses of litigation, settlements, and related litigation costs (including attorneys fees), fines, penalties, judgments and liabilities resulting from administrative findings, and damage to, or loss of, Government property when carrying out well understood non-experimental work and damage to, or loss of, Government property as the result of theft, embezzlement or other unauthorized use are unallowable to the extent that the acts or omissions resulting in these costs are Avoidable Costs as defined in paragraph (1) above. Such costs are unallowable except as specifically authorized by the Contracting Officer and within the scope of work in the contract.

(b) For purposes of this section, negligence is the failure to exercise that standard of care which a reasonable and prudent person would exercise under the same or similar circumstances in an identical or similar environment.

(c) Avoidable Costs shall not include the cost of losses or damages incurred by the contractor as a result of the acts or omissions of employees who, during the phase-in period of a new contract, the contractor is required to employ as a result of assuming the management of a DOE facility. The length of this phase-in period shall be ____ months. It shall in no event, however, exceed twelve months. The contractor is always responsible for the acts or omissions of any employee hired directly by the contractor.

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INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1043 and 1084

[Ex Parte No. MC-5 (Sub No. 11)]

RIN: 3120-AB63

Revision of Regulations Governing Insurance and Surety Companies Making ICC Filings

AGENCY: Interstate Commerce Commission.

ACTION: Final rule; interpretation.

SUMMARY: The Commission is issuing revised rules to clarify its intended meaning of its rules at 49 CFR Parts 1043 and 1084 governing financial responsibility requirements for motor carriers, property brokers and freight forwarders. The Commission interprets the terms "legally authorized" as used in 49 CFR 1043.8 and "authorized" as used in 49 CFR 1084.5 to describe an insurance company which has been licensed or admitted in at least one state to issue insurance policies or bonds, and clarifies its policy that it will accept certificates of insurance issued only by licensed or admitted companies.

EFFECTIVE DATE: The rules are effective on July 19, 1991.

FOR FURTHER INFORMATION CONTACT: Alice K. Ramsay (202) 275-0854 or Heber P. Hardy (202) 275-7148 (TDD for hearing impaired: (202) 275-1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275-1721.)

Energy and Environmental Considerations

This action does not significantly affect the quality of the human

environment or the conservation of energy resources.

Regulatory Flexibility Analysis

The Commission certifies that revision and clarification of the final rules will not have a significant impact upon a substantial number of small entities. These revisions do not impose excessive regulatory burdens, nor do they require unnecessary Federal supervision. Furthermore, the revisions do not require small entities to do anything substantially different in filing evidence of required coverage under 49 CFR 1043.8 and 1084.5 than is required already. We do not expect that any small entities will suffer any significant adverse economic impact. As our figures below indicate, there are numerous companies that make insurance filings at the Commission, and only a minimal number fall into the category of unlicensed excess/surplus lines insurers, leaving a large number of companies available to motor carriers to satisfy their insurance requirements. Moreover, the number of carriers using unlicensed excess/surplus lines companies is also relatively small.

The current regulations affect approximately 50,000 motor carriers of property; approximately 550 freight forwarders; and approximately 1,550 insurance and surety companies writing policies for the motor carriers and freight forwarders operating under the Commission's jurisdiction.

An estimated 835 motor carriers that are covered by unlicensed insurance companies, or 1.7 percent of the approximately 50,000 motor carriers currently covered by insurance filings, will be affected by this decision. Approximately 72 unlicensed insurance companies, or 4.6 percent of the over 1550 insurance companies making filings at the Commission, also will be affected. Notably, as of April 11, 1991, the Commission's records reflect that the above 835 motor carriers were covered by only 857 (approximately one percent) of the over 81,000 insurance filings on file and in effect.

Prior to the order by the United States Court of Appeals in *Owner-Operator Service, Inc. et al.* v. *Interstate Commerce Commission and the United States of America,* No. 90–1274, an estimated 56 unlicensed companies had made insurance filings on behalf of motor carriers. As of April 11, 1991, of the filings made by those companies, approximately 445 filings were on file and in effect. Since the court order, only 16 additional unlicensed companies have made insurance filings. As of April 11, 1991, of the filings made by the latter 16 companies, approximately 412 filings were on file and in effect. The following table illustrates that the vast majority of the 72 unlicensed insurance companies have made five or less filings:

No. of filings	No. of companies
1–5	51
6–10	7
11–50	8
50–100	5
over 200	1

There does not appear to be a problem in obtaining insurance from licensed companies. For example, when the Commission issued an order March 4, 1991, revoking all certificates filed by a licensed insurer which specialized in coverage for small motor carriers and was declared insolvent by a state court, 439 carriers were affected. During the period since that order, evidence of replacement coverage for these carriers has been filed with the Commission and, as of May 7, 1991, 89 percent of the carriers had achieved full compliance, while an additional three percent can operate under their contract authority only. It is likely that the remaining carriers that wish to continue operating will come into compliance. Of the over 390 replacement filings made on behalf of the affected carriers, as of May 7, 1991, only seven were made by unlicensed companies.

Summarizing, we do not expect these revisions to have a significant impact on a substantial number of motor carriers or insurance companies. The Commission's insurance company eligibility requirements at 49 CFR 1043.8 and 1084.5, as revised and clarified, remain substantively identical to the requirements of DOT at 49 CFR 387.11. Furthermore, because DOT does not require evidence of insurance or bonds to be filed, the filing requirements in the ICC's rules do not duplicate DOT's rules. Accordingly, this action will not require additional record keeping or report filing by small entities.

List of Subjects

49 CFR Part 1043

Insurance, Motor carriers, Surety bonds.

49 CFR Part 1084

Freight forwarders, Insurance, Surety bonds.

Decided: June 7, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, parts 1043 and 1084 of the Code of Federal Regulations are amended as follows:

PART 1043—SURETY BONDS AND POLICIES OF INSURANCE

1. The authority citation for 49 CFR part 1043 continues to read as follows:

Authority: 49 U.S.C. 10101, 10321, 11701, 10927; 5 U.S.C. 553.

2. Section 1043.8 is revised to read as follows:

§ 1043.8 Insurance and surety companies.

A certificate of insurance or surety bond will not be accepted by the Commission unless issued by an insurance or surety company that is authorized (licensed or admitted) to issue bonds or underlying insurance policies:

(a) In each state in which the motor carrier is authorized by the Commission to operate, or

(b) In the state in which the motor carrier has its principal place of business or domicile, and will designate in writing upon request by the Commission, a person upon whom process, issued by or under the authority of a court of competent jurisdiction, may be served in any proceeding at law or equity brought in any state in which the carrier operates, or

(c) In any state, and is eligible as an excess or surplus lines insurer in any state in which business is written, and will make the designation of process agent described in paragraph (b) of this section.

PART 1084—SURETY BONDS AND POLICIES OF INSURANCE

3. The authority citation for 49 CFR part 1084 continues to read as follows:

Authority: 49 U.S.C. 10102, 10321, and 10927; 5 U.S.C. 553.

4. Section 1084.5 is revised to read as follows:

§ 1084.5 Insurance and surety companies.

A certificate of insurance or surety bond will not be accepted by the Commission unless issued by an insurance or surety company that is authorized (licensed or admitted) to issue bonds or underlying insurance policies:

(a) In each state in which the freight forwarder is authorized by the Commission to perform service, or

(b) In the state in which the freight forwarder has its principal place of business or domicile, and will designate in writing upon request by the Commission, a person upon whom process, issued by or under the authority of a court of competent jurisdiction, may be served in any proceeding at law or equity brought in any state in which the freight forwarder performs service; or

(c) In any state, and is eligible as an excess or surplus lines insurer in any state in which business is written, and will make the designation of process agent prescribed in paragraph (b) of this section.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 901184-1042]

Groundfish of the Gulf of Alaska

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

ACTION: Notice of prohibition of retention of groundfish.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), is prohibiting further retention of pollock by vessels fishing in the Eastern Regulatory Area of the Gulf of Alaska. This action is necessary to prevent further catch of pollock in the Eastern Gulf in excess of the total allowable catch (TAC). The intent of this action is to promote optimum use of groundfish while conserving pollock stocks.

EFFECTIVE DATES: 12 noon on June 13, 1991, Alaska local time, (A.l.t.), through midnight, A.l.t., December 31, 1991.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, Resource Management Specialist, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) governs the groundfish fishery in the exclusive economic zone in the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council (Council) and is implemented by regulations appearing at 50 CFR 611.92 and parts 620 and 672.

Section 672.20(a) of the regulations establishes an optimum yield (OY) range of 116,000-800,000 metric tons (mt) for all groundfish species in the Gulf of Alaska. Total allowable catches (TACs) for target species and species groups (defined at § 672.20(b)) are specified annually within the OY range and are apportioned among the regulatory areas and districts.

Under § 672.20(c)(3), if the Regional Director determines that the TAC of any target species or "other species" category in a regulatory area or district has been reached, the Secretary will publish a notice in the **Federal Register** declaring that the species or species group is to be treated as a prohibited species under § 672.20(e) in all or part of that regulatory area or district. During the time that this notice is in effect, the operator of every vessel regulated must minimize the catch of that species in the area or district, or part thereof where the notice is applicable.

Section 672.20(c)(1)(ii) provides that the Secretary, after consultation with the Council, will publish a notice in the **Federal Register** specifying the final annual TAC for each target species and the "other species" category and apportionments thereof, final prohibited species catch amounts, and final quarterly allowances of pollock. These final specifications will supersede the interim specifications.

The Secretary declined to implement initial 1991 TACs for pollock without further study, because Steller sea lions have been listed as threatened under the Endangered Species Act, and pollock are important in the diet of Steller sea lions. Additional information about pollock stocks has recently become available through a special status of stock report prepared by the Alaska Fisheries Science Center, NMFS. On the basis of this information, the Secretary is implementing a pollock TAC of 3,400 mt in the Eastern Regulatory Area of the Gulf of Alaska in a notice of initial harvest specifications for pollock, published elsewhere in this issue of the **Federal Register**.

However, the total pollock catch in the Eastern Regulatory Area has already been reached. Therefore, pursuant to § 672.20(c)(3), the Secretary is declaring that pollock must be treated in the same manner as prohibited species in the Eastern Regulatory Area of the Gulf of Alaska, effective 12 noon, A.l.t., June 14, 1991, through the remainder of this fishing year.

Classification

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

List of Subjects in 50 CFR Part 672

Fish, Fisheries, Reporting and recordkeeping requirements.

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

Dated: June 13, 1991.

David S. Crestin,

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

[FR Doc. 91-14510 Filed 6-13-91; 4:38 pm]
BILLING CODE 3510-22-M

50 CFR Parts 672 and 675

[Docket No. 910643-1143]

Groundfish of the Gulf of Alaska; Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Notice of initial harvest specifications for pollock; emergency interim rule; reapportionment of reserves; request for comments.

SUMMARY: The Secretary of Commerce (Secretary) by this notice announces the approval of the 1991 total allowable catch (TAC) specifications for pollock and the reapportionment of pollock reserve to domestic annual processing (DAP). To ensure that pollock fishing does not jeopardize the continued existence or recovery of the threatened Steller sea lion, the Secretary, by emergency rule, is also establishing certain groundfish fishery restsrictions in the Gulf of Alaska (GOA) to minimize the adverse effects of the pollock fishery on Steller sea lions. The emergency rule contains measures that are designed to protect Steller sea lions by (1) allocating the pollock TAC for the combined Western/Central (W/C) Regulatory Areas equally between two subareas located east and west of 154°W. longitude, (2) limiting the amount of unharvested pollock TAC that may be rolled over to subsequent quarters in a fishing year, and (3) prohibiting fishing with trawl gear in the Exclusive Economic Zone (EEZ) within 10 nautical miles (nm) of 14 Steller sea lion rookeries. In order to implement the intent of these Steller sea lion emergency measures, the emergency rule also mends the definition of fishing trip for purposes of the directed fishing rule and deletes statistical area 621. Emergency action by the Secretary is necessary to prevent further economic hardship to the fishing industry and to ensure adequate safeguards, as required by the Endangered Species Act (ESA), for the threatened Steller sea lion. The

actions included in this notice are intended to further the goals and objectives contained in the Fishery Management Plan for Groundfish of the GOA and the ESA.

DATES: Pollock harvest specifications are effective June 13, 1991.

Amendments to 50 CFR parts 672 and 675 are in effect from June 13, 1991, through September 17, 1991.

Comments are invited on the reapportionment of the pollock reserve to DAP through July 5, 1991. Comments also are particularly invited on the environmental assessment prepared for this action.

ADDRESSES: Copies of the environmental assessment (EA), biological opinion, and an updated status of stock assessment for GOA pollock may be obtained from Dale R. Evans, Chief, Fisheries Management Division, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802. Comments should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fisheries Management Division, NMFS), 907–586–7230.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries in the EEZ of the GOA are managed by the Secretary under the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and is implemented by regulations governing the foreign fishery at 50 CFR part 611 and by regulations governing the U.S. fishery at 50 CFR part 672. Additional regulations on U.S. fishermen are found at 50 CFR part 620.

At times, amendments to the FMP and/or its implementing regulations are necessary to respond to fishery conservation and management problems that cannot be addressed within the time frame of the normal procedures provided for by the Magnuson Act. Section 305(c) of the Magnuson Act provides for implementation by emergency rules to address conservation and management problems in the fishery for 90 days with a possible 90-day extension.

Because of the need to complete additional data analyses and to conclude ESA section 7 consultation, a final TAC for GOA pollock has not yet been specified for the 1991 fishing year. Because no TAC level has been specified, the directed fishery for pollock in the GOA has been closed since February 15, 1991 (56 FR 6992, February 21, 1991). The closure of the pollock fishery has caused an economic hardship to fishermen, seafood processors, and related industries. This economic hardship has been exacerbated by a second quarter GOA closure to all non-pelagic trawling because of halibut bycatch levels.

This action includes a notice to implement annual pollock TAC specifications of 3,400 metric tons (mt) for the Eastern Regulatory Area and 100,000 mt for the Western/Central (W/C) Regulatory Areas in the GOA that will be in effect during the 1991 fishing year. Under 50 CFR 672.20(a)(2)(iv), the pollock TAC specification in the W/C Regulatory Areas is apportioned into equal quarterly allowances. Because it is anticipated that DAP will require all reserve amounts of pollock, reserve amounts of pollock are reapportioned to DAP by this action. This action also includes an emergency rule to implement three measures that are necessary to ensure that pollock harvest will not jeopardize Stellar sea lions.

These measures will:

(1) Allocate the pollock TAC specification in the combined W/C Regulatory Areas equally between two subareas located east and west of 154° W. longitude;

(2) Stipulate that any unharvested amount of any quarterly allowance of TACs will be added in equal proportions to the quarterly allowances of the following quarters, resulting in a sum for each quarter not to exceed 150 percent of the initial quarterly allowance; and

(3) Prohibit fishing with trawl gear in the EEZ within 10 nm of the 14 GOA Steller sea lion rookeries. Since 4 of the 14 rookeries border the Bering Sea/Aleutian Island (BSAI) FMP area, fishing closure areas extend into the BSAI area.

A fourth emergency measure amends the definition of fishing trip and deletes statistical area 621. This fourth measure is necessary to implement the allocation of the pollock TAC east and west of 154° W. longitude.

A description of, and reasons for, this action are as follows:

A. Notice Establishing Pollock TAC Specifications

Secretarial approval of the pollock TACs—Acceptable biological catches (ABCs) and TACs for pollock, as well as for each of the target groundfish species categories managed under the FMP, are specified for each new fishing year. The process for determining ABCs and TACs for groundfish species in the GOA is established by the FMP and is implemented in regulations at 50 CFR 672.20(a). The sum of the TACs for all species must fall within the combined optimum yield (OY) range established for these species of 116,000–800,000 mt.

The Council met during December 3–7, 1990, for purposes of recommending 1991 TAC specifications for pollock, as well as other groundfish. It reviewed the best available scientific information about pollock stocks, which was contained in the Stock Assessment and Fishery Evaluation (SAFE) report, dated November 1990. The SAFE Report was prepared and presented by the GOA Groundfish Plan Team to the Council and to the Council's Scientific and Statistical Committee and Advisory Panel. Information contained in the SAFE report is incorporated herein by reference. The Council also reviewed intended industry harvest plans for 1991, and estimates made by NMFS concerning the extent to which U.S. fishermen would harvest amounts of pollock.

Information about pollock in the SAFE report was derived from:

1. The 1990 hydroacoustic survey conducted by the NMFS Alaska Fisheries Science Center (AFSC);

2. 1990 NMFS fishery observer reports:

3. Results of the 1990 bottom trawl surveys in the GOA, which were conducted by the AFSC; and

4. Groundfish catches obtained from the 1990 Weekly Production Reports.

The Council recommended ABCs and TACs for GOA groundfish totaling 773,643 mt and 331,089 mt, respectively, for the 1991 fishing year. The sum of the TACs falls within the groundfish OY range specified in the FMP. The recommended pollock ABC and TAC contributed 133,400 mt to each sum of the groundfish ABCs and TACs. Interim specifications for all groundfish were in effect on January 1, 1991 (see 55 FR 47897, November 16, 1990), based on procedures contained in regulations at 50 CFR 672.20(c)(1)(i). Interim pollock TACs of 850 mt and 17,500 mt were specified for the Eastern Regulatory Area and the W/C Regulatory Areas, respectively. A final notice of 1991 groundfish specifications, other than for pollock, was published in the **Federal Register** on March 1, 1991 (56 FR 8723).

The Council recommended 1991 pollock ABCs and TACs of 130,000 mt in the Western/Central GOA Regulatory Areas and 3,400 mt in the Eastern Regulatory Area. The 1991 Western/Central Regulatory Areas pollock TAC recommended by the Council is 82 percent higher than the 1990 GOA pollock TAC. Because of concern for potential adverse effects to Steller sea lions' food supply, NMFS decided that further evaluation of the GOA pollock TAC, and available data on the GOA

pollock fishery and Steller sea lions was needed before setting the final pollock TAC specification.

The NMFS AFSC reevaluated all available data, and has revised the 1991 pollock exploitable biomass estimate and ABC recommendation of the Western/Central GOA Regulatory Areas. These revisions stem from an improvement in the GOA bottom trawl biomass estimates, specifically, in the methods used to determine when a fishing power correction should be applied and how it should be calculated. Based on these new analyses, the AFSC now recommends an ABC of 100,000 mt for Western/Central GOA pollock, approximately 10 percent of the exploitable biomass. This ABC is appropriately conservative of the pollock stock and is supported by the best available scientific information. The proposed harvest level is substantially below the fishing mortality rate that would result in overfishing.

NMFS concluded formal section 7 consultation on the GOA FMP, GOA fishery, and 1991 TAC specifications for groundfish other than pollock on April 18, 1991. NMFS concluded formal consultation on the 1991 GOA pollock TAC specifications and emergency fishery restrictions on June 5, 1991. The biological opinions prepared during these consultations concluded that these actions are not likely to jeopardize the continued existence of any endangered or threatened species under NMFS's jurisdiction. Copies of the biological opinions may be obtained from the previously listed address.

On the basis of this information, the Secretary is implementing a pollock TAC of 100,000 mt in the W/C Regulatory Areas as listed in the following table. For the Eastern Regulatory Area, the Secretary is implementing the Council's recommended TAC of 3,400 mt.

ABCs, Initial groundfish TACs and DAPs (metric tons) for pollock in the Western/Central (W/C), Western (W), Central (C), and Eastern (E) Regulatory Areas and in the West Yakutat (WYK), Southeast Outside/East Yakutat (SEO/EYK), Gulf-Wide (GW), and Southeast Outside (SEO) Districts of the Gulf of Alaska. Amounts specified as JVP and TALFF initially are set at zero and are not shown in this table. Reserves are apportioned to DAP, effective January 1, 1991.

Species	Area	ABC	TAC-DAP
*	*	*	*
Pollock	W/C	100,000	
Statistical area	61, 62		50,000
	63		50,000
	E	3,400	3,400
Total		103,400	103,400
*	*	*	*
Total		743,643	299,589

The total pollock catch in the Eastern Regulatory Area has reached this amount. As a result, retention of pollock in the Eastern Regulatory Area is prohibited for the remainder of 1991 as described in a separate document in this issue.

Reopening of Western/Central Regulatory Areas to a Pollock Directed Fishery

The Secretary closed the directed fishery for pollock in the entire Western/Central Regulatory Areas, when the interim TAC of 17,500 mt was reached (56 FR 6992, February 21, 1991). The fishery will reopen in the combined Western/Central Regulatory Areas at noon, Alaska local time (A.l.t), on June 13, 1991. The total catch, including discards, when the fishery closed was 22,000 mt. Relative to the first quarter TAC allowance, this amount results in a harvest shortfall which will be added in equal proportions to quarterly allowances in the second, third, and fourth quarters. The amount of pollock available for the second quarter in the W/C Regulatory Areas is 13,000 mt in each subarea east and west of 154° W. longitude. The calculations made to arrive at this figure are presented in the discussion of the rollover emergency measure.

Apportionment of Pollock Reserve to Domestic Annual Processing (DAP)

The FMP stipulates, in part, that 20 percent of the pollock TAC be set aside in a reserve for possible reapportionment at a later date (§ 672.20(d)(2)(i)). Because DAP is projected to need all reserve amounts, the Secretary is reapportioning the pollock reserve to DAP under § 672.20(a)(1)(ii). By doing so, the Secretary is anticipating that the domestic industry will need all the pollock DAP amount. Comments are invited on the reapportionment for 15 days after the effective date of this notice under § 672.20(d)(5)(iv). Comments should focus on whether, and the extent to which, vessels of the United States will harvest reserve or DAP amounts for pollock during the remainder of the year and whether, and the extent to which, U.S. harvested pollock can or will be processed by U.S. fish processors or received at sea by foreign fishing vessels.

B. Measures Implemented By Emergency Rule

The Steller sea lion population has drastically declined in a large portion of its geographic range, including the GOA. This population decline prompted NMFS to list the Steller sea lion as a threatened species, and to establish certain conservation measures to aid the species' recovery (55 FR 49204, November 26, 1990). Consistent with the ESA, section 7 consultation was reinitiated on all Federal fishery management plans and fisheries, including the GOA fishery, within the range of Steller sea lions.

The 1991 GOA pollock TAC specifications were withheld until additional data analyses and section 7 consultation could be completed, primarily because of the concern that the pollock fishery removals would restrict the availability of food to Steller sea lions. As a result of the analyses conducted, NMFS determined that the emergency measures listed below are necessary to ensure that the GOA pollock fishery will not jeopardize the continued existence of Steller sea lions. Based on the economic hardship to the fishing industry, and the need to implement emergency measures to protect Steller sea lions simultaneously with the pollock fishery opening, it is contrary to the public interest to provide prior notice and opportunity to comment on the emergency measures contained in this notice.

Allocation of the pollock TAC east and west of 154° W. longitude

The final pollock specifications notice apportions the 100,000 mt pollock TAC for the W/C Regulatory Areas equally to areas (subareas) east and west of 154° W. longitude. The purpose of the 50,000 mt subarea allocations is to prevent an entire quarterly allowance from being harvested in a concentrated area within the W/C Regulatory Areas. Otherwise, such harvests could result in local depletion of pollock, which may adversely affect the feeding success of Steller sea lions. The limited available data from satellite-transmitter tagged Steller sea lions suggests that sea lions associated with the four major rookeries in the GOA that have shown the steepest recent declines feed in or around the east side of Kodiak Island. These same locations have accounted for the majority of the pollock catch since 1987. The proposed spatial allocation of the quarterly TAC will

divert some fishing effort away from these Steller sea lion foraging habitats.

This measure requires an amendment by emergency rule to the definition of a fishing trip in regulations at 50 CFR 672.20(h)(2) for purposes of managing prohibitions to directed fishing for pollock in each of the two subareas. The operator of a vessel entering a reporting area or district with a specific pollock TAC must initiate a new trip to avoid an unintentional violation. Should NMFS prohibit directed fishing for pollock in either subarea, amounts of pollock retained on board a vessel must be less than 20 percent of the amount of all other fish species retained on board that vessel at any time until any offload or transfer of any fish or fish product from that vessel or until the vessel leaves reporting areas 61 and 62 combined, or reporting area 63, or the Eastern Regulatory Area, where fishing activities commenced, whichever occurs first.

The above area division also requires an amendment by emergency rule to delete statistical area 621 (Shelikof Strait District) in 50 CFR 672.2, which is necessary, because the longitude of 154° would otherwise bisect statistical area 621, and determining which part of the pollock catch was east and west of 154° W. longitude would not be possible with existing reporting requirements under 50 CFR 672.5. Fish that might have been reported from the Shelikof Strait District must now be reported by either Reporting Area 62 or 63, as appropriate.

Limit on Rollover of the Pollock TAC Quarterly Allowances

Existing regulations at 50 CFR 672.20(a)(2)(iv) require the pollock TAC for the W/C Regulatory Areas to be divided equally into four quarterly allowances. Under this emergency rule, each 50,000 mt TAC allocation in the subareas east and west of 154° W. longitude (W/C subareas) is apportioned into 12,500 mt allowances for each calender quarter. Existing regulations also require that any unharvested amount of a quarterly allowance, or excessive harvests of a quarterly allowance, will be added to (rolled over), or subtracted from, in equal proportions, the subsequent quarters' allowances.

To prevent excessive accumulation of any quarterly allowance, an amendment to these regulations is implemented by emergency rule to limit the maximum amount of any subsequent quarterly allowance to 150 percent of the initial quarterly allowance. Thus, in 1991, because each initial quarterly allowance of each pollock TAC is 12,500 mt, the maximum amount of any subsequent quarterly allowance resulting from rollovers is 18,750 mt in each of the two subareas. The purpose of the amendment is to prevent excessive harvests of pollock, in any quarter, which could reduce amounts of food available for sea lions, or limit their feeding efficiency.

As discussed above, the first quarter catch was 22,000 mt. Based on a TAC of 100,000 mt, each quarterly apportionment is 25,000 mt. Subtracting the first quarter catch from the first quarter apportionment results in a 3,000-mt harvest shortfall. Thus, 500 mt is added to each following quarter's apportionment in each subarea east and west of 154° W. longitude resulting in 13,000 mt (the sum of 12,500 mt and 500 mt) in each subarea. Each quarterly allowance in each subarea will be subject to notices of closure under 50 CFR 672.20(c).

Trawl Closures Around Steller Sea Lion Rookeries

Closures to groundfish trawling in the EEZ within 10 nm of 14 Steller sea lion rookeries are implemented. A list of the rookeries is in § 672.24(e) of this notice.

These closures are intended to further reduce any effects that groundfish trawling may have on the Steller sea lions, particularly to their foraging success. The 10-nm closures are based on the average distance travelled by foraging female Steller sea lions during the summer reproductive period. Maintenance of the buffer zones in the non-breeding season is primarily intended to protect juvenile sea lions. Juvenile sea lions are likely to be the most susceptible to prey depletion, since they are less adept predators than adults. These young animals are also less likely to swim far from their rookery of birth, particularly during their first year. Thus, nearshore zones proximal to rookeries are likely to be important feeding areas throughout the year.

Secretarial Determinations

The Secretary has reviewed the purposes of the measures contained in this emergency rule and has determined that they are necessary and appropriate for the conservation and management of the groundfish fishery.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this emergency rule is necessary to respond to an emergency situation and that it is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator finds that reasons summarized above justifying promulgation of this emergency rule on an emergency basis also make it impracticable and contrary to the public interest to provide notice and opportunity for prior comment or to delay for 30 days its effective date under sections 553 (b) and (d) of the Administrative Procedure Act.

The Assistant Administrator has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of the State of Alaska. This determination has been submitted for review by the responsible State agency under section 307 of the Coastal Zone Management Act.

An EA was prepared for this rule and the Assistant Administrator concluded that there will be no significant impact on the human environment. A copy of the EA is available from the Regional Director at the above address.

This emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that order. This rule is being reported to the Director of the Office of Management and Budget with an explanation of why following the usual procedures of that order is not possible.

This rule is exempt from the procedures of the Regulatory Flexibility Act, because it is issued without opportunity for prior public comment.

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

The rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

Other Matters

This action to implement pollock TAC specifications is taken under 50 CFR 611.92 and 50 CFR 672.20 and complies with Executive Order 12291. The Secretary finds that the purpose of the pollock reserves was to save portions of the TAC in case they were needed by DAP later in the fishing year rather than apportioning them to joint venture processing (JVP) or total allowable level of foreign fishing (TALFF) at the beginning of the fishing year. Because the best available information indicates that DAP will harvest all the pollock TAC, no JVP or TALFF specifications have been established, and no JVP or TALFF apportionments are expected during 1991. Because retention of a pollock reserve could result in a premature fishery closure, this apportionment to DAP is made

immediately effective under 50 CFR 672.20(d)(5)(iv)(A)(3). This apportionment is effective June 13, 1991. Comments are invited on the reserve apportionments through July 5, 1991.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping requirements.

Dated: June 13, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for part 672 continues to read as follows:

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

§ 672.2 [Amended]

2. In § 672.2, in the definition of "statistical area," the description of "statistical area 621" is suspended from June 13, 1991, through September 17, 1991.

3. In § 672.20, paragraphs (a)(2)(iv) and (h)(2)(i) are suspended and paragraphs (a)(2)(v), (h)(2) (iii) and (iv) are added from June 13, 1991, through September 17, 1991, to read as follows:

§ 672.20 General limitations.

(a) * * *

(2) * * *

(v) The TAC for pollock in the Central and Western Regulatory Areas will be apportioned equally to statistical areas 61 and 62 combined, and to statistical area 63. Each apportionment will be divided equally into the four quarterly reporting periods of the fishing year. Within any fishing year, any unharvested amount of any quarterly allowance of TACs will be added in equal proportions to the quarterly allowances of the following quarters, resulting in a sum for each quarter not to exceed 150 percent of the initial quarterly allowance. Within any fishing year, harvests in excess of a quarterly allowance of any TAC will be deducted in equal proportions from the quarterly allowances of each of the remaining quarters of that fishing year.

* * * * *

(h) * * *

(2) * * *

(iii) From the commencement of or the continuation of fishing for any groundfish other than sablefish and pollock, after the effective date of a notice under paragraph (c)(2) of this section prohibiting directed fishing, until any offload or transfer of any fish or fish product from that vessel or until the vessel leaves the regulatory area where fishing activities commenced, whichever occurs first.

(iv) From the commencement of or continuation of fishing for pollock after the effective date of a notice under paragraph (c)(2) of this section prohibiting directed fishing until any offload or transfer of any fish or fish product from that vessel or until the vessel leaves reporting areas 61 and 62 combined, or reporting area 63, or the Eastern Regulatory Area, where fishing activities commenced, whichever occurs first.

4. In § 672.24, paragraph (e) is added from June 13, 1991, through September 17, 1991, to read as follows:

§ 672.24 Gear limitations.

* * * * *

(e) Steller sea lion areas. Trawling is prohibited year round in the Gulf of Alaska within 10 nautical miles of each of the following Steller sea lion rookeries listed at 50 CFR 227.12(a)(3): Outer Island, Sugarloaf Island, Marmot Island, Chirikof Island, Chowiet Island, Atkins Island, Chernabura Island, Pinnacle Rock, North and South Clubbing Rocks, Ugamak Island, Akun Island, Akutan Island, Adugak Island, and Ogchul Island.

PART 675—GROUNDFISH FISHERY OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

5. The authority citation for part 675 continues to read as follows:

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

6. In §675.24, paragraph (f) is added from June 13, 1991 through September 17, 1991 to read as follows:

§ 675.24 Gear limitations.

* * * * *

(f) Steller sea lion areas. Trawling is prohibited year round in the Bering Sea and Aleutian Islands area within 10 nautical miles of each of the following Steller sea lion rookeries listed at 50 CFR 227.12(a)(3): Ugamak Island, Akun Island, Akutan Island, and Adugak Island.

[FR Doc. 14477 Filed 6–13–91; 4:38 p.m.]

BILLING CODE 3510–22–M

50 CFR Part 685

[Docket No. 910645–1145]

Pelagic Fisheries of the Western Pacific Region

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

ACTION: Emergency interim rule; longline area closures in the Main Hawaiian Islands.

SUMMARY: The Secretary of Commerce (Secretary) issues this emergency interim rule amending current regulations promulgated under the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region (FMP). This action is needed to minimize gear conflicts between longline and troll/handline pelagic fisheries in Main Hawaiian Island (MHI) waters. MHI waters are defined in this emergency rule as the Exclusive Economic Zone (EEZ) of the Hawaiian Islands Archipelago lying to the east of 161° West longitude. Gear conflicts have increased throughout the MHI since August 1989, when longline vessels began fishing near the Waianae Coast, an area fished heavily by troll/handline fishermen, both commercial and recreational. These conflicts have hindered fishing activities and resulted in loss of gear, in some cases due to willful destruction. Increasing tensions between pelagic user groups have led to concerns of public safety. In response, the Western Pacific Fishery Management Council (Council) has proposed, and the Secretary concurs with, implementation of this temporary emergency rule to prohibit longline fishing within 75 nautical miles (nm) around Kauai County (which includes the islands of Kauai, Niihau, and Kaula) and Honolulu County (which is the island of Oahu), and 50 nm around Hawaii County (which is the island of Hawaii) and Maui County (which includes the islands of Maui, Kahoolawe, Lanai, and Molokai).

EFFECTIVE DATE: The emergency rule is effective from 0000 hours local time June 14, 1991, to 2400 hours local time August 19, 1991.

ADDRESSES: Copies of the documentation supporting the Council's emergency action request and the environmental assessment (EA) for this action may be obtained from, and comments should be sent to, E.C. Fullerton, Director, Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director,

Western Pacific Fishery Management Council, (808) 523–1368 or (FTS) 551 1974, Svein Fougner, Fisheries Management Division, Southwest Region, NMFS, Terminal Island, California (214) 514–6660 or (FTS) 795–6660, or Alvin Katekaru, Pacific Area Office, Southwest Region, NMFS, Honolulu, Hawaii (808) 955–8831 or (FTS) 551–2927.

SUPPLEMENTARY INFORMATION: Stocks of pelagic species around Hawaii have been traditionally harvested by both longline and trolling gear. Between 1987 and 1990, the longline fleet tripled (from approximately 45 vessels to 150 vessels), while the commercial troll/handline fleet (including charterboats) increased from 2,232 vessels to 2,409 vessels. During this same time period, total longline catches increased 3.4 times from 3.9 million pounds (lb) (1,769 metric tons (mt)) to 13.1 million lb (5,941 mt), while troll catches decreased 16 percent from 5.3 million lb (2,419 mt) to 4.5 million lb (2,041 mt).

In August 1989, conflicts between longliners, many recently arrived from the Gulf of Mexico, and troll/handline fishermen, both commercial and recreational, attracted media attention. Some of these interactions, which first occurred off Waianae, Oahu, lead to physical confrontations and destruction of gear. State officials met with both charterboat and small boat troll fishermen and with longline fishermen. As a result of these meetings a voluntary informal agreement was reached whereby longline fishermen would stay at least 20 nm from shore.

Not all longliners adhered to this informal agreement and allegations of gear conflicts escalated, particularly around the islands of Oahu, Kauai, and Maui, as the longline fleet grew. Tensions continued to mount throughout 1990 and the Council was increasingly concerned that continued gear conflicts might lead to violent confrontations.

In December 1990, the Council decided to request emergency action to impose a moratorium on new entry into the longline fishery to halt growth and provide a period of stability in which to collect data and to analyze the impact of the longline fishery on the stocks, examine the interaction between various sectors of the pelagic fishery such as the longline and troll/handline fleets, and evaluate long-term management alternatives. The emergency moratorium was implemented on April 23, 1991. The Council intends to submit a follow-up plan amendment to this emergency moratorium that would establish a 3-year moratorium on new entry into the longline fishery. The moratorium will, by limiting the number of vessels, control escalation of the gear conflicts, but does not resolve fundamentally the existing public safety problem.

Concerned about the continuing negative social impacts and potential economic impact of these interactions, the Council appointed a Pelagic Task Force in December 1990. The Task Force, comprised of longliners, commercial and recreational trollers, and handliners (including charterboat representatives), was charged with developing recommendations for possible area closures to address this problem. Public hearings were also held throughout the MHI.

The Task Force members agreed that some type of area closure was needed but could not agree on the magnitude of such area closures. Commercial and recreational trollers and handline fishermen, including charterboat representatives, who made up the majority of Task Force members recommended a minimum of 75 nm around all MHI while longliners and fish processors favored 20 to 30 nm.

After examining available data, recommendations of the Task Force, and public input, the Council concluded that a 75-nm closure around Kauai County and Honolulu County and a 50-nm closure around Maui County and Hawaii County are warranted. Examination of State of Hawaii catch reports shows that, while the majority of commercial trolling trips are taken within 20 nm of shore, an increasing number of trips are reported at distances of 50 to 60 nm off Kauai, Oahu, and the west coast of Hawaii, and 40 nm off Maui, Molokai, and Lanai. Distances travelled, and thus the potential for gear conflict, are greatest during the summer yellowfin tuna season. Little information is available from the recreational fishery but an informal poll was taken of both commercial troll and recreational fishermen in early 1991. According to respondents, the maximum distances fished were as follows: Kauai, 70 nm; Oahu, 53 nm; Maui County, 47 nm; and Hawaii, 47 nm.

Analyses of existing information with respect to the potential adverse impacts of the longline fishery on the catch per unit of effort and markets of troll/handline pelagic fishermen are inconclusive. Gaining a better understanding of the interaction between sectors is one of the objectives of the data collection and analysis plan during the planned 3-year moratorium. Preliminary 1990 data on blue marlin catches may indicate adverse interaction. Blue marlin is a highly valued recreational species that plays an important part in the Hawaii charterboat industry. Blue marlin is also a by-catch species in the longline fishery. During 1990, the longline harvest of blue marlin increased 7 percent while commercial troll landings decreased by 42 percent. Oahu troll/handline monthly catch per trip information (calculated from market data) shows that the season peak, which occurred in August and September during 1987–89 (90–125 lb or 40.5–56.3 kilograms (kg) per trip), did not occur in 1990 when catch rates remained relatively stable at 25–40 lb (11.3–18.0 kg) per trip throughout the year. Analyses of similar trends in the Atlantic fishery have shown a negative correlation between longline harvests and recreational catch rates.

Vessels in the Hawaii longline fleet range in length from about 23 feet (ft) to 113 ft (7.0 to 34.4 meters (m)). Twenty five percent of the 157 vessel fleet are less than 57 ft (17.4 m) in length. During the first 3 months of the longline permit and logbook program (November 27, 1990, to February 24, 1991), 29 percent of the total longline effort took place within the proposed 75/50–nm closure area compared to 48 percent in the remaining EEZ around the MHI and 23 percent in the NWHI. However, for the quarter of the fleet less than 57 ft (17.4 m) in length, 46 percent of the effort occurred within the proposed 75/50-nm closure area. Catches from this area accounted for 65 percent of the swordfish harvest, 40 percent of the bigeye tuna harvest, and 54 percent of the yellowfin tuna harvest by vessels under 57 ft (17.4 m) in length. This segment of the fleet, which includes a number of smaller vessels with a long history of longlining within Hawaiian waters, will be the most negatively impacted by the area closure.

From May to September, when seas are calmer and the yellowfin tuna season is at a peak, commercial and recreational trolling effort normally increases and occurs at greater distances from shore. While Federal longline logbook data are not available for that time period, state catch reports show longline effort occurring within the 75/50-num closure area, particularly between Kauai and Oahu. While the growth of the longline fleet has been temporarily halted with the emergency moratorium, other actions by the Council (e.g., a 50-nm closure in the NWHI to prevent interaction with endangered monk seals) may exacerbate gear conflicts, causing operators of longline vessels to look for alternative fishing grounds. For these reasons, emergency action is necessary

in order to have area restrictions in place by the time of greatest potential conflict. A 75-nm closure around Oahu and Kauai provides a 15-nm buffer zone beyond the maximum distance reported by commercial trolling fishermen on state catch reports. In recent years, the commercial troll, charterboat, and recreational fleets located in these areas have reported traveling to fishing grounds farther offshore. The area closure for Maui and Hawaii Counties was determined to be 50 nm based on the maximum distance reported on state catch report forms, except for east Hawaii where the maximum distance reported was 20 nm. The Council intends to follow this emergency action with an amendment incorporating area restrictions into the FMP.

This emergency rule defines the term Main Hawaiian Islands as the EEZ of the Hawaiian Islands Archipelago lying to the east of 161° West longitude. It is being defined to clarify where the area closures are being implemented and to distinguish this portion of the Hawaiian Island chain from the Northwestern Hawaiian Islands, where a protected species zone area closure was implemented under emergency regulations in April 1991.

The Council is concerned about enforcement of the area closure regulations. Automated vessel position indicating devices (transponders) hold promise for enhancing enforcement activities. The Council is currently conducting field experiments to determine the feasibility of employing transponders to monitor the location of longline vessels. When this technology is operationally available, the Council may propose new regulations that require longline vessels to carry transponders.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson Fishery Conservation and Management Act (Magnuson Act) and other applicable law. This rule is effective for 90 days from the date of publication under section 305(c)(3)(B) of the Magnuson Act and may be extended for an additional 90 days with the agreement of the Council. The Assistant Administrator has determined that conditions in the fishery are such that delaying this rule would pose a substantial risk of severe social conflict with potential adverse public safety implications as well as possible adverse economic impacts.

The Assistant Administrator also finds that the reasons justifying promulgation of this rule on an emergency basis make it impracticable and contrary to the public interest to provide notice and opportunity for comments upon, or to delay for 30 days the effective date of these emergency regulations under section 553 (b) and (d) of the Administrative Procedure Act.

This emergency rule is exempt from the normal review procedures of Executive Order (E.O.) 12291 as provided in section 8(a)(1) of that order. This rule is being reported to the Director of the Office of Management and Budget with an explanation of why it is not practicable to follow the regular procedures of that order.

The Council prepared an EA for this action. The Assistant Administrator concluded that there will be no significant impact on the human environment. A copy of the EA is available from the Southwest Region (see **ADDRESSES**).

An informal consultation was conducted under section 7 of the Endangered Species Act (ESA) and it was determined that this action is not likely to adversely affect any endangered or threatened species listed under the ESA.

The Assistant Administrator has determined that this emergency rule will be implemented in a manner that is consistent to the maximum extent practical with the approved coastal zone management program of the State of Hawaii. The Council requested that the State of Hawaii concur with the Assistant Administrator's finding and the State of Hawaii has concurred.

This rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

This emergency rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior public comment.

This emergency rule does not contain policies with known federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 685

Fisheries, Fishing.

Dated: June 13, 1991.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 685 is amended as follows:

PART 685—PELAGIC FISHERIES OF THE WESTERN PACIFIC REGION

1. The authority citation for part 685 continues to read as follows:

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

2. In § 685.2, effective from 0000 hours local time June 14, 1991, to 2400 hours local time August 19, 1991, new definitions for "Longline fishing prohibited area" and "Main Hawaiian Islands" are added, in alphabetical order, to read as follows:

§ 685.2 Definitions.

* * * * *

Longline fishing prohibited area means the waters within 75 nm of the Islands of Oahu, Kauai, Niihau, and Kaula, and the waters within 50 nm of the islands of Hawaii, Maui, Kahoolawe, Lanai, and Molokai, as measured from the baseline from which the seaward boundary of the State of Hawaii is defined.

Main Hawaiian Islands means the EEZ of the Hawaiian Islands Archipelago lying to the east of 161° West longitude.

* * * * *

3. In § 685.5, new paragraph (u) is added to be effective from 0000 hours local time June 14, 1991, to 2400 hours local time August 19, 1991, to read as follows:

§ 685.5 Prohibitions.

* * * * *

(u) Fish with longline gear within the longline fishing prohibited area in the Main Hawaiian Islands as defined in § 685.2 of this part.

[FR Doc. 91–14568 Filed 6–4–91; 12:18 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 56, No. 118
Wednesday, June 19, 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 AGRICULTURE

Rural Telephone Bank

7 CFR Part 1600

Meetings of the Board of Directors of the Rural Telephone Bank

AGENCY: Rural Telephone Bank, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Telephone Bank (Bank) proposes to amend 7 CFR chapter XVI of the Code of Federal Regulations to add a new part 1600. This new part implements the provisions of the Government in the Sunshine Act (5 U.S.C. 552b) and sets forth the procedural requirements designed to provide the public with information to the fullest extent practicable, regarding the decision making process of the Board of Directors (Board) of the Bank. The regulations include provisions for giving advance notice of meetings of the Board, for holdimg meetings which may lawfully be closed to the public, for maintaining copies of transcripts, electronic recordings, or minutes of closed meetings, and for the availability of the non-exempt portions of such records to the public.

All Rural Telephone Bank Borrowers will be affected by new part 1600 in that the borrowers bill be provided with information regarding the Board's decision making processes.

DATES: Public comments concerning this proposed rule must be received by the Bank or bear a postmark or its equivalent no later than July 19, 1990.

ADDRESSES: Comments may be mailed to F. Lamont Heppe, Jr., Chief, Telephone Loans and Management Staff, Rural Electrification Administration, room 2250-South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone number (202) 382–8530. Comments received may be inspected in room 2250. The Bank requests an original and three copies of all documents.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Chief, Telephone Loans and Management Staff, Rural Electrification Administration, room 2250-South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone number (202) 382–8530.

SUPPLEMENTARY INFORMATION: This proposed rule is issued in conformance with Executive Order 12291. This action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment or productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, this rule has been determined to be non major.

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

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.852, Rural Telephone Bank Loans. For the reasons set forth in 7 CFR part 3015, subpart V (50 FR 47034), this program is excluded from the scope of Executive Order 12372 which requires inter-governmental consultation with state and local officials.

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

Background

Subtitle F of the Rural Economic Development Act of 1990, (RED Act) (Pub. L. 101–624), requires the Bank to promulgate regulations that implement provisions of the Government in the Sunshine Act. Section 2363 of the RED Act requires that Bank Board meetings comply with the requirements of the Sunshine Act. Therefore, a new part 1600 is proposed to be added to 7 CFR chapter XVI to include this new requirement.

The Rural Telephone Bank is an agency and instrumentality of the United States within the United States Department of Agriculture (USDA). The Bank was established on May 7, 1971, (Pub. L. 92–12) as a lending agency operating in conjunction with the Rural Electrification Admininstration (REA) to provide supplemental financing for the REA Telephone Loan Program. The Adminsitrator of REA also serves as the Governor of the Bank, its chief executive officer.

Management of the Bank is vested in a Board of Directors. The Board consists of thirteen members; seven members are appointed by the President and six members are elected by holders of Class B and Class C Bank stock. Five of the seven Presidential appointees are officers or employees of USDA but not officers or employees of REA. Historically, these directors have been high officials of USDA who are responsible for the operation of major agencies and programs of the Department. The remaining two presidential appointees are from the general public and are not officers or employees of the Federal Government. The commercial-type and cooperative-type entities that hold Class B or C Bank stock elect six members (three from each corporate category) to serve on the Bank Board. The elected members represent the corporations that have borrowed from the Bank.

List of Subjects in 7 CFR Part 1600

Sunshine Act.

For reasons set forth in the preamble, the Bank proposes to amend 7 CFR chapter XVI to add a new part 1600 as follows:

PART 1600—GENERAL INFORMATION

Meetings of the Board of Directors of the Rural Telephone Bank

Sec.

1600.1 General.
1600.2 Definitions.
1600.3 Open meetings
1600.4 Scheduling of meetings.
1600.5 Public announcement of meetings.
1600.6 Bases for closing a meeting to the public.

Sec.
1600.7 Procedures for closing a meeting to the public
1600.8 Transcript, recording or minutes; availability to the public.

Authority: 7 U.S.C. 941 et seq.

§ 1600.1 General.

The purpose of this part is to effectuate the provisions of the Government in the sunshine Act. This part applies to the deliberations of a quorum of the Directors of the Bank required to take action on behalf of the Bank where such deliberations determine or result in the joint conduct or disposition of official Bank business. Any deliberation to which this part applies is hereinafter in this part referred to as a meeting of the Board of Directors.

§ 1600.2 Definitions.

As used in this part:

(a) *Board* means Board of Directors of the rural Telephone Bank (Bank).

(b) *Director* means as individual who is a member of the Board.

(c) *Legal Counsel* means the legal counsel of the Bank.

(d) *Meeting* means the deliberations (including those conducted by conference telephone call or by any other method) among a quorum of the Directors, where such deliberations determine or result in joint conduct of official business of the Board. For purposes of this Part, each item on the agenda of a meeting is considered a meeting or a portion of a meeting. To the extent that the discussions do not result in the beginning of deliberations or achieve a consensus on a matter of official agency business or effectively predetermine official actions, the term Meeting does not include:

(1) Deliberations to determine whether a meeting or portions of a meeting will be open or closed or whether information pertaining to closed meetings will be disclosed;

(2) Calling a meeting at a date earlier than announced as provided in § 1600.5;

(3) Changing the subject matter of a publicly announced meeting as provided in § 1066.5;

(4) Disposition of Board business by circulation of materials to individual Board members;

(5) Staff briefings of Board members;

(6) Informal background discussions among Board members and staff which clarify issues and expose varying views; or

(7) Sessions with individuals from outside the Bank where Board members listen to a presentation and may elicit additional information.

(e) *Open to public observation* means the right of any member of the public to attend and observe, but not participate or interfere in any way in an open meeting of the Board.

§ 1600.3 Open Meetings.

(a) Except as provided for in § 1600.6 every portion of every meeting of the Board shall be open to public observation. Observation does not include participation or disruptive conduct by observers, and persons engaging in such conduct will be removed from the meeting. Documents being considered at meetings of the Board may be obtained subject to the exemptions set forth in § 1600.8.

(b) Board members shall not jointly conduct or dispose of official Board business other than in accordance with this part.

(c) The Secretary of the Board shall be responsible for assuring that ample space, sufficient visibility, and adequate acoustics are provided for public observation of meetings of the Board.

§ 1600.4 Scheduling of meetings.

A decision to hold a meeting of the Board should be made as provided in the bylaws of the Bank and at least ten days prior to the scheduled meeting date in order for the Secretary of the Bank to give the public notice required by § 1600.5. Special meetings of the Board may be held on less than ten days notice if a majority of the Board determines by a recorded vote that Bank business requires that the special meeting be held on less than ten days notice. After public announcement of a meeting of the Board under the provisions of § 1600.5, the subject matter thereof, or the determination to open or close a meeting, or portion thereof, may only be changed if a majority of the Directors determines by a recorded vote that business so requires and that no earlier announcement of the change is possible.

§ 1600.5 Public announcement of meetings.

(a) Except as otherwise provided in this section, public announcement of open meetings and meetings or portions thereof closed under § 1600.7 will be made at least seven days in advance of each meeting. Except to the extent that such information is determined to be exempt from disclosure under § 1600.6, each such public announcement will state the time, place, and subject matter of the meeting, whether it is to be open or closed to the public, and the name and telephone number of the official designated to respond to requests for information about the meeting. Each such announcement shall be submitted for publication in the **Federal Register**. Copies of the announcement shall also be mailed to holders of Class B and Class C Bank stock.

(b) If a meeting is closed, the Board may omit from the announcement information usually included, if and to the extent that it finds that disclosure would be likely to have any of the consequences listed in § 1600.6.

(c) Where a majority of the Board members determine by recorded vote that Bank business requires that a meeting be called on less than ten days notice, public announcement shall be made at the earliest practicable time. Such announcement will state the time, place, and the subject matter of the meeting, whether it is to be open or closed to the public, and the name and telephone number of the official designated to respond to requests for information about the meeting.

(d) The time or place of a meeting may be changed following the public announcement required by paragraph (a) of this section only if the Secretary publicly announces such change at the earliest practicable time. The subject matter of a meeting, or the determination of the Board to open or close a meeting, or portion of a meeting, to the public, may be changed following the public announcement required by this section only if:

(1) A majority of the Directors determines by a recorded vote that business so requires and that no earlier announcement of the change was possible, and

(2) The Secretary publicly announces such change and the vote of each Director upon such change at the earliest practicable time.

(e) The earliest practicable time, as used in this subsection, means as soon as possible, which should in few, if any, instances be later than the commencement of the meeting or portion in question.

(f) Each person interested in attending an open meeting of the Board should notify the Assistant Secretary of the Board at least one business day prior to the open meeting of their intention to attend the meeting. Any person who fails to do so may not be accommodated if there is insufficient space in the meeting room.

§ 1600.6 Bases for closing a meeting to the public.

(a) A portion or portions of a Board meeting may be closed to the public and any information pertaining to such meeting otherwise required by § 1600.3 to be disclosed to the public may be withheld, where the Board determines that public disclosure of information to

be discussed at such meetings is likely to:

(1) Disclose matters that are:

(i) Specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy and

(ii) In fact properly classified pursuant to such Executive Order;

(2) Relate solely to the internal personnel rules and practices of the Bank;

(3) Disclose matters specifically exempted from disclosure by statute (other than the Freedom of Information Act, 5 U.S.C. 552), provided that such statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Involve accusing any person of a crime, or formally censuring any person;

(6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would:

(i) Interfere with enforcement proceedings,

(ii) Deprive a person of a right to a fair trial or to an impartial adjudication,

(iii) Constitute an unwarranted invasion of personal privacy, or

(iv) Disclose the identity of a confidential source, and, in the case of a record compiled by a criminal enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,

(v) Disclose investigative techniques and procedures, or

(vi) Endanger the life or physical safety of law enforcement personnel;

(8) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of the Bank or any other agency responsible for the regulation or supervision of financial institutions;

(9) Disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed action of the Board or of another agency, except that this shall not apply in any instance where the content or nature of the proposed action has already been disclosed to the public or where the Board is required by law to make such disclosure on its own initiative prior to taking final action on such proposal; or

(10) Specifically concern the Board's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the Board of a particular case of formal agency adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

(b) Any Board meeting or portion thereof, which may be closed, or any information which may be withheld under paragraph (a) of this section, will not be closed or withheld, respectively, in any case where the Board finds the public interest requires otherwise.

§ 1600.7 Procedures for closing a meeting to the public.

(a) A majority of all Directors may vote to close a meeting or withhold information pertaining to that meeting. A separate vote shall be taken with respect to any action under § 1600.6(a). A majority of the Board may act by taking a single vote with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular subject matter and is scheduled to be held no more than thirty days after the initial meeting in such series. The vote of each Director participating in such vote shall be recorded and no proxy shall be allowed.

(b) Whenever any person whose interest may be directly affected by a portion of the Board's meeting requests that the Board close such portion to the public on the basis of exemptions in paragraph (a) (5), (6), or (7) of § 1600.6, the Board, upon request of any one of its members, will vote whether or not to close such portion of the meeting. The vote of each Director participating in such vote shall be recorded and no proxy shall be allowed.

(c) Before every Board meeting closed on the basis of one or more of the exemptions in § 1600.6(a), the Legal Counsel will publicly certify that, in Counsel's opinion, the meeting may be closed to the public and shall state each relevant exemption.

(d) Within one business day after any vote taken pursuant to paragraph (a), (b), or (c) of this section, the Board will make publicly available a written copy of the vote, reflecting the vote of each Board member. Except to the extent that such information is exempt from disclosure, if a meeting or portion of a meeting is to be closed to the public, the Board will make publicly available within one business day after the required vote a full written explanation of its action, together with a list of all persons expected to attend the meeting and their affiliation.

§ 1600.8 Transcript, recording or minutes; availability to the public.

(a) The Secretary of the Board will maintain the following records for each Board meeting, or portion thereof which is closed to the public pursuant to a vote under § 1600.7:

(1) A copy of the Legal Counsel's certification required by § 1600.7;

(2) A copy of a statement from the presiding officer which sets forth the time and place of the closed meeting or portion thereof and a list of persons present; and

(3) A complete verbatim transcript or electronic recording adequate to record fully the proceedings of each Board meeting or portion of a meeting, except that in the case of a meeting or portion of a meeting closed to the public on the basis of exemption in paragraph (a)(8) or (10) of § 1600.6, the Secretary of the Board will maintain either a transcript, electronic recording, or a complete set of minutes. Such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of actions taken and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll-call vote reflecting the vote of each member on the question. All documents considered in connection with any action will be identified in such minutes.

(b) The retention period for the records required by paragraph (a) of this section will be for a period of at least two years after the particular Board meeting or until one year after the conclusion of any Board proceeding with respect to which the meeting or portion thereof was held, whichever occurs later.

(c) The Secretary of the Board will make promptly available to the public the transcript, electronic recording, transcription of the recording, or minutes of the discussion of any item on the agenda of a Board meeting, except for such item or items of such discussion as the Board determines to contain

information which may be withheld on the basis of one or more of the exemptions in § 1600.6.

(d) Requests for public inspection of electronic recording, transcripts or minutes of Board meetings shall be made to the Assistant Secretary of the Board of Directors of the Rural Telephone Bank, room 4051-South Building, U.S. Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC 20250. Requests for inspection or copies of transcripts shall specify the date of the meeting, the name of the agenda and the agenda item number; this information will appear in the notice of the meeting.

(e) The transcripts, minutes, or transcriptions of electronic recordings of a Board meeting will disclose the identity of each speaker, and will be furnished to any person at the actual cost of transcription or duplication.

Dated: May 3, 1991.

Gary C. Byme,

Governor, Rural Telephone Bank.

[FR Doc. 91–14335 Filed 6–18–91; 8:45 am]

BILLING CODE 3410–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR–91–12]

Petition for Rulemaking; Summary of Petition Received; Reopening of Comment Period

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for rulemaking received; reopening of comment period.

SUMMARY: This action reopens the comment period of a petition for rulemaking published on April 11, 1991 (56 FR 14660). The comment period in the matter of Docket No. 26487 is being reopened for an additional 90 days in order to provide the citizens who will be affected by this proposal for additional time to submit their comments.

DATES: Comments on the petition must be received on or before: September 17, 1991.

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

FOR FURTHER INFORMATION CONTACT: Ida Klepper, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–9688.

SUPPLEMENTARY INFORMATION:

Docket No.: 26487.

Petitioner: Mr. Harry E. McClure.

Regulations Affected: 14 CFR 43.1(b).

Description of Petition: To clarify the wording in § 43.1(b) to include provisions to control the maintenance that must be performed an amateur-built aircraft, and who is authorized to maintain them in an airworthy condition.

Petitioner's Reason for the Request: The petitioner is concerned that a large number of amateur-built aircraft are incorporating type certificated engines and propellers into their amateur-built aircraft and there are no provisions to control the maintenance that must be performed on these products and who is authorized to maintain them in an airworthy condition.

Issued in Washington, DC, on June 12, 1991.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

[FR Doc. 91–14559 Filed 6–18–91; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 90–ANM–08]

Proposed Amendment, Control Zone and Transition Area, Pullman, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Pullman, Washington Control Zone and Transition Area. This action is necessary because a new VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME–A) approach is being established for the Pullman Airport. The effect would be to define new controlled airspace which will contain the new procedure. The intent of the action is to accurately define the controlled airspace for pilot reference. The changes would be depicted on aeronautical charts enabling pilots to determine when instrument flight rules may be required.

DATES: Comments must be received on or before August 15, 1991.

ADDRESSES: Send comments on the proposal to: Bette VanManen, ANM–538, Federal Aviation Administration, Docket No. 90–ANM–08, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Bette VanManen, ANM–538, Federal Aviation Administration, Docket No. 90–ANM–08, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Telephone: (206) 227–2538.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 90–ANM–08." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, ANM–530, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also

request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA proposes an amendment to §§ 71.171 and 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Pullman, Washington Control Zone and Transition Area. This would define new controlled airspace which will contain the new VOR/DME-A approach being established for the Pullman-Moscow Regional Airport. The intent of this action is to accurately define the controlled airspace for pilot reference. The changes would be depicted on aeronautical charts enabling pilots to determine when instrument flight rules may be required. Sections 71.171 and 71.181 of part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6G dated September 4, 1990.

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

List of Subjects in 14 CFR Part 71

Aviation Safety, Control zones, Transition areas.

The Proposed Amendment

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

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

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

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

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Pullman, WA [Revised]

Within a 4.8 mile radius of Pullman-Moscow Regional Airport (lat 46°44'38" N, long 117°06'31" W) and within 2 miles each side of the Pullman VOR/DME (lat 46°40'28" N, long 117°13'21" W) 047° radial extending from the 4.8 mile radius to the VOR/DME, and within 2 miles each side of the 046° radial extending from the 4.8 mile radius to 16 miles northeast of the VOR/DME. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and times will be continuously published in the Airport/Facility Directory.

§ 71.181 [Amended]

3. Section 71.181 is amended as follows:

Pullman, WA [Revised]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Pullman-Moscow Regional Airport (lat 46°44'38" N, long 117°06'31" W) and within 2 miles each side of the Pullman VOR/DME (lat 46°40'28" N, long 117°13'21" W) 232° and 047° radials extending from the 5-mile radius to 8 miles southwest of the VOR/DME, and that airspace within a 24-mile radius of the Pullman VOR/DME extending clockwise from the 342° radial to a line 5 miles east of and parallel to the 046° radial of the VOR/DME; and that airspace extending upward from 1,200 feet above the surface within 9 miles northwest and 6 miles southeast of the Pullman VOR/DME 052° and 232° radials extending from 17.5 miles southwest to 7.5 miles northeast of the VOR/DME.

Issued in Seattle, Washington, on June 13, 1991.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division.

[FR Doc. 91-14567 Filed 6-18-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI-59-89]

RIN 1545-A037

Proceeds of Bonds Used for Reimbursement; Correction

AGENCY: Internal Revenue Service.

ACTION: Correction to notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains corrections to the notice of proposed rulemaking (FI-59-89), which was published in the Federal Register on April 25, 1991 (56 FR 19046). The proposed regulations clarify when the allocation of bond proceeds to reimburse expenditures previously made by an issuer is treated as an expenditure of the bond proceeds.

FOR FURTHER INFORMATION CONTACT: William P. Cejudo, (202) 566-3283 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is the subject of these corrections amends the Income Tax Regulations (26 CFR part 1) to provide proposed rules regarding when the use of bond proceeds to reimburse a previously paid expenditure is treated as an expenditure of the bond proceeds for purposes of sections 103 and 141-150 of the Internal Revenue Code. The proposed regulations reflect the modifications to section 103 and the addition of sections 141-150 to the Code by the Tax Reform Act of 1986 (Pub. L. 99-514, 100 Stat. 2602).

Need for Correction

As published, the proposed regulations contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

PART 1—[CORRECTED]

Accordingly, the publication of proposed regulations (FI-59-89), which was the subject of FR Doc. 91-9561, is corrected as follows:

§ 1.103-17 [Corrected]

Paragraph 1. In the list below for § 1.103-17(f)(5) *Example 1* and *Example 2*, for each location indicated in the left column, remove the date indicated in the middle column, and add the date indicated in the right column:

Location	Remove	Add
Example 1:		
(i), line 1	1993	1994
(i), line 18	1993	1994
(i), line 19	1993	1994
(ii), line 1	1994	1995
(ii), line 7	1991	1992
(ii), line 8	1994	1995
(ii), line 13	1993	1994
(ii), line 14	1993	1994
(ii), line 15	1994	1995
(iii), line 2	1993	1994

Location	Remove	Add
(iii), line 4	1994	1995
Example 2:		
(i), line 17	1993	1994

§ 1.103–18 [Corrected]

Par. 2. On page 19054, column 3, § 1.103–18(a), line 4, the language "bond under section 141(d)(1)(A) relating" is corrected to read "bond under section 141(e)(1)(A) relating".

Par. 3. On page 19054, column 3, § 1.103–18(a), line 6, the language "141(d)(1)(D) relating to qualified small" is corrected to read "141(e)(1)(D) relating to qualified small".

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91–14548 Filed 6–18–91; 8:45 am]

BILLING CODE 4830–01–M

26 CFR Part 1

[CO–90–90]

RIN 1545–AP28

Income From Discharge of Indebtedness—Acquisition of Indebtedness by Person Related to the Debtor; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to the notice of proposed rulemaking (CO–90–90), which was published on Friday, March 22, 1991 (56 FR 12135). The proposed regulations provide rules concerning the acquisition of outstanding indebtedness by a person related to the debtor from a person who is not related to the debtor.

FOR FURTHER INFORMATION CONTACT: Victor L. Penico (202) 566–3618 or Warren Joseph at (202) 566–4430 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is the subject of these corrections proposes the addition of § 1.108–2 to part 1 of title 26 of the Code of Federal Regulations under section 108.

Need for Correction

As published, the proposed regulations contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

PART 1—[CORRECTED]

Accordingly, the publication of the proposed regulations (CO–90–90), which was the subject of FR Doc. 91–6904, is corrected as follows:

§ 1.108–2 [Corrected]

Par. 1. On page 12139, column two, in § 1.108–2, paragraph (b)(2)(ii)(B), line two, the colon is removed following the word "both" and is corrected to read "——".

Par. 2. On page 12140, column two, in § 1.108–2, paragraph (e)(2) under the heading *"Examples"*, lines six and seven, the language "jurisdiction of a court in a title 11 the gross income of the related holder" is corrected to read "jurisdiction of a court in a title 11 case and no indebtedness is qualified farm indebtedness described in section 108(g)".

Par 3. On page 12140, column two, in § 1.108–2, paragraph (e)(2), under *Example 1,* lines five, six, and seven, the language "$10,000,000 and provides for interest payments of 10 percent on December 31 of each year and a payment at maturity of" is corrected to read "$10,000,000 and provides monthly for interest payments of $30,000 payable at the end of each month and a payment at maturity of".

Par. 4. On page 12140, column two, in § 1.108–2, paragraph (e)(2), paragraph (iii) of *Example 1,* lines four and five, the language "$321,697.52, in 1993, $333,196.33; and in 1994, $345,106.15" is corrected to read "$289,144.88; in 1993, $331,286.06; and in 1994, $379,569.06".

Par. 5. On page 12140, column two, in § 1.108–2, paragraph (e)(2), under *Example 2,* line eight, the figure "$9,321,697.52" is corrected to read "$9,289,144.88".

Par. 6. On page 12140, column two, in § 1.108–2, paragraph (e)(2), under *Example 2,* line nine, the figure "$78,302.48" is corrected to read "$110,855.12".

Par. 7. On page 12140, column two, in § 1.108–2, paragraph (e)(2), under *Example 3,* line seven, the language "$9,026,808.13, which is the" is corrected to read "$9,022,621.41 which in this case equals the".

Par. 8. On page 12140, column two, in § 1.108–2, paragraph (e)(2), under *Example 3,* lines ten, eleven, and twelve, the language "($9,000,000) plus the sum of the daily portions from January 1, through February 1 ($26,808.13)" is corrected to read "($9,000,000) plus the accrued original issue discount through February 1 ($22,621.41)".

Par 9. On page 12140, column three, in § 1.108–2, paragraph (e)(2), under *Example 3,* line eight, the language "to P's adjusted basis, and under section" is corrected to read "to P's adjusted basis, and, under section".

Par. 10. On page 12140, column three, in § 1.108–2, paragraph (e)(2), under *Example 3,* line ten, the figure "$9,026,808.13" is corrected to read "$9,022,641.41".

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91–14549 Filed 6–18–91; 8:45 am]

BILLING CODE 4830–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket Number FEMA–7024]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed modified base (100-year) flood elevations listed below for selected locations in the Nation. The base (100-year flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

DATES: The period for comment will be ninety (90) days following the second publication of the proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of modified base flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (title XIII of the Housing and Urban Development Act of 1968, (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR part 67.4(a).

These elevations, together with the floodplain management measures required by § 60.3 of the program

regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state or regional entities. These proposed modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance coverage on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed modified flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with minimum Federal standards, the elevations prescribe how high to build in the floodplain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, floodplains.

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. The proposed modified base flood elevations for selected locations are:

PROPOSED MODIFIED BASE FLOOD ELEVATIONS

State	City/town/county	Flooding source	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Alabama	City of Birmingham, Jefferson County.	Unnamed Creek 31	About 1,050 feet upstream of 10th Avenue	*591	*591
			Just downstream of 1st Avenue	*605	*604
Maps available for inspection at the Community Planning Department, 710 North 20th Street, Birmingham, Alabama.					
Send comments to The Honorable Richard Arrington, Jr., Mayor, City of Birmingham, 710 North 20th Street, Birmingham, Alabama 35203.					
Georgia	Unincorporated areas of Walker County.	Chattanooga Creek	About 400 feet downstream of the confluence of Dry Creek.	*658	*660
			Just downstream of upstream crossing of State Route 193.	*685	*685
			Just upstream of upstream crossing of State Route 193.	*685	*690
			Just downstream of Nickajack Road	*700	*700
		Dry Creek	At mouth	*658	*660
			About 1,160 feet upstream of Maple Street	*660	*660
Maps available for inspection at the Property and Records Office, P.O. Box 445, Lafayette, Georgia.					
Send comments to The Honorable Roy E. Parrish, Jr., Walker County Commissioner, P.O. Box 445, Lafayette, Georgia 30728.					
Maryland	Secretary, Town Dorchester County.	Warwick River North Branch	Along northern corporate limits	None	* 6
		Warwick River South Branch	Along southern corporate limits	None	* 6
Maps available for inspection at the Town Hall, Main Street, Secretary, Maryland.					
Send comments to The Honorable Walter R. Collins, Mayor of the Town of Secretary, Dorchester County, P.O. Box 248, Secretary, Maryland 21664.					
Michigan	Township of Clinton, Macomb County.	Clinton River	Just downstream of confluence of Clinton River North Branch.	* 593	* 593
			About 2,100 feet upstream of confluence of Red Run Drain.	* 602	* 601
		Red Run Drain	At mouth	* 602	* 601
			About 2,650 feet upstream of Metropolitan Parkway.	* 605	* 604
Maps available for inspection at the Planning Department, Mr. Steve Cassin, 40700 Romeo Plank Road, Mt. Clemens, Michigan.					
Send comments to The Honorable Mark Kohl, Township Supervisor, Township of Clinton, 40700 Romeo Plank Road, Mt. Clemens, Michigan 48044.					
Nevada	Elko County Unincorporated Areas.	Susie Creek	Just below Western Pacific Railroad	None	* 4,907
			At U.S. Highway 40	None	* 4,913
			Approximately 300 feet upstream of westbound land of Interstate 80.	None	* 4,917
		Unnamed Wash	Approximately 1,500 feet downstream of Lamoille Highway.	None*	5,070
			Approximately 1,200 feet downstream of Lamoille Highway.	None	* 5,075

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Flooding source	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 800 feet downstream of Lamoille Highway.	None	* 5,08[illegible]
			Approximately 40 feet downstream of Lamoille Highway.	None	* 5,087
			Approximately 40 feet upstream of Lamoille Highway.	None	* 5,094
			Approximately 300 feet upstream of Lamoille Highway.	None	* 5,094

Maps are available for review at the Elko County Engineering Department, 569 Court Street, Elko, Nevada.

Send comments to the Honorable Ernie Hall, Chairman, Elko County Board of Commissioners, County Courthouse, Elko, Nevada 89801.

New Jersey	Teaneck, Township Bergen County.	Overpeck Creek	At the downstream corporate limits	* 9	* 7
			Approximately 1,000 feet upstream of State Route 4.	* 9	* 8
		Teaneck Creek	At confluence with Overpeck	* 9	* 7
			Approximately 1,800 feet upstream of Degraw Avenue.	* 9	* 8
		Tributary to Overpeck Creek	At confluence with Overpack Creek	* 9	* 8
			At Overpeck Avenue	* 9	* 8

Maps available for inspection at the Municipal Building, 818 Teaneck Road, Teaneck, New Jersey.

Send comments to The Honorable Eleanor M. Kieliszek, Mayor of the Township of Teaneck, Bergen County, Municipal Building, 818 Teaneck Road, Teaneck, New Jersey 07666.

New York	Allegany, Village Cattaraugus County.	Five Mile Creek	At downstream corporate limits	* 1,416	* 1,415
			Approximately 100 feet upstream of upstream corporate limits.	* 1,417	* 1,416

Maps available for inspection at the Village Hall, 188 West Main Street, Allegany, New York.

Send comments to The Honorable Joseph M. Catalona, Mayor of the Village of Allegany, Cattaraugus County, 188 West Main Street, Allegany, New York 14706.

North Dakota	City of Rugby Pierce County.	Tributary to Rush Lake	At the downstream extraterritorial limits	*1,520	*1,518
			Just downstream of Fourth Avenue Southwest (State Highway 3).	*1,523	*1,521
			Just upstream of Third Avenue Southeast	*1,533	*1,530
			Approximately 1,800 feet upstream of the county road locted east of the City of Rugby.	*1,535	*1,535

Maps are available for review at the City Auditor's Office, City Hall, 223 South Main Avenue, Rugby, North Dakota.

Send comments to The Honorable Curtis Teigen, Mayor, City of Rugby, City Hall, 223 South Main Avenue, Rugby, North Dakota 58368.

Oklahoma	Glenpool, City Tulsa County.	Nichols Creek	At the downstream side of U.S. Routes 75 & 169.	*684	*685
			33rd West Avenue (upstream corporate limits)	None	*757
		Rolling Meadows Creek	At U.S. Routes 75 & 169	None	*695
			At the upstream corporate limits	None	*727

Maps available for inspection at the City Manager's Office, 14522 Broadway, Glenpool, Oklahoma.

Send comments to The Honorable Don Bahnmaier, Mayor of the City of Glenpool, Tulsa County, P.O. Box 70, 14522 Broadway, Glenpool, Oklahoma 74037.

Oklahoma	Owasso, City Tulsa County.	Bird Creek Tributary 5A	Approximately 350 feet upstream of U.S. Highway 169.	*603	*604
			Approximately 3,150 feet upstream of 86th Street North.	*653	*654

Maps available for inspection at the Community Development Office, 207 South Cedar, Owasso, Oklahoma.

Send comments to Mr. Rodney Ray, Owasso City Manager, tulsa County, 207 South Cedar, Owasso, Oklahoma 74055.

Oklahoma	Sequoyah County Unincorporated Areas.	West Shiloh Branch	Approximately 0.6 mile downstream of West Shiloh Avenue.	*481	*482
			Approximately 130 feet upstream of County Road.	None	*540
		Little Sallisaw Creek	Just upstream of Dogwood Street	*482	*481
			Approximately 0.5 mile updstream of Interstate Route 40.	None	*501
		Hog Creek	At confluence with Little Sallisaw Creek	*494	*491
			Approximately 0.9 mile downstream of U.S. Route 59.	*521	*522

Maps available for inspection at the Sequoyah County Conservation District, 101 McGee Drive, Sallisaw, Oklahoma.

Send comments to Mr. Bruce Tabor, Chairman of th eSequoyah County Board of Commissioners, 117 South Oak, Sallisaw, Oklahoma 74955.

Pennsylvania	Wilkes-Barre, city, Luzerne County.	Susquehanna River	Approximately .4 mile upstream of the downstream corporate limits.	*546	*545
			At upstream corporate limits	*551	*549

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Flooding source	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Mill Creek	At confluence with the Susquehanna River	*551	*549
			Approximately 900 feet upstream of George Avenue.	*551	*550
		Laurel Creek	At confluence with Mill Creek	*551	*549
			Approximately 1,200 feet upstream of the confluence of Coal Brook.	*562	*561
		Coal Brook	At confluence with Laurel Run	None	*551
			Approximately 1,040 feet upstream of State Route 309.	None	*553

Maps available for inspection at the City Hall, Planning Department, 40 East Market Street, Wilkes-Barre, Pennsylvania.

Send comments to The Honorable Lee A. Namey, Mayor of the City of Wilkes-Barre, Luzerne County, 40 East Market Street, Wilkes-Barre, Pennsylvania 18711.

South Dakota	Union County	Missouri River	At the confluence with Big Sioux River (county boundary).	None	*1,090
			Approximately 3.2 miles upstream of the confluence with Big Sioux River (at river mile 737.0).	None	*1,092
			Approximately 4.4 miles upstream of the confluence with Big Sioux River (at river mile 738.2).	None	*1,093
		Big Sioux River	At the confluence with Missouri River (county boundary).	None	*1,090
			Approximately 2,200 feet downstream of Interstate Highway 29..	None	*1,093
			Just downstream of Interstate Highway 29	None	*1,094

Maps are available for review at the Office of the Land Use Administrator, Union County Courthouse, 200 East Main Street, Elk Point, South Dakota.

Send Comments to The Honorable M.C. Bak, Chairman, Union County Commissioners, P.O. Box 519, Elk Point, South Dakota 57025-0640.

Virginia	Bedford, city, independent city.	Unnamed tributary to Little Otter River.	At confluence with Little Otter River	None	*841
			Approximately 850 feet upstream of Crenshaw Street.	None	*920
		West Branch	Approximately 400 feet upstream of confluence with unnamed tributary to Little Otter River.	None	*892
			At U.S. Route 460	None	*892
		Little Otter River	Approximately 500 feet downstream of State Route 43.	None	*836
			At confluence of unnamed tributary to Little Otter River.	None	*841

Maps available for inspection at the City Hall, 215 E. Main Street, Bedford, Virginia.

Send Comments to The Honorable G. Michael Shelton, Mayor of the City of Bedford, P.O. Drawer 807, Bedford, Virginia 24523.

Issued: June 10, 1991.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 91-14447 Filed 6-18-91; 8:45 am]

BILLING CODE 6718-03-M

44 CFR PART 67

[Docket No. FEMA-7020]

Proposed Flood Elevation Determination

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations previously published at 56 FR 22679 on May 16, 1991. This notice corrects the name of the state in which the City of Clarksburg, Harrison County, West Virginia, is located.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the City of Clarksburg, Harrison County, West Virginia, previously published at 56 FR 22679 on May 16, 1991, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.

List of Subjects in 44 CFR Part 67

Flood Insurance, Floodplains.

On page 22684, in the May 16, 1991 issue of **Federal Register**, the entry under State name for Clarksburg, City, Harrison County, is corrected to read, "West Virginia".

Issued: June 7, 1991.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 91-14446 Filed 6-18-91; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL MARITIME COMMISSION

46 CFR Part 504

[Docket No. 91-28]

Procedures for Environmental Policy Analysis

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission proposes to amend its Procedures for Environmental Policy Analysis, which set forth requirements for environmental analysis of Commission actions under the National Environmental Policy Act of 1969. Specifically, the proposed amendment would categorically exclude from the requirement for an environmental analysis actions concerning non-vessel-operating common carrier ("NVOCC") filings of surety bonds and designations of resident agents for service of process pursuant to 46 CFR part 583.

DATES: Comments due on or before July 19, 1991.

ADDRESSES: Send comments (original and fifteen copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573 (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: John Robert Ewers, Director, Bureau of Administration, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573 (202) 523-5866.

SUPPLEMENTARY INFORMATION: The Commission's Procedures for Environmental Policy Analysis (46 CFR part 504) specify the types of environmental analyses required for Commission actions under the National Environmental Policy Act of 1969. Actions having a potential for environmental impact as defined in § 504.2(c) are subjected to environmental assessments that result in either findings of no significant impact (§ 504.6) or environmental impact statements (§ 504.7). Actions with little or no potential for environmental impact are categorically excluded from the requirements for environmental assessment (§ 504.4).

Section 504.4 lists routine types of Commission actions that are excluded from the requirements for analysis. The activities covered by categorical exclusion do not individually or collectively have significant effects upon the quality of the human environment, because they are purely ministerial, or because they do not significantly increase or decrease air, water or noise pollution or use of fossil fuels, recyclables or energy.

On January 15, 1991, (56 FR 1493) the Commission published an Interim rule to implement the NVOCC Amendments of 1990, section 710 of Public Law 101-595. This rule contains, among other things, provisions for the filing of NVOCC surety bonds and designations of resident agents for service of process (for foreign-domiciled NVOCCs). These actions appear to have no potential for environmental impact. Accordingly, the Commission proposes to add such matters to the list of actions excluded from environmental analysis under § 504.4.

Although the Commission, as an independent regulatory agency, is not subject to Executive Order 12291, dated February 17, 1981, it has nonetheless reviewed the rule in terms of this Order and has determined that this rule is not a "major rule" because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units or small governmental organizations.

The Paperwork Reduction Act, 44 U.S.C. 3501-3520, does not apply to this notice of proposed rulemaking because the amendment to part 504 of title 46, Code of Federal Regulations, does not impose any additional reporting or recordkeeping requirements or change the collection of information from members of the public which require the approval of the Office of Management and Budget.

Lists of Subjects in 46 CFR Part 504

Environmental Impact Statements.

Therefore, pursuant to 5 U.S.C. 553, 42 U.S.C. 4332(2)(b), section 710 of Public Law 101-595 and 46 U.S.C. app. section 1716, the Federal Maritime Commission proposes to amend part 504, title 46, Code of Federal Regulations, as follows:

1. The authority citation for part 504 continues to read as follows:

Authority: 5 U.S.C. 552, 553; Sec. 21 and 43 of the Shipping Act, 1916 (46 U.S.C. app. 820 and 841a); secs. 13 and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1712 and 1716); sec. 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(b)) and sec. 382(b) of the Energy Policy and Conservation Act of 1975 (42 U.S.C. 6362)

2. Section 504.4 is amended by adding a new paragraph (a)(3), to read as follows:

§ 504.4 Categorical exclusions.

(a) * * *

(3) Filings by non-vessel-operating common carriers of surety bonds and designations of resident agents for service of process pursuant to 46 CFR part 583.

* * * * *

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-14498 Filed 6-19-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91-159, RM-7719]

Radio Broadcasting Services; Medicine Lodge, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Florida Public Radio, Inc., proposing the substitution of Channel 269C2 for Channel 240A at Medicine Lodge, Kansas, and modification of the construction permit for Station KREJ to specify the new channel. In accordance with section 1.420(g) of the Commission's Rules, should another party indicate interest in the Class C2 allotment, the modification cannot be implemented unless an equivalent class channel is also allotted. The coordinates for Channel 269C2 are 37-13-58 and 98-39-43.

DATES: Comments must be filed on or before August 5, 1991, and reply comments on or before August 20, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Randy Henry, President, Florida Public Radio, Inc., 505 Josephine Street, Titusville, FL 32796; (petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 91–159, adopted May 31, 1991, and released June 13, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street, NW., Washington, DC 20036, (202) 452–1422.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–14493 Filed 6–18–91; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 91–160, RM–7718]

Radio Broadcasting Services; Sterling, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Early Williams proposing the allotment of Channel 239A to Sterling, Kansas, as that community's first FM broadcast service. There is a site restriction 4.6 kilometers (2.9 miles) southwest of the community at coordinates 38–10–56 and 98–14–27.

DATES: Comments must be filed on or before August 5, 1991, and reply comments on or before August 20, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Early Williams, 2301–22nd Street West, Bradenton, Florida 34205; (petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 91–160, adopted May 31, 1991, and released June 13, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street, NW., Washington, DC 20036, (202) 452–1422.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–14494 Filed 6–18–91; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 91–161, RM–7701]

Radio Broadcasting Services; Jasper, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by James M. Lout seeking the allotment of Channel 297A at Jasper, Texas, as the community's third local FM transmission service. Channel 297A can be allotted to Jasper in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.5 kilometers (0.9 miles) north of the community to avoid a short-spacing to the vacant allotment of Channel 297C3, Lake Arthur, Louisiana. The coordinates for Channel 297A at Jasper are North Latitude 30–56–13 and West Longitude 93–59–47.

DATES: Comments must be filed on or before August 5, 1991, and reply comments on or before August 20, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Julian P. Freret, Esq., Booth, Freret & Imlay, 1920 N Street, NW., Suite 150, Washington, DC 20036 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91–161 adopted May 31, 1991, and released June 13, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–14495 Filed 6–18–91; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 80

[PR Docket No. 91-167; FCC 91-168]

Second Calling Channel on VHF Marine Radio, Channel 9

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Communications Commission proposes to amend the Maritime Services Rules in PR Docket No. 91-167, FCC 91-168, to permit VHF marine radio channel 9 to be used as a second calling channel. By proposing to establish a second calling channel, it is believed that congestion on channel 16, the internationally designated distress, safety and calling frequency, will be reduced. This Rule Making was proposed by the Field Operations Bureau, Boston Marine Safety Project, as part of an ongoing effort to improve safety and distress communications procedures.

DATES: Comments must be submitted on or before August 2, 1991. Reply comments may be submitted on or before August 19, 1991.

ADDRESSES: Comments may be mailed to the Federal Communications Commission, Office of the Secretary, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Susan Jones, Private Radio Bureau, Aviation and Marine Branch, 2025 M Street, NW., Washington, DC 20554, (202) 632-7175.

SUPPLEMENTARY INFORMATION: To aid us in the final determination in this matter, we are conducting a study, in cooperation with the U.S. Coast Guard, on the effect of using marine VHF channel 9 as a second calling channel in the Boston Harbor and its effect on reducing congestion on channel 16. We will use results from this study and the comments we receive in this proceeding to determine any future action.

List of Subjects for 47 CFR Part 80

Maritime services, Frequencies, Radio.

Authority: Authority for issuance of this Notice is contained in sections 4(i), 303(f) and (r), of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) 303(f) and (r).

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-14646 Filed 6-18-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 390

[FHWA Docket No. MC-91-6]

RIN 2125-AC28

Federal Motor Carrier Safety Regulations; General; Motor Vehicle Marking

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FHWA is proposing to amend its commercial motor vehicle marking requirements to apply to every commercial motor vehicle subject to the Federal Motor Carrier Safety Regulations (FMCSRs). This action to include a broader range of vehicles will improve uniformity of identification of commercial motor vehicles operated on the nation's highways and aid enforcement officers in carrying out their duties.

DATES: Comments must be received on or before August 19, 1991.

ADDRESSES: Submit written, signed comments to FHWA Docket No. MC 91-6, room 4232, HCC-10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Commenters may, in addition to submitting "hard copies" of their comments, submit a floppy disk in standard or high density formats containing files compatible with word processing programs such as WordPerfect, WordStar, or Microsoft "Word" for IBM systems, or WordPerfect or Microsoft Word for Macintosh. Commenters should clearly label submitted disk with the software format used (e.g., WordPerfect 5.0 (IBM) or Microsoft Word 4.0 (Mac)). All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Neill L. Thomas, Office of Motor Carrier Standards (202) 366-2981, or Mr. Paul L. Brennan, Office of the Chief Counsel (202) 366-0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: A final rule published in the **Federal Register** on May 19, 1988 (53 FR 18042, Docket No. MC-114) (effective November 15, 1988), among other things amended part 390 of the FMCSRs by adding § 390.21, marking of commercial motor vehicles. This rule generally requires self-propelled motor vehicles operated by interstate private motor carriers of property and interstate motor carriers of migrant workers to be marked. The marking is to be located on both sides of the self-propelled vehicle and consists of the motor carrier's name or trade name, the city or community and State (name abbreviated) in which the carrier maintains its principal place of business or in which the vehicle is customarily based, and the motor carrier identification number, if issued by the FHWA, preceded by the letters "USDOT."

Four classes of motor carriers were not subject to the DOT's 1988 final rule. They included: (1) For-hire motor carriers transporting the U.S. mail in interstate commerce under contract to the United States Postal Service; (2) for-hire motor carriers of passengers transporting school children and/or school personnel in interstate commerce when such transportation is at the direction and/or under the control of a public school system and is not a "school bus operation" as defined in § 390.5; (3) for-hire motor carriers of property engaged in the emergency towing of disabled vehicles from the point of disablement to another location in interstate commerce; and (4) ICC "exempt" motor carriers (i.e., economically exempt, eg., agricultural commodity carriers). These carriers operate a significant number of commercial motor vehicles in interstate commerce.

Private motor carriers of passengers are not now subject to the FMCSRs. 49 CFR 390.3(f)(6). School Bus Fleet Magazine reports in its January 1990 issue that 36 States use contractors for the transportation of school children. Those contractors operated more than 90,000 vehicles during the 1987-1988 school year. The National Star Route Mail Contractors Association estimates that 5,500 of its members operate commercial motor vehicles.

The Interstate Commerce Commission (ICC) regulates the marking of commercial motor vehicles operated by a certain segment of the motor carrier industry. That segment is comprised of two groups of for-hire motor carriers, namely, common and contract motor carriers of property or passengers.

The ICC published a final rule entitled Identification of Vehicles in the **Federal Register** on March 27, 1990 (55 FR 11199). The Commission extended its

regulation to "govern all for-hire motor carriers except those providing (a) Joint, through, regular-route passenger service under continuing lease or interchange agreements, if the vehicle owner's name and "MC" number are displayed as prescribed at 49 CFR 1058.2, and if the carriers have filed with the Commission's appropriate Regional Director(s) and posted in each terminal and ticket agency on the involved routes a published schedule showing the points between which each joint carrier assumes control and responsibility for the vehicle's operation; and (b) Nonscheduled, charter, luxury-type passenger service using limousine-type vehicles with a capacity of six or fewer passengers."

49 CFR 1058.1

The ICC also discontinued a rulemaking in the **Federal Register** on July 11, 1990 (55 FR 28419), which would have eliminated the vehicle marking requirements of 49 CFR 1058 and adjusted the leasing regulations at 49 CFR 1057. The overwhelming majority of the comments received by the ICC indicated that the marking requirement is essential to public safety, allowing immediate identification of vehicles in situations involving moving violations, stolen equipment, security, and unauthorized or uninsured operations.

The Motor Carrier Safety Act of 1984 (MCSA of 1984) (49 U.S.C. app. 2501–2520 (1988)) authorizes the FHWA to establish vehicle marking requirements for all commercial motor vehicles, as defined in the MCSA of 1984, if the agency determines that such a requirement will assist in ensuring that commercial motor vehicles are safely maintained, equipped, loaded, and operated. Requiring all commercial motor vehicles operated in interstate commerce to meet a single identification standard would create a needed nationwide uniformity. Such action would assist Federal and State enforcement personnel in properly identifying motor carriers during roadside vehicle inspections and accident investigations, thus assuring the submission of accurate inspection and accident results and other data into the FHWA and State management information systems. Also, the general public would be able to identify and report to the motor carrier or an enforcement agency any operations being conducted in an unsafe manner by the operator of a commercial motor vehicle.

Unique identification numbers are important to provide motor carrier safety and enforcement personnel and concerned highway users a rapid and sure way to distinguish a particular motor carrier's vehicles. There are many companies with the same name but which are located in different cities or states. As an example, there are twelve independent Arrow Trucking Companies, located in twelve different cities. Without the ability to quickly identify the city and State of domicile, the name of the motor carrier alone will be of little value to the average motorist.

In view of the foregoing, the FHWA proposed to amend its marking requirement regulation to encompass all commercial motor vehicles operated in interstate commerce. Those commercial motor vehicle operated by for-hire motor carriers under authority issued by the ICC would be allowed to meet the FHWA's rules by complying with the compatible marking requirements of the ICC.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The action taken by the FHWA in this document will amend the commercial motor vehicle marking requirements to apply to every commercial motor vehicle subject to the FMCSRs. The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the DOT. It is anticipated that the economic impact of this rulemaking will be minimal. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354), the agency has evaluated the effects of this proposal on small entities. This proposal, if adopted, would require motor carriers to mark commercial motor vehicles. The FHWA believes that the cost of this marking will be minimal. Therefore, under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

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

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The Agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 and has determined that this action would not have any effect on the quality of the environment.

Regulation Identifier Number

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 390

Highway safety, Highways and roads, Motor carriers, Motor vehicle marking, Motor vehicle safety.

Issued on June 11, 1991.

T.D. Larson,

Administrator.

In consideration of the foregoing, the FHWA proposes to amend title 49, Code of Federal Regulations, subtitle B, chapter III, part 390, as follows:

PART 390—[AMENDED]

1. The authority citation for part 390 continues to read as follows:

Authority: 49 U.S.C. app. 2503 and 2505; 49 U.S.C. 3102 and 3104; 49 CFR 1.48.

§ 390.21 [Amended]

2. Paragraph (a) of section 390.21 is revised to read as follows:

§ 390.21 Marking of commercia motor vehicles.

(a) *General.* Every self-propelled commercial motor vehicle operated in interstate commerce and subject to the rules of subchapter B of this chapter must be marked as specified in paragraphs (b), (c) and (d) of this section. Self-propelled commercial

motor vehicles operated by for-hire motor carriers under authority issued by the Interstate Commerce Commission (ICC) may meet the requirements of this section by complying with the marking requirements set forth in 49 CFR part 1058.

* * * * *

[FR Doc. 91-14502 Filed 6-18-91; 8:45 am]
BILLING CODE 4910-22-M

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 840

Notification of Railroad Accidents

AGENCY: National Transportation Safety Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to add a new § 840.7 to part 840, the NTSB Rules Pertaining to Notification of Railroad Accidents. It requires that the operator of a railroad that notifies the NTSB of an accident under § 840.3 must preserve intact and make no attempt to extract data from any event recorder or event recorder data pack, any speed tape, or any other data recording medium that was aboard the accident train or that recorded events pertaining to the accident train during the time surrounding the accident. Recent railroad accident experience has prompted the need for action by the NTSB to ensure the integrity and utility of recorded data pertaining to railroad accidents.

DATES: Interested persons are invited to submit written comments on or before July 19, 1991.

ADDRESSES: Comments should be sent in duplicate to Daniel D. Campbell, General Counsel, National Transportation Safety Board, room 818, 800 Independence Avenue SW., Washington, DC 20594.

FOR FURTHER INFORMATION CONTACT: Daniel D. Campbell, General Counsel (202) 382-6540.

SUPPLEMENTARY INFORMATION: Section 840.3 requires notification to the National Transportation Safety Board of certain railroad and rail rapid transit accidents. By the addition of a new section to part 840, the Board is proposing to require that the operator of a railroad that notifies the NTSB of an accident under § 840.3 also be required to preserve intact, and make no attempt to extract data from, any event recorder or data pack from any event recorder, any speed tape, or any other recording medium, that contains or that may contain information pertaining to the operation of the accident train, until the NTSB takes custody thereof or a release is made to the operator by a representative of the NTSB.

Recent railroad accident experience has prompted the need for action by the NTSB to ensure the integrity and utility of recorded data pertaining to railroad accidents. Two examples are the August 9, 1990, collision between two Norfolk Southern freight trains near Sugar Valley, Georgia, and the December 12, 1990, collision between an Amtrak train and a Massachusetts Bay Transportation Authority train in Boston. In both of these accidents, valuable information was lost because the available event recorder data packs were mishandled. In the latter accident an end-of-tape mark was placed over approximately 13.6 minutes of recorded data that extended from approximately 1.2 minutes before the last stop of the train prior to the accident to approximately 3.0 minutes after the accident. NTSB laboratory personnel worked for weeks to recover and interpret the remaining raw electrical data in the area of the end-of-tape mark. Similarly, a read-out induced anomaly obscured needed information in the earlier Norfolk Southern collision. Other investigations have also been delayed or potentially compromised because of delayed release of recorders to the NTSB for recovery of data. These occurrences have made it apparent that there is, within the rail community, some lack of appreciation regarding the NTSB's authority over the instrumentalities of transportation that have been involved in an accident within NTSB jurisdiction.

It should be beyond question (1) that the Safety Board can require the production of evidence in the context of a safety investigation and, (2) that the Board has the authority to secure and control the scene of an accident and the instrumentalities of transportation involved.[1] Similarly, the Board has the authority to do such testing of equipment and facilities as is necessary, with recognition of an operator's need to be free of unnecessary obstruction to continue operation of his business.[2] In general, testing is to be accomplished with the cooperation of the owner and in a manner that preserves, to the maximum extent possible, any evidence related to the accident. But the manner of testing and control of the accident scene are ultimately committed to the Board's discretion.[3]

The rule here proposed is fully consistent with the scope and intent of the Independent Safety Board Act.[4] The rule is meant only to preserve evidence. It imposes no requirement as to the use of event recorders. The proposal merely requires that if an event recorder or similar device were installed at the time of an accident, the recorder and all data packs, paper tapes or other recording media should be preserved as evidence for initial examination by the Board. The rule will not obstruct unnecessarily the use of transport facilities or unnecessarily delay their reopening. Further, it has been the Board's customary practice to return event recorders to their owners as soon as practical after data has been extracted. Consequently, operators will not suffer significant inconvenience regarding their own post-accident analysis.[5] And, as a result of implementation, the likelihood of preservation of evidence will, if anything, be enhanced.

Regulatory Flexibility Act

Under the criteria of the Regulatory Flexibility Act (5 U.S.C. 605(b), the NTSB has determined that this proposed rule, if adopted, will not have a significant economic impact on any entity. Because the new rule will simply require preservation of available data and information in the form in which it is already contained, the costs of complying with the rule are not substantial, and the NTSB has so certified.

Executive Order 12291

The NTSB has determined that, if adopted, this is not a major rule under Executive Order 12291.

Paperwork Reduction Act

This regulation will not impose any information collection requirements requiring Office of Management and

[1] See 49 U.S.C. 1903 (b)(1) and (b)(2).

[2] 49 U.S.C. 1903(b)(2).

[3] 49 U.S.C. 1903(b)(2), as amended by section 3 of Public Law 101-641, November 28, 1990.

[4] The Board's authority to promulgate rules necessary for the exercise of its functions is found at 49 U.S.C. 1903(b)(12).

[5] Currently, event recorders are used aboard locomotives to accomplish such tasks as fuel conservation, speed monitoring between points for which limits have been set, and the monitoring of brake systems. The brief delay imposed on any operator by the requirement that the event recorder be preserved until the NTSB either takes custody or releases it will not result in postponement of any tasks for which the event recorder was installed because the occurrence of the accident itself typically suspends accomplishment of all tasks other than those that pertain to accident investigation.

Budget approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.).*

List of Subjects in 49 CFR Part 840

Administrative practice and procedure, investigation, hazardous materials transportation, railroad safety, reporting and recordkeeping requirements, recording media, event recorder, speed tape, information retrieval.

The Proposed Amendments

In consideration of the foregoing, the NTSB proposes to amend 49 CFR part 840 as follows:

1. The authority citation for part 840 is revised to read as follows:

Authority: 49 U.S.C. 1903.

2. A new § 840.7 is added to read as follows:

§ 840.7 Preservation of event recorders or data packs from event recorders, speed tapes, and other recording media.

The operator of a railroad involved in a railroad accident for which notification must be given to the NTSB, as specified in § 840.3, must preserve intact and make no attempt to extract data from any event recorder or data pack from any event recorder, any speed tape, or any other recording medium that contains or that may contain information in any way pertinent to the accident for which notification has been given, until the NTSB takes custody thereof or until released by a representative or the NTSB.

Issued in Washington, DC on this 13th day of June, 1991.

James L. Kolstad,

Chairman.

[FR Doc. 91–14455 Filed 6–18–91; 8:45 am]

BILLING CODE 7533–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 32 and 33

RIN 1018–AB25

Addition of Five National Wildlife Refuges to the Lists of Open Areas for Hunting, Two to the List for Sport Fishing and Pertinent Refuge-Specific Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish Wildlife Service (Service) proposes to add five national wildlife refuges (NWRs) to the lists of open areas for migratory game bird hunting, upland game hunting, and/or big game hunting, two NWR's to the list for sport fishing and pertinent refuge-specific regulations for those activities. The Service has determined that such uses will be compatible with and, in some cases, enhance the major purposes for which each refuge was established. The Service has further determined that this action is in accordance with the provisions of all applicable laws, is consistent with the principles of sound wildlife management, and is otherwise in the public interest by providing additional recreational opportunities of a renewable natural resource.

DATES: Comments must be received on or before July 19, 1991.

ADDRESSES: Address comments to: Assistant Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Room 3248, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: U.S. Fish and Wildlife Service, Division of Refuges, MS 670–ARLSQ, 1849 C Street NW., Washington, DC 20240; Telephone; (703) 358–2043.

SUPPLEMENTARY INFORMATION: National wildlife refuges are generally closed to hunting and sport fishing until opened by rulemaking. The Secretary of the Interior (Secretary) may open refuge areas to hunting and/or fishing upon a determination that such uses are compatible with the major purpose(s) for which the refuge was established, and that funds are available for development, operation, and maintenance of a hunting or fishing program. The action must also be in accordance with provisions of all laws applicable to the areas, must be consistent with the principles of sound wildlife management, and must otherwise be in the public interest. This rulemaking proposes to open five refuges to hunting and two to sport fishing. All of the hunting and fishing programs have proposed refuge-specific hunting or fishing regulations which are included in this rulemaking.

This rulemaking will delist Desert National Wildlife Range, Nevada from upland game hunting and sport fishing because these activities have not been permitted since the jurisdictional change in 1966. The refuge does not harbor sport fish species and there is no public demand for hunting of the few upland game species that exist.

The Willow Creek NWR was at some point wrongly listed under Montana. This rulemaking will also delist Willow Creek NWR from Montana and relist it correctly under California.

Department of the Interior policy is whenever practicable, to afford the public an opportunity to participate in the rulemaking process. It is the purpose of this proposed rulemaking to seek public input regarding the proposed opening of the refuges cited below to migratory game bird hunting, upland game hunting, big game hunting, or sport fishing. Accordingly, interested persons may submit written comments concerning this proposal to the Assistant Director—Refuges and Wildlife (address above) by the end of the comment period. All relevant comments will be considered by the Department prior to issuance of a final rule.

Conformance With Statutory and Regulatory Authorities

The National Wildlife Refuge System Administration Act of 1966, as amended (NWRSAA) (16 U.S.C. 668dd), and the Refuge Recreation Act of 1962 (RRA) (16 U.S.C. 460K) govern the administration and public use of national wildlife refuges. Specifically, Section 4 (d)(1)(A) of the NWRSAA authorizes the Secretary to permit the use of any areas within the National Wildlife Refuge System (Refuge System) for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access, when he determines that such uses are compatible with the major purposes for which each refuge was established. The Service administers the Refuge System on behalf of the Secretary. The RRA gives the Secretary additional authority to administer refuge areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purposes for which the refuges were established. In addition, prior to opening refuges to hunting or fishing under this Act, the Secretary is required to determine that funds are available for the development, operation, and maintenance of the permitted forms of recreation.

In accordance with the NWRSAA and the RRA, the Secretary has determined that these openings for hunting and fishing are compatible and consistent with the primary purposes for which each of the refuges listed below was established, and that funds are available to administer the programs. The hunting and fishing programs will be general within State and Federal (migratory game bird) regulatory frameworks. A brief description of the proposed hunting and fishing programs follows:

Salinas River NWR, located 11 miles north of Monterey, California, was established in 1973 for wildlife conservation purposes and, in particular, for carrying out the national migratory bird management program. The 368-acre Refuge consists of several ecotypes and provides habitat for large numbers of wading birds, waterfowl, pelicans, gulls, and terns. The proposed migratory bird hunting would take place on a 48-acre portion of the Salinas River and a 14-acre portion of adjacent uplands. The hunt is designed to contribute to and be compatible with refuge purposes and objectives and in compliance with the NWRSAA. It would provide high quality, wildlife-oriented recreational use of a renewable resource that is expected to be enjoyed by about 140 hunting visitors. A section 7 evaluation under the Endangered Species Act found that the proposed action is not likely to adversely affect any listed species. The current Refuge budget provides adequate funds to administer the proposed hunt and is in compliance with the RRA.

Hakalau Forest NWR, located on the island of Mauna Kea, was established October 29, 1985, to assure the protection, perpetuation and maintenance of five endangered forest bird species and their rainforest habitat. The Service, in cooperation with the State of Hawaii and other agencies, has undertaken a number of actions to ensure the continued existence of endangered Hawaiian forest birds and protection of their habitats. These include land acquisition, control of feral animals and alien plants, reforestation, and research to determine the limiting factors on the distribution and number of native birds. The initial guiding force behind these actions was the recovery plan for Hawaii Forest Birds. The Plan states that "the biggest threat to the continuing survival of Hawaii's forest birds is the destruction and severe disruption of their habitat as a result of * * * grazing and browsing by feral animals * * *," namely the feral pig. A section 7 evaluation under the Endangered Species Act found that opening the refuge to big game hunting would have a highly beneficial effect on the listed species and their habitat. The proposed hunt is designed to contribute to and be compatible with refuge purposes and objectives and would be in compliance with the NWRSAA. It would also provide high quality, wildlife-oriented recreational use of a renewable resource that is expected to be enjoyed by about 600 hunter visits. The current annual budget provides adequate funds to administer the proposed hunting programs and is in compliance with the RRA.

Bayou Sauvage NWR, located in the eastern portion of Orleans Parish, Louisiana, was established in 1986, to enhance the population of migratory, shore and wading birds; to encourage the natural diversity of fish and wildlife species, to protect the endangered and threatened species and to provide opportunities for fish and wildlife oriented public uses and recreation in an urban setting. The proposed sport fishing program would take place on the 13,000 acres of fresh water marsh and impoundments and the 10,000 acres of tidal marsh on the Refuge. All access to the fresh water marsh or impoundments must be made via Refuge property thereby affording the opportunity to ensure that all State laws and Refuge regulations are observed by anglers. The proposed sport fishing program would provide high quality wildlife-oriented recreational use of a renewable resource that because of its close proximity to New Orleans is expected to be enjoyed by about 11,000 fishing visitors each year. It has been designed to contribute to and be compatible with the legislated purposes for which the Refuge was established and would be in compliance with the NWRSAA. The current Refuge budget provides adequate funds to administer the proposed fishing program and is in compliance with the RRA. A section 7 evaluation under the Endangered Species Act found that the proposed action is not likely to adversely affect any listed species.

Dahomey NWR, located approximately 30 miles north of Greenville, Mississippi, was established to preserve and enhance endangered species, protect waterfowl and their habitat, preserve bottomland hardwood habitat and provide for wildlife-oriented recreational opportunities. Based on qualitative and quantitative measures of habitats present on the Refuge, and on population parameters of proposed species of gray and fox squirrel, raccoon, cottontail and swamp rabbits, opossum, beaver and white-tailed deer, the proposed big game and upland game hunting program would allow for the maintenance of wildlife and its supporting habitat in a desirable and healthy status. The proposed hunting programs has been designed to contribute to and be compatible with refuge purposes and objectives and be in compliance with the NWRSAA. It would provide high quality, wildlife-oriented recreational use of a renewable resource that is expected to be enjoyed by about 1,000 hunting visitors. A Section 7 evaluation under the Endangered Species Act found that the proposed action is not likely to adversely affect any listed species. The current Refuge budget provides adequate funds to administer the proposed hunts and is in compliance with the RRA.

St. Catherine Creek NWR, located about seven miles south of the City of Natchez, Mississippi, was established in 1989, to protect and preserve a portion of internationally significant waterfowl habitat. At present, approximately 6,950 acres of bottomland and upland hardwoods, cypress swamps, cleared land and fallow fields have been acquired. Old St. Catherine Creek and Butler Lake are the two permanent water bodies on the Refuge. Areas that will support the fisheries resource are limited to the impounded water areas, creeks, and the backwater areas of the Refuge. The proposed sport fishing program has been designed to contribute to and be compatible with Refuge purposes and would be in compliance with the NWRSAA. It would provide high quality, wildlife-oriented recreational use of a renewable resource that is expected to be enjoyed by about 6,000 fishing visitors each year. A Section 7 evaluation under the Endangered Species Act found that the proposed action is not likely to adversely affect any listed species.

Supawna Meadows NWR, located along the Delaware River in Salem, New Jersey, was established in 1934 as a refuge and breeding ground for migratory birds and animals, and administered under the Tinicum National Environmental Center Complex. Over 85 percent of the Refuge is in wetlands and serves as an important migration area. The proposed migratory bird hunting would occur on the "Goose Pond" section of the Refuge under Special Conditions. The proposed hunt has been critically designed to contribute to and be compatible with the legislated purposes for which the Refuge was established and has been so certified. In re-establishing a former use of the area prior to Refuge ownership, it is expected to provide some 625 hunting visitors with high quality wildlife-oriented recreational use of a renewable resource. The Refuge budget provides adequate funds to administer the proposed program and is in compliance with the RRA. A Section 7 evaluation under the Endangered Species Act found that the proposed hunt is not likely to adversely affect any listed species.

Roanoke River NWR, located near Windsor, North Carolina, was established August 14, 1989, to protect and enhance approximately 33,000 acres

of strategically located wooded wetlands consisting of bottomlands and swamps with high waterfowl value. Upland and big game hunting would be open on the majority of the Refuge with migratory game bird hunting allowed on no more than 40 percent of the refuge. Properly administered public deer hunting will reduce the potential of refuge habitat being overbrowsed and upland game hunting (raccoon) will reduce competition with wood ducks for nesting cavities and reduce predation on eggs and incubating females. In a Memorandum of Understanding signed by the Service and the North Carolina Wildlife Resources Commission for cooperative management of the Refuge, hunting was recognized as a legitimate use of joint venture lands where no conflict with primary project objectives would be created by such an activity. As such hunting would be allowed within the framework established by the two bureaus. The proposed hunts have been designed to contribute to and be compatible with Refuge purpose and objectives and is in compliance with the NWRSAA. It would provide high quality, wildlife-oriented recreational use of a renewable resource that is expected to be enjoyed by about 1,200 hunting visitors. A section 7 consultation under the Endangered Species Act found that the proposed hunt is not likely to adversely affect any listed species. The refuge budget provides adequate funds to administer the proposed program and is in compliance with the RRA.

Economic Effect

Executive Order 12291, "Federal Regulation," of February 17, 1981, requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions. It is estimated that opening these refuges to hunting and fishing will generate approximately 21,034 visits annually. Using data from the 1985 National Survey of Hunting, Fishing, and Wildlife-Associated Recreation, total annual receipts generated from purchases of food, transportation, hunting and fishing equipment, fees, and licenses associated with these programs are expected to be approximately $12,751,598 or substantially less than $100 million. In addition, since these estimated receipts will be spread over six states, the implementation of this rule should not have a significant economic impact on the overall economy of a particular region, industry, or group or industries, or level of government.

With respect to small entities, this rule will have a positive aggregate economic effect on small businesses, organizations, and governmental jurisdictions. The openings will provide recreational opportunities and generate economic benefits that may not now exist, and will impose no new costs on small entities. While the number of small entities likely to be affected is not known, the number is judged to be small. Moreover, the added cost to the Federal government of law enforcement, posting, and other actions needed to implement activities under this rule will be considerably less than the income generated from the implementation of these hunting and/or sport fishing programs. Accordingly, the Department of the Interior has determined that this rule is not a "major rule" within the meaning of Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Paperwork Reduction Act

The information collection requirements contained in parts 32 and 33 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018–0014. The information is being collected to assist the Service in administering these programs in accordance with statutory authorities which require that recreational uses be compatible with the primary purposes for which the areas were established. The information requested in the application form is required to obtain a benefit.

The public reporting burden for the application form is estimated to average six (6) minutes per response, including time for reviewing instructions, gathering and maintaining data, and completing the form. Direct comments on the burden estimate or any other aspect of this form to the Service Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street NW., MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1018–0014), Washington, DC. 20503

Environmental Considerations

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), environmental assessments have been prepared for these proposed openings pursuant to the Endangered Species Act. These documents are available for public inspection and copying in Room 670, 4401 North Fairfax Drive, Arlington, Virginia, or by mail, at the address listed in the section "**ADDRESSES**" above.

Nancy Marx, Division of Refuges, U.S. Fish and Wildlife Service, Washington, DC, is the primary author of this proposed rulemaking document.

List of Subjects 50 CFR Part 32

Hunting, National Wildlife Refuge System, Wildlife, Wildlife refuges.

50 CFR Part 33

Fishing, National Wildlife Refuge System, Wildlife refuges.

Accordingly, it is proposed to amend parts 32 and 33 of chapter I of Title 50 of the Code of Federal Regulations as set forth below:

PART 32—[AMENDED]

1. The authority citation for part 32 would continue to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, 715i.

2. Section 32.11 would be amended by adding alphabetically by State, Salinas River NWR. CA. Supawna Meadows NWR, NJ, and Roanoke River NWR, NC:

§ 32.11 List of open areas; migratory game birds.

* * * * *

California

* * * * *

Salinas River National Wildlife Refuge

* * * * *

New Jersey

* * * * *

Supawna Meadows National Wildlife Refuge

* * * * *

North Carolina

* * * * *

Roanoke River National Wildlife Refuge

* * * * *

3. Section 32.12 would be amended by redesignating paragraphs (f)(4) (1) and (2) as paragraphs (f)(4) (i) and (ii), and (f) (11) through (16) as paragraphs (f) (12) through (17); adding paragraph (f)(11); redesignating paragraphs (aa) (1) through (7) as (aa)(1) (i) through (vii) and paragraph (aa) as (aa)(i); adding

paragraphs (aa)(2) and (aa)(2) (i) through (v); redesignating paragraph (dd)(5) as (dd)(6); adding paragraphs (dd)(5) and (dd)(5) (i) and (ii) as follows:

§ 32.12 Refuge-specific regulations; migratory game birds.

* * * * *

(f) *California* * * *

(11) *Salinas River National Wildlife Refuge.* Hunting of geese, ducks, coots, and moorhens is permitted on designated areas of the refuge subject to the following condition: Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

(aa) *New Jersey* * * *

(2) *Supawna Meadows National Wildlife Refuge.* Hunting of geese and ducks is permitted on designated areas of the refuge subject to the following conditions:

(i) All goose and duck hunting will close after the last day of the regular duck season for the south zone of New Jersey.

(ii) Snow goose hunting will begin with the Canada goose season for the south zone of New Jersey only.

(iii) Loaded and uncased firearms are permitted in an unanchored boat only when retrieving crippled birds.

(iv) All hunting blind materials, boats, and decoys must be removed at the end of each hunting day. Permanent blinds are not permitted.

(v) Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

(dd) *North Carolina* * * *

(5) *Roanoke River National Wildlife Refuge.* Hunting of ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

4. Section 32.21 would be amended by adding alphabetically by State, Dahomey NWR, MS and Roanoke River NWR, NC; and removing Desert National Wildlife Range, NV as follows:

§ 32.21 List of open areas; upland game.

* * * * *

Mississippi

* * * * *

Dahomey National Wildlife Refuge

* * * * *

North Carolina

* * * * *

Roanoke River National Wildlife Refuge

* * * * *

5. Section 32.22 would be amended by redesignating paragraphs (v) (2) through (7) as (v) (3) through (8); adding paragraphs (v) (2) and (cc) (3); and redesignating (dd)(4) (1) and (2) as (dd)(4) (i) and (ii) and (dd)(5)(1) as (dd)(5)(i) as follows:

§ 32.22 Refuge-specific regulations; upland game.

* * * * *

(v) *Mississippi.* * * *

(2) *Dahomey National Wildlife Refuge.* Hunting of squirrel, rabbit, beaver, raccoon, and opossum is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(cc) *North Carolina.* * * *

(3) *Roanoke River National Wildlife Refuge.* Hunting of squirrel, raccoon and opossum is permitted on designated areas of the refuge subject to the following condition: Permits are required

* * * * *

6. Section 32.31 would be amended by adding a new state, Hawaii and adding alphabetically by State, Hakalau Forest NWR, HI, Dahomey NWR, MS, and Roanoke River NWR, NC as follows:

§ 32.31 List of open areas; big game.

* * * * *

Hawaii

Hakalau Forest National Wildlife Refuge

* * * * *

Mississippi

* * * * *

Dahomey National Wildlife Refuge

* * * * *

North Carolina

* * * * *

Roanoke River National Wildlife Refuge

* * * * *

7. Section 32.32 would be amended by redesignating paragraphs (k) through (uu) as (l) through (vv); adding paragraph (k); redesignating newly redesignated paragraphs (u)(3)(1) as (u)(3)(i) and (z)(2) through (7) as (z)(3) through (8); adding paragraphs (z)(2) and (hh)(6); and redesignating newly redesignated paragraphs (ss)(4)(1) through (5) as (ss)(4)(i) through (v) as follows:

§ 32.32 Refuge-specific regulations; big game.

* * * * *

(k) *Hawaii—Hakalau Forest National Wildlife Refuge.* Hunting of feral pigs is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(z) *Mississippi.* * * *

(2) *Dahomey National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(hh) *North Carolina.* * * *

(6) *Roanoke River National Wildlife Refuge.* Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

PART 33—[AMENDED]

8. The authority citation for Part 33 would continue to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, 715i.

9. Section 33.4 would be amended by adding alphabetically by State, Willow Creek NWR, CA, Bayou Sauvage NWR, LA, and St. Catherine Creek NWR, MS; and removing Willow Creek NWR, MT and Desert NWR, NV as follows:

§ 33.4 List of open areas; sport fishing.

* * * * *

California

* * * * *

Willow Creek National Wildlife Refuge

* * * * *

Louisiana

Bayou Sauvage National Wildlife Refuge

* * * * *

Mississippi

* * * * *

St. Catherine Creek National Wildlife Refuge

* * * * *

10. Section 33.22 would be amended by redesignating paragraphs (a) through (j) as (b) through (k); adding paragraphs (a) (1) through (6) as follows:

§ 33.22 Louisiana.

(a) *Bayou Sauvage National Wildlife Refuge.* Finfishing and shellfishing are permitted on designated areas of the refuge subject to the following conditions:

(1) Fishing is permitted during daylight hours only from March 16 through October 31, with the following exceptions: bank fishing from U.S. Highway 11 is permitted year-round; the area south of Intracoastal Waterway is permitted year-round; the areas outside the Hurricane Protection Levee, the main Canal from U.S. Highway 11 to the borrow pits (2) within the Blind lagoon

Unit, and the area bounded by I–10, Lake Pontchartrain, and Levee #27 is permitted from the end of the State waterfowl season (East Zone) through October 31.

(2) Only rod and reel or pole and line is permitted for finfishing. All hand lines and crabbing equipment must be attended.

(3) The use of trotlines, slat traps, or nets is prohibited, with the following exceptions: bait shrimp may be taken with cast nets; crayfish and crabs with ring nets up to 20 inches in diameter.

(4) Daily crab and crayfish limit is 100 pounds per vehicle or boat.

(5) Outboard motors not to exceed 25 horsepower are permitted in waterways, canals, and pools within the Hurricane Protection Levee (#26, #27, and #28).

(6) Air-thrust boats, motorized pirogues, and go-devils are prohibited in refuge waters.

* * * * *

11. Section 33.28 would be amended by adding paragraph (c) to read as follows:

§ 33.28 Mississippi.

* * * * *

(c) *St. Catherine Creek National Wildlife Refuge.* Sport fishing is permitted on designated areas of the refuge subject to the following conditions:

(1) Fishing and access is permitted during daylight hours only from March 1 through September 15 in areas designated by refuge signs and/or leaflets with the exception that fishing and access may be permitted year-round in some areas if designated by refuge signs and/or leaflets.

(2) Access to the refuge fishing areas is restricted to roads and trails designated by refuge signs and/or leaflets.

(3) Boats may not be left on the refuge overnight.

* * * * *

Dated: May 17, 1991.

Richard N. Smith,

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

[FR Doc. 91–14375 Filed 6–18–91; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 56, No. 118
Wednesday, June 19, 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 COMMERCE

Bureau of Export Administration

[Docket No. 910358-1132]

Foreign Availability Determination: 5-Axis Computer Numerical Control Units

AGENCY: Office of Foreign Availability, Bureau of Export Administration, Department of Commerce.

ACTION: Notice of negative determination.

SUMMARY: On May 14, 1991, consistent with the provisions of section 791 of the Export Administration Regulations (EAR), the Department of commerce determined that foreign availability of 5-Axis Computer Numerical Control Units controlled under ECCN 1091A of the commodity Control List (CCL) (15 CFR 799.1, Supp. 1), does not exist to controlled countries. As a result of this negative determination, the Department of Commerce will not amend the existing export controls on this item.

FOR FURTHER INFORMATION CONTACT: Steven C. Goldman, Director, Office of Foreign Availability, room SB-097, Department of Commerce, Washington, DC 20230; Telephone: (202) 377-8074.

SUPPLEMENTARY INFORMATION:

Background

Although the Export Administration Act (EAA) expired on September 30, 1990, the President invoked the International Emergency Economic Powers Act and continued in effect, to the extent permitted by law, the provisions of the EAA and the EAR in Executive Order 12730 of September 30, 1990.

Part 791 of the EAR (15 CFR 730 *et seq.*) implements and establishes the procedures and criteria for determining the foreign availability of goods and technology whose export is controlled for national security reasons. The Secretary of Commerce or his designee determines whether foreign availability exists.

With limited exceptions, the Department of Commerce may not maintain national security controls on exports of an item to affected countries if the Secretary or his designee determines that items of comparable quality are available in fact to such countries from a foreign source in quantities sufficient to render the controls ineffective.

On January 14, 1991, the Office of Foreign Availability (OFA) initiated a foreign availability assessment of 5-Axis Computer Numerical Control Units to controlled countries. These items are controlled under ECCN 1091A of the CCL. On March 29, 1991, the Department published a notice of the initiation of this assessment in the **Federal Register** (56 FR 13114).

OFA provided its assessment and recommendation to the Deputy Assistant Secretary for Export Administration. The Deputy Assistant Secretary considered the assessment and other relevant information and determined that foreign availability does not exist to controlled countries within the meaning of section 791 of the EAR for 5-Axis Computer Numerical Control Units. The Department provided all interested government agencies, including the Departments of State and Defense, with the opportunity to review and comment on the assessment and determination. As a result of this negative determination, the Department of Commerce will not amend the existing export controls on these items.

If OFA receives new evidence concerning this foreign availability determination, OFA may reevaluate its assessment. Inquiries concerning the scope of this assessment should be sent to the Director of the Office of Foreign Availability at the above address.

Dated: June 13, 1991.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 91-14556 Filed 6-18-91; 8:45 am]
BILLING CODE 3510-DT-M

International Trade Administration

Automotive Parts Advisory Committee; Renewal

The delegate of the Secretary of Commerce renewed the U.S. Automotive Parts Advisory Committee (APAC). The renewal of the committee is in accordance with the Federal Advisory Committee Act, 5 U.S.C. app. 2, and 41 CFR part 101-6.10 (1990), Federal Advisory Committee Management Rule.

The APAC was established by the Secretary of Commerce on June 6, 1989 to advise Department of Commerce officials on issues related to sales of U.S.-made auto parts to Japanese markets.

The Committee functions as an advisory body in accordance with the Federal Advisory Committee Act. Additional information may be obtained from Stuart Keitz, U.S. Department of Commerce, International Trade Administration, (202) 377-0669.

Dated: June 2, 1991.

Mary A. Toman,

Deputy Assistant Secretary for Automotive Affairs and Consumer Goods.

[FR Doc. 91-14472 Filed 6-18-91; 8:45 am]
BILLING CODE 3510-DR-M

[A-351-605]

Frozen Concentrated Orange Juice From Brazil; Preliminary Results and Termination in Part of Antidumping Duty Administrative Review; Intent To Revoke in Part the Antidumping Duty Order

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

ACTION: Notice of Preliminary Results and Termination in Part of Antidumping Duty Administrative Review; Intent to Revoke in Part the Antidumping Duty Order.

SUMMARY: In response to a request by respondents, the Department of Commerce has conducted an administrative review of the antidumping duty order on frozen concentrated orange juice from Brazil. The review covers five producers and/or exporters of this merchandise to the United States and the period May 1, 1989 through April 30, 1990. We preliminarily determine the weighted-

average dumping margins for all respondents during this period to be zero or *de minimis*. Because Branco Peres Citrus S.A. and Citro-Pectina S.A. withdrew their requests for review, we are terminating the review with respect to those firms. If, by virtue of the final results of this review, Cargill Citrus Limitada, Citrosuco Paulista, Coopercitrus Industrial Frutesp S.A. and Montecitrus Trading S.A. have three consecutive years of sales at not less than fair value, and it is likely that they will not sell the subject merchandise at less than fair value in the future, the Department will revoke the antidumping duty order with respect to these firms upon publication of these final results. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: June 19, 1991.

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

SUPPLEMENTARY INFORMATION:

Background

On May 8, 1990, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" (55 FR 19093) of the antidumping duty order on frozen concentrated orange juice from Brazil (52 FR 16426; May 5, 1987). In May 1990, seven respondents, Cargill Citrus Ltda., Citrosuco Paulista S.A., Coopercitrus Industrial Frutesp S.A., Montecitrus Trading S.A., Frutropic S.A., Citro-Pectina S.A., and Branco Peres Citrus S.A., requested an administrative review of the order. We initiated the review, covering the period May 1, 1989 through April 30, 1990, on July 6, 1989 (55 FR 27359). A timely request for revocation of the antidumping duty order, accompanied by the required certification, was submitted by Cargill Citrus Ltda., Citrosuco Paulista S.A., Coopercitrus Industrial Frutesp S.A., and Montecitrus Trading S.A. Because Citro-Pectina S.A. and Branco Peres Citrus S.A. subsequently withdrew their requests for review, the Department is terminating the review of their sales for this period. The Department has now conducted the review for the remaining companies in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act). The final results of the last administrative review were published on November 14, 1990 (55 FR 47502).

Scope of the Review

Imports covered by the review are shipments of frozen concentrated orange juice (FCOJ) from Brazil. The merchandise is currently classifiable under item 2009.11.00 of the *Harmonized Tariff Schedule* (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period May 1, 1989 through April 30, 1990 and five producers and/or exporters of Brazilian FCOJ to the United States: Cargill Citrus Ltda., Citrosuco Paulista S.A., Coopercitrus Industrial Frutesp S.A., Frutropic S.A., and Montecitrus Trading S.A. The review of this period with respect to Citro-Pectina S.A., and Branco Peres Citrus S.A. is being terminated.

The Department intends to revoke the antidumping duty order with respect to four firms: Cargill Citrus Ltda., Citrosuco Paulista S.A., Coopercitrus Industrial Frutesp S.A. and Montecitrus Trading S.A. if, at the time the Department publishes the final results of this review, the four firms have demonstrated three consecutive years of sales at not less than fair value, and it is not likely that these firms will sell subject merchandise at less than fair value in the future. The additional respondent who submitted a revocation request, Frutropic S.A., is not eligible for revocation as provided in § 353.25(a) of the Department's regulations because it failed to meet the requirement of having sold the merchandise at not less than fair value for three consecutive years. As required by § 353.25(c) of the Department's regulations, the Department conducted a verification of all factual information submitted by those firms eligible for revocation.

United States Price

In calculating the United States price, we used both purchase price and exporter's sales price (ESP) as defined in section 772 of the Tariff Act. Purchase price was used for those sales to the United States which were made prior to importation, while exporter's sales price was used for those sales which were made after importation. Purchase price was based on the packed f.o.b. price to unrelated purchasers in the United States. ESP was based on the packed delivered price to the first unrelated purchaser in the United States. For purchase price sales, where applicable, we made deductions for Brazilian brokerage expenses, discounts, export taxes, port fees, foreign inland freight and insurance. For ESP sales, we made deductions for discounts, U.S. duty and Customs' fees, harbor maintenance fees, U.S. inland freight and insurance, brokerage and handling expenses, ocean freight and marine insurance, credit expenses and indirect selling expenses. Where foreign market value was based on home market prices, we made an addition to U.S. price for taxes which were not collected by reason of exportation of the merchandise to the United States. No other adjustments were claimed or allowed.

Foreign Market Value

The Department based foreign market value on ex-factory or delivered prices to unrelated purchasers in the home market or on third country f.o.b. prices, in accordance with section 773 of the Tariff Act. We made deductions, where appropriate, for foreign inland freight, marine insurance, and export taxes. Where applicable, we deducted foreign packing expenses and added U.S. packing to home market price (packing costs were not incurred on bulk sales). We adjusted foreign market value for differences in credit expenses, post-sale warehousing expenses, indirect taxes, and differences in the physical characteristics of the merchandise. In the case of comparisons to ESP sales, we made an adjustment for indirect selling expenses, limited by the amount of indirect selling expenses incurred in the United States. No other adjustments were claimed or allowed. Where distortions would have been created through the use of a monthly foreign market value, we calculated foreign market value based on shorter periods.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine the weighted-average margins for the period May 1, 1989 through April 30, 1990 to be:

Manufacturer/Exporter	*Margin (percent)*
Citrosuco Paulista S.A.	0.03
Cargill Citrus Ltda.	zero
Coopercitrus Industrial Frutesp S.A.	0.11
Montecitrus Trading S.A.	0.09
Frutropic S.A.	0.06

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service upon completion of this review.

Further, as provided for by section 751(a)(1) of the Tariff Act, because there were either *de minimis* or no margins for Cargill Citrus Ltda., Citrosuco Paulista S.A., Coopercitrus Industrial Frutesp S.A., Frutropic S.A. and Montecitrus Trading S.A. no cash deposit will be required for these manufacturers. The cash deposit rate for all other exporters/producers shall continue to be at the rate established in the final results of the last administrative review (55 FR 47502; November 14, 1990) or the antidumping duty order (52 FR 16426; May 5, 1987), as applicable. These deposit requirements/waivers, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Parties to the proceeding may request disclosure within five days and interested parties may request a hearing not later than ten days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted no later than seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 353.38(e).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than ten days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 353.38(c), are due.

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22 and 353.25.

Dated: June 12, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-14632 Filed 6-18-91; 8:45 am]

BILLING CODE 3510-05-M

Exemption of Foreign Air Carrier From Customs Duties and Taxes; Request for Finding of Reciprocity (Saudi Arabia)

Notice is hereby given that the Department of Commerce is undertaking to determine whether, pursuant to sections 309 and 317 of the Tariff Act of 1930, as amended (19 U.S.C. 1309 and 1317), and section 4221 of the Internal Revenue Code of 1954, as amended (26 U.S.C. 4221), the Government of Saudi Arabia allows substantially reciprocal customs and tax exemptions to aircraft of U.S. registry in connection with international commercial operations to those exemptions granted to aircraft of foreign registry under the aforementioned statutes. The basis of this undertaking is the request of Saudi Arabian Airlines Corporation (Saudia) for a finding of such reciprocity effective retroactively to April 1, 1990.

The above-cited statutes provide exemptions for aircraft of foreign registry from payment of import duties and certain internal revenue taxes on the import or purchase of supplies in the United States for such aircraft in connection with their international commercial operations. "Supplies" as used in this context indicates a wide range of articles used by aircraft in international operations, including fuel and lubricants, spare parts, consumable supplies, and ground handling and support equipment. These exemptions apply upon a finding by the Secretary of Commerce, or his designee, and communicated to the Department of the Treasury, that such country allows, or will allow, "substantially reciprocal privileges" to aircraft of U.S. registry with respect to imports or purchases of such supplies in that country.

Interested parties are invited to submit their views and comments in writing concerning this matter to Ms Linda F. Powers, Deputy Assistant Secretary for Services, Room 1128, U.S. Department of Commerce, Washington, DC 20230. All submissions should be made in five copies and should be received no later than thirty (30) days following the publication of this notice.

Copies of all written comments received will be available for public inspection between the hours of 8:30 a.m. and 5 p.m. Monday through Friday in the Freedom of Information Records Inspection Facility, International Trade Administration, room 4102, U.S. Department of Commerce, Washington, DC.

FOR FURTHER INFORMATION CONTACT: C. William Johnson, Transportation, Tourism and Marketing Industries Division, Office of Service Industries, International Trade Administration, Room 1120, U.S. Department of Commerce, Washington, DC 20230, or telephone (202) 377-5071.

Dated: June 13, 1991.

Linda F. Powers,

Deputy Assistant Secretary for Services

[FR Doc. 91-14557 Filed 6-18-91; 8:45 am]

BILLING CODE 3510-DR-M

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Amended Export Trade Certificate of Review, Application No. 87-6A004.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to the National Machine Tool Builders' Association on May 19, 1987. Notice of issuance of the Certificate was published in the **Federal Register** on May 22, 1987 (52 FR 19371).

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

Export Trade Certificate of Review No. 87-00004, was issued to the National Machine Tool Builders' Association ("NMTBA") on May 19, 1987 (52 FR 19371, May 22, 1987) and previously amended on December 11, 1987 (52 FR 48454, December 22, 1987), January 3, 1989 (54 FR 837, January 10, 1989), April 20, 1989 (54 FR 19427, May 5, 1989), May 31, 1989 (54 FR 24931, June 12, 1989), and May 29, 1990 (55 FR 23576, June 11, 1990).

NMTBA's Export Trade Certificate of Review has been amended to:

1. Add each of the following companies as a new "Member" of the Certificate: Advanced Technologies, Incorported, Bay City, MI; Black Brothers Co., Mendota, IL; Blue Valley Machine and Mfg. Co., Inc., Kansas City, MO; Broaching Machine Specialties, Novi, MI (controlling entity: Machinery & Equipment Exchange, Inc.); Coherent General, Inc., Sturbridge, MA (controlling entity: Coherent Inc.); Crouch Machinery, Inc., Pinehurst, NC; Curtin Hebert Co. Inc., Gloversville, NY; Debur Corporation, Chelmsford, MA; Easco Sparcatron, Whitmore Lake, MI (controlling entity: Liquid Drive Corp.); Gold Crown Machinery, Inc., Cincinnati, OH; Haas Automation, Inc., Sun Valley, CA; Hess Engineering, Inc., Niles, MI (controlling entity: Hess Industries, Inc.); Jorgensen Conveyors, Inc., Mequon, WI; MBD Machines Division, Warsaw, IN (controlling entity; Tyler Machinery Co., Inc.); Maho Machine Tool Corporation, Naugatuck, CT (controlling entity: Maho A.G., Germany); Mega Manufacturing Inc., Hutchinson, KS: Mikron Corp. Monroe, Monroe, CT (controlling entity: Mikron Holding); Murata Wiedemann Inc., King of Prussia, PA (controlling entity: Murata Machinery Ltd); Roto-Finish Co., Inc., Kalamazoo, MI (controlling entity: Kalamazoo Co.); Seneca Falls Machine Tool Co., Inc., Seneca Falls, NY (controlling entity: SFM Corporation); Wadell Machine & Tool Co., Inc., Somerset, NJ; and Xermac, Inc., Royal Oak, MI;

2. Delete each of the following companies as a "Member" of the Certificate: Autonumerics, Inc.; CAM-APT Inc.; CM Systems, Inc.; Eltee Pulsitron; Innovex; George T. Schmidt Inc.; Timmco International, Inc.; Wes-Tech Automation Systems; Western Machine Tool Works; and Wisconsin Drill Head Co.; and

3. Change the listing of current "Member" Sheffield Machine Tool Company to Sheffield Schaudt Grinding Systems, Inc.

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: June 14, 1991.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 91-14633 Filed 6-18-91; 8:45 am]

BILLING CODE 3510-DR-M

University of California, Santa Barbara; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 89-292R. *Applicant:* University of California, Santa Barbara, Santa Barbara, CA 93106. *Instrument:* Mass Spectrometer, Model PRISM SERIES II. *Manufacturer:* VG Isotech, United Kingdom. *Intended Use:* See notice at 55 FR 2861, January 29, 1990.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides: (1) An automatic cold finger micro volume inlet with a guaranteed internal precision of 0.006 per mil for 20 bar μ1 samples of N^2 and (2) a reproducibility for hydrogen isotope ratio analysis of 0.5 per mil. This capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91-14634 Filed 6-18-91; 8:45 am]

BILLING CODE 3510-DS-M

National Institute of Standards and Technology

[Docket No. 910528-1128]

RIN 0693-AA91

Proposed Withdrawal of Twelve Federal Information Processing Standards

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; request for comments.

SUMMARY: The purpose of this notice is to announce the proposed withdrawal of twelve Federal Information Processing Standards (FIPS). These standards are proposed for withdrawal because the technical specifications that they adopt are obsolete and are no longer supported by industry.

The standards proposed for withdrawal are the following:

—FIPS 3-1, Recorded Magnetic Tape for Information Interchange (800 CPI, NRZI) (ANSI X3.22-1973).

—FIPS 25, Recorded Magnetic Tape for Information Interchange (1600 CPI, Phase Encoded) (ANSI X3.39-1973).

—FIPS 50, Recorded Magnetic Tape for Information Interchange, 6250 cpi (246 cpmm), Group Coded Recording (ANSI X3.54-1976).

—FIPS 51, Magnetic Tape Cassettes for Information Interchange (3.810 mm [0.150 in] Tape at 32 bpmm [800 bpi], PE) (ANSI X3.48-1977).

—FIPS 52, Recorded Magnetic Tape Cartridge for Information Interchange, 4-Track, 6.30 mm (¼ in), 63 bpmm (1600 bpi), Phase Encoded (ANSI X3.56-1977).

—FIPS 79, Magnetic Tape Labels and File Structure for Information Interchange (ANSI X3.27-1978).

—FIPS 93, Parallel Recorded Magnetic Tape Cartridge for Information Interchange, 4-Track, 6.30 mm (¼ in), 63 bpmm (1600 bpi) Phase Encoded (ANSI X3.72-1981/R1987).

—FIPS 114, 200 mm (8 in Flexible Disk Cartridge Track Format Using Two-Frequency Recording at 6631 bprad on One Side—1.9 tpmm (48 tpi) for Information Interchange (ISO 5654/2-1985).

—FIPS 115, 200 mm (8 in) Flexible Disk Cartridge Track Format Using Modified Frequency Modulation Recording at 13262 bprad on Two Sides—1.9 tpmm (48 tpi) for Information Interchange (ISO 7065/2-1985).

—FIPS 116, 130 mm (5.25 in) Flexible Disk Cartridge Track Format Using Two-Frequency Recording at 3979 bprad on One Side—1.9 tpmm (48 tpi) for Information Interchange (ISO 6596/2-1985).

—FIPS 117, 10 mm (5.25 in) Flexible Disk Cartridge Track Format Using Modified Frequency Modulation Recording at 7958 bprad on Two Sides—1.9 tpmm (48 tpi) for Information Interchange (ISO 7487/3-1984).

—FIPS 118, Flexible Disk Cartridge Labelling and File Structure for Information Interchange (ISO 7665-1983).

Prior to the submission of this proposed withdrawal to the Secretary of Commerce for review and approval, it is essential to assure that consideration is given to the needs and views of manufacturers, the public, and State and local governments. The purpose of this notice is to solicit such views.

Interested parties may obtain copies of these standards from the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161, telephone (703) 487–4650.

DATES: Comments on this proposed withdrawal must be received on or before September 17, 1991.

ADDRESSES: Written comments concerning the withdrawal should be sent to: Director, Computer Systems Laboratory, ATTN: Withdrawal of Twelve FIPS, Technology Building, room B154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Radack, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975–2833.

Dated: June 14, 1991.

John W. Lyons,

Director.

[FR Doc. 91–14636 Filed 6–18–91; 8:45 am]

BILLING CODE 3510–CN–M

National Institute of Standards and Technology Visiting Committee on Advance Technology

AGENCY: National Institute of Standards and Technology, DOC.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app., notice is hereby given that the National Institute of Standards and Technology Visiting Committee on Advanced Technology will meet on Wednesday, June 26, 1991, from 2:30 p.m. to 3:30 p.m. The Visiting Committee on Advanced Technology is composed of nine members appointed by the Director of the National Institute of Standards and Technology who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to fully examine and discuss FY 1993 budget planning information for the National Institute of Standards and Technology.

DATES: The meeting will convene June 26, 1991, at 2:30 p.m. and adjourn at 3:30 p.m. on June 26, 1991.

ADDRESSES: The meeting will be held in room 5840, Department of Commerce, 14th and Constitution, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Dr. Dale E. Hall, Executive Director, Visiting Committee on Advanced Technology, National Institute of Standards and Technology, Gaithersburg, Maryland, 20899, telephone number (301) 975–2158.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, for Administration, with the concurrence of the General Counsel, formally determined on August 30, 1990, that portion of the meeting of the Visiting Committee on Advanced Technology which involve examination and discussion of the budget for the Institute may be closed in accordance with section 552(b)(9)(B) of title 5, United States Code, since the meeting is likely to disclose financial information that may be privileged or confidential.

Dated: June 14, 1991.

John Lyons,

Director.

[FR Doc. 91–14637 Filed 6–18–91; 8:45 am]

BILLING CODE 3510–13–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment to the Export Licensing System for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

June 14, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs providing for the use of export licenses/commercial invoices printed on blue paper.

EFFECTIVE DATE: July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Lori E. Goldberg, 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 the People's Republic of China have agreed, effective on July 1, 1991, to amend further the export licensing system to provide for the use of textile export licenses/commercial invoices, issued by the Government of the People's Republic of China for shipments exported from China on and after July 1, 1991, which are printed on blue guilloche patterned background paper. The blue form replaces the green and yellow licenses/invoices currently in use. The visa stamp is not being changed at this time.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 14, 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 February 23, 1984, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive, as amended, establishes an export licensing system for certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the People's Republic of China.

Effective on July 1, 1991, the textile export license/commercial invoice, issued by the Government of the People's Republic of China, will be printed on blue guilloche patterned background paper for merchandise currently subject to the export licensing system, and exported from China on and after July 1, 1991. The blue form will replace the green and yellow form currently being used.

The Committee for the Implementation of Textile Agreements has determined that this action falls 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. 91–14578 Filed 6–18–91; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Consolidation and Conversion of Defense Research and Development Laboratories Advisory Commission; Meeting

AGENCY: Department of Defense (DoD) Advisory Commission on Consolidation and Conversion of Defense Research and Development Laboratories.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of Public Law 92–463, the "Federal Advisory Committee Act," notice is hereby given that the Federal Advisory Commission on Consolidation and Conversion of Defense Research and Development Laboratories will hold meetings on June 19–20, 1991, and on July 17–18, 1991, in Washington, DC area. These meetings will convene at 8:30 a.m. and adjourn at 5 p.m. on each day of the meetings. These sessions will be closed to the public.

The purpose of these meetings is to discuss technological factors involved in developing recommendations to the Secretary of Defense on consolidating, converting, or realigning various laboratories of the Department of Defense. The entire agenda for the meeting will consist of discussions of the key issues related to future military research and technology development. These matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive Order. Accordingly, the Director of Defense Research and Engineering 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 552(c)(1) of title 5, United States Code.

This Notice of the June 19–20, 1991, meeting of the Commission is being published late due to the need to accelerate the schedule to meet the reporting dates mandated in section 246 of the National Defense Authorization Act for 1991. Operational necessity constitutes an exceptional circumstance not allowing Notice to be published in the Federal Register at least 15 days before the date of this meeting.

For further information concerning this meeting, contact: Dr. Michael Heeb, Executive Secretary to the DoD Advisory Commission on Consolidation and Conversion of Defense Research and Development Laboratories, 5109 Leesburg Pike, suite 317, Falls Church, VA 22041, Phone (703) 756–8969.

Dated: June 14, 1991.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–14573 Filed 6–18–91; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Naval Reserve Officers Training Corps Scholarship Program Applicant Questionnaire; NAVCRUIT 1131/6; OMB No. 0703–0028

Type of Request: Revision.

Average Burden Hours/Minutes Per Response: .33 Minutes.

Responses Per Respondent: 1.

Number of Respondents: 40,000.

Annual Burden Hours: 13,200.

Annual Responses: 40,000.

Needs and Uses: An assessment of an individual's basic eligibility for the NROTC Scholarship Program is necessary for the initial screening of prospective applicants. In order to pre-screen applicants it is necessary to have information concerning date of birth, citizenship, high school graduation date, etc. Address and phone are needed to contact those individuals who are eligible and to inform those who are not. Information is provided to the individual who wishes to apply for the Four-Year NROTC Scholarship Program. The information gathered is used by Headquarters, Navy Recruiting Command to determine basic eligibility. Without this information, this could not be accomplished.

Affected Public: Individuals or households.

Frequency: On occasion.

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

OMB Desk Officer: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DOD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce. Written request for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202–4302.

Dated: June 14, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–14575 Filed 6–18–91; 8:45 am]

BILLING CODE 3810–01–M

Office of the Inspector General

Membership of the Performance Review Board

AGENCY: Office of the Inspector General, Department of Defense (OIG, DOD).

ACTION: Notice of membership to the Performance Review Board.

SUMMARY: This notice announces the appointment of the members of the Performance Review Board (PRB) for the OIG, DOD as required by 5 U.S.C. 4314(c)(4). the PRB provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance ratings, performance awards and recertification to the Inspector General.

EFFECTIVE DATE: July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Ms. Dona Seracino, Chief, Employee Relations Division, Personnel and Security Directorate, Office of the Assistant Inspector General for Administration and Information Management, OIG, DOD, 400 Army Navy Drive, Arlington, VA (202) 693–0257.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the appointed members of the PRB for the OIG, DOD are identified in the enclosures. They will serve until further notice.

Dated: June 14, 1991.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Derek J. Vander Schaaf—Deputy Inspector General, OIG, DOD

Nancy L. Butler—Director, Financial Management, Office of the Assistant Inspector General for Auditing, OIG, DOD

David A. Brinkman—Assistant Inspector General for Analysis and Followup, OIG, DOD

Katherine A. Brittin—Assistant Inspector General For Inspections, OAIG–INS, DOD

Donald E. Davis—Deputy Assistant Inspector General for Audit Policy and Oversight, OIG, DOD

Michael R. Hill—Assistant Inspector General for Audit Policy and Oversight, OIG, DOD

Edward R. Jones—Deputy Assistant Inspector General for Auditing, OIG, DOD

Robert J. Lieberman—Assistant Inspector General for Auditing, OIG, DOD
Nicholas T. Lutsch—Assistant Inspector General for Administration and Information Management, OIG, DOD
Donald Mancuso—Assistant Inspector General for Investigations, OIG, DOD
William F. Thomas—Director, Readiness and Operational Support Directorate, Office of the assistant Inspector General for Auditing, OIG, DOD
Donald E. Reed—Director, Acquisition Management Directorate, Office of the Assistant Inspector General for Auditing, OIG, DOD
Jack L. Montgomery—Deputy Assistant Inspector General for Administration and Information Management, OIG, DOD
William G. Dupree—Deputy Assistant Inspector General for Investigations, OIG, DOD
Stephen A. Whitlock—Director, Inspections Directorate, Office of the Assistant Inspector General for Inspections, OIG, DOD
William R. Barton—Inspector General, General Services Administration
John Connors—Deputy Inspector General, Department of Housing and Urban Development
Joyce Fleischman—Deputy Inspector General, Department of the Interior
Lewis D. Rinker—Deputy Inspector General, National Aeronautics and space Administration

[FR Doc. 91-14574 Filed 6-18-91; 8:45 am]
BILLING CODE 3810-01-M

Department of the Navy

Privacy Act of 1974; Addition of a Proposed New Record System

AGENCY: Department of the Navy, DOD.

ACTION: Addition of a new record system.

SUMMARY: The Department of the Navy proposes to add one system of records to its inventory of record systems subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

DATES: The proposed action will be effective on July 19, 1991, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Mrs. Gwendolyn Aitken, Head, PA/FOIA Branch, Office of the Chief of Naval Operations (OP-09B30), Department of the Navy, The Pentagon, Washington, DC 20350-2000. Telephone (703) 694-2004.

SUPPLEMENTARY INFORMATION: The Department of the Navy record system notices for records systems subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a) were published in the Federal Register as follows:

51 FR 12908 Apr. 16, 1986
51 FR 18086 May 16, 1986 (DON Compilation changes follow)
51 FR 19884 Jun. 3, 1986
51 FR 30377 Aug. 26, 1986
51 FR 30393 Aug. 26, 1986
51 FR 45931 Dec. 23, 1986
52 FR 2147 Jan. 20, 1987
52 FR 2149 Jan. 20, 1987
52 FR 8500 Mar. 18, 1987
52 FR 15530 Apr. 29, 1987
52 FR 22671 Jun. 15, 1987
52 FR 45846 Dec. 2, 1987
53 FR 17240 May 16, 1988
53 FR 21512 Jun. 8, 1988
53 FR 25363 Jul. 6, 1988
53 FR 39499 Oct. 7, 1988
53 FR 41224 Oct. 20, 1988
54 FR 8322 Feb. 28, 1989
54 FR 14378 Apr. 11, 1989
54 FR 32682 Aug. 9, 1989
54 FR 40160 Sep. 29, 1989
54 FR 41495 Oct. 10, 1989
54 FR 43453 Oct. 25, 1989
54 FR 45781 Oct. 31, 1989
54 FR 48131 Nov. 21, 1989
54 FR 51784 Dec. 18, 1989
54 FR 52976 Dec. 26, 1989
55 FR 21910 May 30, 1990 (Navy Mailing Addresses)
55 FR 37930 Sep. 14, 1990
55 FR 42758 Oct. 23, 1990
55 FR 47508 Nov. 14, 1990
55 FR 48678 Nov. 21, 1990
55 FR 53167 Dec. 27, 1990
56 FR 424 Jan. 4, 1991
56 FR 12721 Mar. 27, 1991

A new system report, as required by 5 U.S.C. 522a(r) of the Privacy Act, was submitted on June 10, 1991, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4b of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985 (50 FR 52738, December 24, 1985).

Dated: June 14, 1991.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

NO5100-2

SYSTEM NAME:

Scheduled Parachute Jump Program.

SYSTEM LOCATION:

Naval Safety Center, Naval Air Station, Norfolk, VA 23511-5796.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Navy and Marine Corps personnel and trainees who participate in the Scheduled Parachute Jump Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Unit reports of each scheduled jump, which includes name of parachutist, Social Security Number, Unit Identification Code (UIC), and model of parachute; total scheduled jump activity survey reports; and annual scheduled jump activity reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and Executive Order 9397.

PURPOSE(S):

To track scheduled jump activity data for specific individuals or types of parachutes and correlate the information with parachute jump mishap data; analyze information to determine the relationship between various categories and combinations of jump experience and accident involvement.

To provide results of these studies to all echelons within the Navy and Marine Corps having responsibility for jump operations, parachute training, and allocation of resources to and within the parachute jump program.

To provide an annual summary of jump activity by parachute type to each reporting individual for his/her verification and personnel records. Upon request, a detailed by jump report for a specified time frame is also provided.

To provide records to the Chief of Naval Personnel for promotional screening, detailing, and compliance with minimum standards.

To provide summaries of jump activity for Marine Corps personnel to the Commandant of the Marine Corps.

To provide records of specific jump designated personnel to contractors, if required, for projects either funded by or deemed potentially valuable to the Department of the Navy.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Magnetic tape and computer printouts.

RETRIEVABILITY:

Name, Social Security Number, Unit Identification Code (UIC), and model of parachute.

SAFEGUARDS:

Computer area is locked after hours and access is strictly controlled. Hard drive locked to preclude unauthorized

access. Only two individuals have a key to access hard drive. Building is under 24 hour watch.

RETENTION AND DISPOSAL:

Permanent. Magnetic tape files contain all available records and are never purged.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Aviation Safety Programs, Naval Safety Center, Naval Air Station, Norfolk, VA 23511–5796.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Director of Aviation Safety Programs, Naval Safety Center, Naval Air Station, Norfolk, VA 23511–5796.

The request should include full name, Social Security Number, and address of the individual concerned and should be signed.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Director of Aviation Safety Programs, Naval Safety Center, Naval Air Station, Norfolk, VA 23511–5796.

The request should include full name, Social Security Number, and address of the individual concerned and should be signed.

CONTESTING RECORD PROCEDURE:

The Department of the Navy rules for accessing records and contesting contents and appealing determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Navy and Marine Corps jumpers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 91–14577 Filed 6–18–91; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

Notice of 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 July 12, 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., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection: (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: June 13, 1991.

Mary P. Liggett,

Acting Director, Office of Information, Resources Management.

Office of Special Education and Rehabilitative Services

Type of Review: Expedited

Title: Application for Grants Under the Minority Outreach Program.

Abstract: This form will be used by State Educational agencies and non-profit institutions to apply for funding under the Minority Outreach Program.

Addition Information: An expedited review is requested in order to keep the grant awards under the Minority Outreach Program in FY 1991. This application contains General Information and instructions for the program narrative, Part II of the Budget Information, Standard Form 424 (Application for Federal Assistance), Standard Form 424B (Assurances), Lobbying Certifications, Debarment Certifications, Drug-Free Certifications, and Lobbying Activities Disclosures.

Frequency: Annually.

Affected Public: State or local governments; Non-profit institutions.

Reporting Burden:

Responses: 15.

Burden Hours: 630.

Recordkeeping Burden:

Recordkeepers: 0.

Burden Hours: 0.

DRAFT

General Information

Over the past several decades, the field of special education has experienced considerable growth. Development in the preparation of committed, skilled personnel have accompanied the substantial advances in the application of knowledge, theory, and promising diagnostic and instructional practices in diverse educational settings. The Training Personnel for the Education of Individuals with Disabilities program is designed to assist institutions of higher education (IHEs) and other appropriate nonprofit agencies (NPAs) in the development and implementation of quality preservice and inservice training programs. Since its inception, the program has provided professional, technical, and financial assistance to improve the quality and increase the supply of special education and support personnel across the nation.

One Competition: This package covers a new application for one separate competition, distinguished by an independent training focus and review schedule. A description of the purpose, available resources, and program focus pertinent to this competition is provided in this application package.

Specify Absolute and Competitive Priorities: In applying for new grant funds under this program, please specify the individual competition (absolute priority) to which your agency/institution is submitting. Should

situations arise in which a training activity appears to be appropriate for more than one competition, applicants are advised to select the single competition that most accurately reflects the prinary training audience to be served by the project. Applicants are responsible for selecting the most appropriate competition for proposed activities. In the event that an agency or institution develops several activities which cut across competitions, it is better to submit separate applications for activities which accurately correspond to each individual competition. It is relatively unusual for a given application to be equally appropriate under more than one competition.

Conversely, it is quite common for applications to address one or more of the competitive priorities listed. In 1990, 74 percent of applications received addressed one or more areas now listed as competitive priorities in addition to major areas identified as absolute priorities.

Applicants must complete Item 10 of ED Form 424 to identify the selected absolute priority. Applicants are urged to include in the descriptive project title (Item 11) information further clarifying the intent of the application in terms of the absolute priority. Such identification will insure the accurate and timely processing of applications.

Content and Format: Applicants are urged to review the criteria upon which applications will be evaluated, we strongly recommend that you use this form as a guide in preparing the application narrative. Peer reviewers have been consistent in their preference for applications arranged to conform with the evaluation criteria.

Public reporting burden for this collection of information is estimated to average 42 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820–NEW *, Washington, DC 20503.

[FR Doc. 91–14639 Filed 6–18–91; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Canada concerning Civil Uses of Atomic Energy, as amended, and the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/EU(CA)–10, for the transfer of 25 kilograms of enriched uranium scrap, enriched to 93.15 percent in the isotope uranium-235 from Chalk River, Ontario, Canada to Dounreay, Scotland, the United Kingdom, for recovery of the uranium. The recovered uranium metal is to be returned to Canada.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC on June 17, 1991.

Richard H. Williamson,

Associate Deputy Assistant Secretary for International Affairs.

[FR Doc. 91–14714 Filed 6–18–91; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project No. 10909–000 New York]

Kinderhook Hydro, Inc.; Availability of Environmental Assessment

June 12, 1991.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the proposed Kinderhook Project located on the Kinderhook Creek in Columbia County, near the Village of Valatie, New York, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3308, of the Commission's offices at 941 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 91–14542 Filed 6–18–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD91–07190T Mississippi–4]

State Oil and Gas Board of Mississippi; Notice of Determination Designating Tight Formation

June 12, 1991.

Take notice that on June 4, 1991, the State Oil and Gas Board of Mississippi (Mississippi) submitted the above-referenced notice of determination to the Commission, pursuant to § 271.703(c)(3) of the Commission's regulations, that the LT–3 Tuscaloosa Formation in the Maxie Field, in Forrest County, Mississippi, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The notice of determination cover sections 1, 2, 11, and 12 in Township 1 South, Range 13 West, sections 4–7 in Township 1 South, Range 12 West, and sections 31–33 in Township 1 North, Range 12 West. The notice of determination also contains Mississippi's findings that the referenced portion of the LT–3 Tuscaloosa Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR, 275.203 and

275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,
Secretary.

[FR Doc. 91-14539 Filed 6-18-91; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. JD91-07208T West Virginia-6]

State of West Virginia; Notice of Determination Designating Tight Formation

June 12, 1991.

Take notice that on June 10, 1991, the Oil and Gas Section of the Division of Energy, within the Department of Commerce, Labor and Environmental Resources, for the State of West Virginia (West Virginia), submitted the above-referenced notice of determination to the Commission, pursuant to § 271.703(c)(3) of the Commission's regulations, that the Keefer Sandstone Formation in Mineral and Hampshire Counties, West Virginia, qualifies as a tight formation under § 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The notice of determination covers all of Mineral and Hampshire Counties. The notice of determination also contains West Virginia's findings that the referenced portion of the Keefer Sandstone Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR § 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR, sections 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,
Secretary.

[FR Doc. 91-14540 Filed 6-18-91; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. MT88-1-006]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

June 12, 1991.

Take notice that Algonquin Gas Transmission Company (Algonquin) on June 7, 1991, tendered for filing as part of its FER Gas Tariff, Third Revised Volume No. 1, six copies of the tariff sheets listed in the attached appendix.

Algonquin states that the revised tariff sheets are being filed to comply with the Commission's Order Nos. 497 and 497-A and in Docket No. MT88-1-000 *et al.* and MG88-2-000 *et al.* issued May 23, 1991.

The proposed effective date of the tariff sheets listed above is June 7, 1991.

Algonquin states that copies of the filing are being served on Algonquin's jurisdictional sales and transportation customers, and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's rules of practice and procedures, 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 19, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 91-14532 Filed 6-18-91; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. MT90-8-003]

Mississippi River Transmission Corp.; Proposed Change in FERC Gas Tariff

June 12, 1991.

Take notice that on June 7, 1991 Mississippi River Transmission Corporation (MRT) tendered for filing Substitute Fourth Revised Sheet No. 72 to its FERC Gas Tariff, Original Volume No. 1-A, with a proposed effective date of November 15, 1990.

MRT states that this filing is being made in compliance with an Order issued by the Commission on May 23, 1991, in which the Commission directed MRT to set forth the title of the operating personnal shared with its affiliated marketing or brokering company.

MRT states that a copy of this filing has been mailed to each of MRT's jurisdictional customers and to the State Commissions of Arkansas, Illinois and Missouri.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's rules of practice and procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 19, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 91-14528 Filed 6-18-91; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. MT91-2-004]

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

June 12, 1991.

Take notice that on June 7, 1991, National Fuel Gas Supply Corporation ("National") tendered for filing Second Revised Sheets Nos. 248, 249 and 250 to its FERC Gas Tariff, Second Revised Volume No. 1, proposed to become effective on July 8, 1991.

National's proposed tariff sheets are filed in response to an order requiring compliance issued by the Commission to National on May 23, 1991 in Docket Nos. MT91-2-000, MT91-2-002 and MT91-2-003. That order required various changes in the form of National's Transportation Service Request Form to bring National into compliance with the requirements of Order No. 497-A applicable to interstate pipelines which conduct transportation transactions with affiliated marketing or brokering entities.

National states that copies of this filing were served upon the Company's jurisdictional customers and the regulatory Commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts and New Jersey.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's rules of practice and procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 19, 1991. Protests will be considered by the Commission in

determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–14533 Filed 6–18–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT88–27–007]

Northern Border Pipeline Co.; Proposed Changes in FERC Gas Tariff

June 12, 1991.

Take notice that on June 7, 1991, Northern Border Pipeline Company (Norther Border) tendered for filing the following sheets to its FERC Gas Tariff, Original Volume No. 1, with a proposed effective date of July 8, 1991:

Third Revised Sheet No. 260

Northern Border states that the purpose of this filing is to comply with the Commission's Order Nos. 497 and 497–A Compliance Filing issued in Docket No. MT88–1–000, *et al.* on May 23, 1991.

Any person desiring to protect said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's rules of practice and procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 19, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–14536 Filed 6–18–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT88–1–005]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

June 12, 1991.

Take notice that Northern Natural Gas Company (Northern) on June 7, 1991, tendered for filing to become part of Northern's FERC Gas Tariff, Third Revised Volume 1, the following tariff sheets:

Third Revised Volume No. 1

First Revised Sheet No. 52F.12a
Second Revised Sheet No. 52F.12b

Northern states that such tariff sheets, with a proposed effective date of July 7, 1991, are being submitted in compliance with the Commission Orders on the following Dockets:

RM87–34–065, et al. issued April 4, 1991 related to Order 500 crediting regulations
MT88–01–000, et al. issued May 23, 1991 related to Order 497 affiliate identification

Northern futher states that copies of the filing have been mailed to each of its customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's rules of Practice and procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 19, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–14534 Filed 6–18–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER91–20–000]

PJM Group; Notice of Filing

June 13, 1991.

Take notice that on May 30, 1991, Pennsylvania-New Jersey-Maryland (PJM) tendered for filing a Second Response to Additional Staff Inquiries in the above referenced docket.

Any person desiring to be heard or to protect said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before June 21, 1991. 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. 91–14529 Filed 6–18–91; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2687 California]

Pacific Gas & Electric Co.; Intent To File an Application for a New License

June 12, 1991.

Take notice that Pacific Gas & Electric Company, the existing licensee for the Pit 1 Hydroelectric Project No. 2687, filed a timely notice of intent to file an application for a new license, pursuant to 18 CFR 16.6 of the Commission's Regulations. The original license for Project No. 2687 was issued effective May 1, 1965, and expires December 31, 1995.

The project is located on the Fall River in Shasta County, California. The principal works of the Pit 1 Project include Pit 1 forebay and dam; a diversion dam and intake structure; a tunnel; penstocks; Pit 1 powerhouse with an installed capacity of 61 MW; a transmission line connection; and appurtenant facilities.

Pursuant to 18 CFR 16.7, the licensee is required henceforth to make available certain information to the public. This information is now available from the licensee at 245 Market Street, San Francisco, CA 94106, Attn: Mr. Steve Christ, room 514, Telephone No. (415) 973–2629.

Pursuant to 18 CFR 16.8, 16.9 and 16.10, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applciations for license for this project must be filed by December 31, 1993.

Lois D. Cashell,

Secretary.

[FR Doc. 91–14543 Filed 6–18–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT88–32–003]

Sea Robin Pipeline Co.; Proposed Changes to FERC Gas Tariff

June 12, 1991.

Take notice that on June 7, 1991, Sea Robin Pipeline Company (Sea Robin) tendered for filing the following revised

sheets to Original Volume No. 1 of it's FERC Gas Tariff:

Third Revised Sheet No. 45
First Revised Sheet No. 45–B
Second Revised Sheet No. 47
Third Revised Sheet No. 52
Second Revised Sheet No. 71

Sea Robin states that its proposed tariff sheets are being submitted in accordance with the Commission's Order No. 500–K and its order in Sea Robin Pipeline Company. Docket No. MT88–32–000 and reflect.

(1) The elimination from Sea Robin's tariff of all references to the Order No. 500 take-or-pay crediting program; and
(2) A change in the time in which Sea Robin will respond to complaints from 2 business days to 48 hours.

Sea Robin states that copies of the filing are being served on Sea Robin's jurisdictional shippers, and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, 20426, in accordance with Rules 214 and 211 of the commission's rules of practices and procedures, 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 19, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–14537 Filed 6–18–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT88–21–003]

South Georgia Natural Gas Co.; Proposed Changes In FERC Gas Tariff

June 12, 1991

Take notice that on June 7, 1991, South Georgia Natural Gas Company (South Georgia) tendered for filing the following sheets to its FERC Gas Tariff, First Revised Volume No. 1, with a proposed effective date of July 7, 1991:

Second Revised Sheet No. 34Q.01
Fourth Revised Sheet No. 34T

South Georgia states that the purpose of this filing is to comply with the Commission's Order Nos. 497 and 497–A Compliance Filing issued in Docket No. MT88–1–000, *et al.* on May 23, 1991.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's rules of practice and procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 19, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–14530 Filed 6–18–91; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 1934 California]

Southern California Edison Co.; Intent To File an Application for a New License

June 12, 1991.

Take notice that Southern California Edison Company, the existing licensee for the Mill Creek Nos. 2 and 3 Hydroelectric Project No. 1934, filed a timely notice of intent to file an application for a new license, pursuant to 18 CFR 16.6 of the Commission's Regulations. The original license for Project No. 1934 was issued effective May 1, 1946, and expires April 30, 1996.

The project is located on Mill Creek, a tributary of the Santa Ana River, in San Bernardino County, California. The principal works of the Mill Creek Project include 3 concrete diversion dams; conduits about 11 miles long; forebays; penstocks; two powerhouses with a total installed capacity of 3.25 MW; a transmission line connection; and appurtenant facilities.

Pursuant to 18 CFR 16.7, the licensee is required henceforth to make available certain information to the public. This information is now available from the licensee at 2244 Walnut Grove Avenue, Rosemead, CA 91770, Tele. (818) 302–8944.

Pursuant to 18 CFR 16.8, 16.9 and 16.10, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by April 30, 1994.

Lois D. Cashell,

Secretary.

[FR Doc. 91–14524 Filed 6–18–91; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 1930 California]

Southern California Edison Co.; Notice of Intent To File an Application for a New License

June 12, 1991.

Take notice that Southern California Edison Company, the existing licensee for the Kern River No. 1 Hydroelectric Project No. 1930, filed a timely notice of intent to file an application for a new license, pursuant to 18 CFR 16.6 of the Commission's Regulations. The original license for Project No. 1930 was issued effective May 1, 1946, and expires April 30, 1996.

The project is located on the Kern River in Kern County, California. The principal works of the Kern River Project include a concrete gravity diversion dam; a conduit about 8.5 miles long; a concrete regulating forebay; a penstock; a powerhouse with an installed capacity of 24.8 MW; a transmission line connection; and appurtenant facilities.

Pursuant to 18 CFR 16.7, the licensee is required henceforth to make available certain information to the public. This information is now available from the licensee at 2244 Walnut Grove Avenue, Rosemead, CA 91770, Tele. (818) 302–8944.

Pursuant to 18 CFR 16.8, 16.9 and 16.10, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by April 30, 1994.

Lois D. Cashell,

Secretary.

[FR Doc. 91–14525 Filed 6–18–91; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 1932 California]

Southern California Edison Co.; Notice of Intent To File an Application for a New License

June 12, 1991.

Take notice that Southern California Edison Company, the existing licensee for the Lytle Creek Hydroelectric Project No. 1932, filed a timely notice of intent to file an application for a new license, pursuant to 18 CFR 16.6 of the

Commission's Regulations. The original license for Project No. 1932 was issued effective May 1, 1946, and expires April 30, 1996.

The project is located on Lytle Creek, a tributary of the Santa Ana River, in San Bernardino County, California. The principal works of the Lytle Creek Project include a diversion dam; a conduit about 22,735 feet long; a concrete regulating forebay, a penstock about 1,546 feet long; a powerhouse with a total installed capacity of 500 kW; a transmission line connection; and appurtenant facilities.

Pursuant to 18 CFR 16.7, the licensee is required henceforth to make available certain information to the public. This information is now available from the licensee at 2244 Walnut Grove, Rosemead, CA 91770, Tele. (818) 302–8944.

Purusuant to 18 CFR 16.8, 16.9 and 16.10, each application for a new license and any operating license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by April 30, 1994.

Lois D. Cashell,

Secretary.

[FR Doc. 91–14526 Filed 6–18–91; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 1933 California]

Southern California Edison Co.; Notice of Intent To File an Application for a New License

June 12, 1991.

Take notice that Southern California Edison Company, the existing licensee for the Santa Ana Nos. 1 and 2 Hydroelectric Project No. 1933, filed a timely notice of intent to file an application for a new license, pursuant to 18 CFR 16.6 of the Commission's Regulations. The original license for Project No. 1933 was issued effective May 1, 1946, and expires April 30, 1996.

The project is located on the Santa Ana River River in San Bernardino County, California. The principal works of the Senate Ana Project include 6 diversion dams on the Santa Ana River and tributaries; conduits with aggregate length of about 5 miles; two penstocks; two powerhouses with a total installed capacity of 5.0 MW; a transmission line connection; and appurtenant facilities.

Pursuant to 18 CFR 16.7, the licensee is required henceforth to make available certain information to the public. This information is now available from the licensee at 2244 Walnut Grove Avenue, Rosemead, CA 91770, Tele. (818) 302–8944.

Pursuant to 18 CFR 16.8, 16.9 and 16.10, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by April 30, 1994.

Lois D. Cashell,

Secretary.

[FR Doc. 91–14527 Filed 6–18–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT88–20–004]

Southern Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

June 12, 1991.

Take notice that on June 7, 1991, Southern Natural Gas Company (Southern Natural) tendered for filing the following sheets to its FERC Gas Tariff, Sixth Revised Volume No. 1, with a proposed effective date of July 7, 1991:

Third Revised Sheet No. 45R.19a
Second Revised Sheet No. 45R.20a

Southern Natural states that the purpose of this filing is to comply with the Commission's Order Nos. 497 and 497–A Compliance Filing issued in Docket No. MT88–1–000, *et al.* on May 23, 1991.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 19, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary

[FR Doc. 91–14541 Filed 6–18–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP90–1014–005]

Southwest Gas Storage Co.; Proposed Changes in FERC Gas Tariff

June 12, 1991.

Take notice that Southwest Gas Storage Company (Southwest) on June 7, 1991 tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, six (6) copies of the following tariff sheets:

First Revised Sheet No. 61
Original Sheet No. 61A
First Revised Sheet No. 62
First Revised Sheet No. 73
First Revised Sheet No. 102
Original Sheet No. 102A
First Revised Sheet No. 103
First Revised Sheet No. 114

Southwest states that these revised tariff sheets are being filed to comply with the Commission's Order on Order Nos. 497 and 497–A Compliance Filings dated May 23, 1991 in Docket No. CP90–1014–002.

The proposed effective date of the tariff sheets listed above is June 7, 1991.

Southwest states that copies of its filing were served on its jurisdictional customers and parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's rules of practice and procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 19, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–14535 Filed 6–18–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT88–34–002]

Tennessee Gas Pipeline Co.; Proposed Changes in FERC Gas Tariff

June 12, 1991.

Take notice that on June 7, 1991, Tennessee Gas Pipeline Company ("Tennessee") filed an original and 10 copies of the following revised tariff sheets to Third Revised Volume No. 1 of its FERC Gas Tariff 1, to be effective June 7, 1991:

First Revised Sheet No. 282
First Revised Sheet No. 283

Tennessee states that the purpose of the filing is to comply with the Commission's order of May 23, 1991, issued in the above-referenced dockets.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 19, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–14544 Filed 6–18–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT88–17–001]

Texas Sea Rim Pipeline, Inc.; Proposed Changes In FERC Gas Tariff

June 12, 1991.

Take notice that on June 7, 1991, Texas Sea Rim Pipeline Inc. (Sea Rim) tendered for filing the following sheets to its FERC Gas Tariff, Original Volume No. 2, with a proposed effective date of July 1, 1991:

First Revised Sheet No. 10
First Revised Sheet No. 113
First Revised Sheet No. 114
First Revised Sheet No. 115
First Revised Sheet No. 116
Original Sheet No. 116a

Sea Rim states that the purpose of this filing is to comply with the Commission's Order Nos. 497 and 497–A Compliance Filing issued in Docket No. MT88–1–000, *et al.* on May 23, 1991.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's rules of practice and procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 19, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–14538 Filed 6–18–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT88–14–003]

Williams Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

June 12, 1991.

Take notice that Williams Natural Gas Company (WNG) on May 31, 1991, tendered First Revised Sheet Nos. 273 and 276 to its FERC Gas Tariff, First Revised Volume No. 1. The proposed effective date of these tariff sheets is July 1, 1991.

WNG states that First Revised Sheet Nos. 273 and 276 are being filed in compliance with Commission Order (order) issued May 23, 1991. Ordering Paragraph (B)(13) required WNG to file within 15 days of the issuance of the order to include in its transportation request form the item required by § 250.16(b)(2)(vii).

WNG states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such protests should be filed on or before June 19, 1991. 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 proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91–14531 Filed 6–18–91; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3966–5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for reivew and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATE: Comments must be submitted on or before July 19, 1991.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: NSPS for Phosphate Rock Plants (Subpart NN). (ICR No. 1078.03; OMB No. 2060–0111). This is a reinstatement of a previously approved collection.

Abstract: Owners or operators of phosphate rock plants must notify the delegated State authority or EPA of construction, reconstruction, anticipated and actual startup, and dates and results of the initial performance tests. Records must be maintained of the performance test results and all startups, shutdowns, and malfunctions. Owners or operators must install and maintain a continuous monitoring system (CMS) to measure opacity, or if a wet scrubber is used, monitor pressure drop and flow rate. Semiannual reports of excess emissions or monitoring system performance are required. The States and EPA use the data to ensure compliance with the standards and to target inspections.

Burden Statement: The public reporting burden for this collection of information is estimated to average 12 hours per response for reporting, and 262.5 hours per recordkeeper annually. The estimated reporting burden includes the time needed to review instructions, search existing data sources, gather the data needed and review the collection of information.

Respondents: Owners or operators of phosphate rock plants.

Estimated No. of Respondents: 13.

Estimated No. of Responses per Respondent: 6.

Estimated Total Annual Burden on Respondents: 4,324 hours.

Frequency of Collection: Once and semiannually.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy

Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

and

Troy Hillier, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20530.

Dated: June 12, 1991.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 91–14622 Filed 6–18–91; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3956–6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before July 19, 1991.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382–2740.

SUPPLEMENTARY INFORMATION:

Title: Records of Polychlorinated Biphenyls (PCBs) Use, Storage and Disposal—(EPA ICR No. 0583.04; OMB #2070–0061). This is an extension of the expiration of a currently approved collection.

Abstract: In compliance with TSCA Section 6(e), owners of PCBs or equipment containing PCBs, must record the dates of PCBs removal from service, and they must record the quantity of PCBs removed from service; they must record the name of the owner of the initial storage and disposal facility, and they must record the quantity of PCBs remaining in service at the end of each calendar year. Owners of storage and disposal facilities must record the date when PCBs are received; they must record the date and identification of specific PCBs that are transferred or disposed of at another storage or disposal facility. Owners or operators of incinerators must record the quantity of PCBs fed into the incinerator, and they must track and maintain records of PCBs' incineration processes. Owners of chemical waste landfills must collect samples of surface and ground water at locations and frequencies specified by EPA; they must conduct analysis of the samples for PCBs, pH, specific conductance, and chlorinated organics, and they must record results of all analysis. Owners of high efficiency boilers must record the amount of PCBs burned each month; they must monitor the combustion processes, and they must record the results of all analysis. In addition, owners and operators of storage for disposal facilities (including high efficiency boiler operations) must maintain documents on the various facility approval actions required by Federal regulations, as well as any State or local government approval actions. Records must be maintained by the owners of PCBs and PCBs containing equipment, or the owners of the facility using, storing or disposing of PCBs. The EPA uses these data to monitor the movement and final disposal of PCBs.

Burden Statement: The annual public burden for this collection of information is estimated to average 35 hours per recordkeeper. This estimate includes the time needed to review instructions, search data sources, gather the data needed, and review the collection of information.

Respondents: Owners of PCBs' owners and operators of PCBs containing equipment; owners and operators of facilities using, storing or disposing of PCBs.

Estimated No. of Respondents: 5,501.

Estimated Total Annual Burden on Respondents: 192,535 hours.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

and

Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20530.

Dated: June 12, 1991.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 91–14623 Filed 6–18–91; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3966–7]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATE: Comments must be submitted on or before July 19, 1991.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382–2740.

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: Continuous Release Reporting under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 (EPA ICR #1445.02; OMB #2050–0086). This ICR requests renewal of the existing clearance.

Abstract: CERCLA 103(f)(2) provides relief from the per-occurrence notification requirements of section 103(a) for hazardous substance releases that are "continuous" and "stable in quantity and rate," provided that such releases are reported annually, or at such time as there is any statistically significant increase in the quantity of the release. Under the continuous release reporting regulation (CRRR), developed by EPA's Emergency Response Division in the Office of Solid Waste and Emergency Response, the term "continuous" includes routine, anticipated, intermittent releases, in addition to releases that are continuous without interruption. Similarly, the CRRR considers a release to be "stable in quantity and rate" if it is predictable and regular in quantity and rate of release.

The information collected under the CRRR is used to evaluate the acute and chronic effects of a continuous release in order to determine if a response action is necessary to prevent or mitigate any adverse effects. Any hazardous substance release that equals or exceeds its RQ warrants a timely evaluation of its source, emission rate, and chemical form, the proximity of sensitive populations or ecosystems, and the ambient conditions, to ensure the protection of human health, welfare, and the environment. The information is also used by State and local government authorities for emergency planning and response purposes.

To report a "continuous" release, the regulated community is expected to perform the following activities: (1) One or more initial phone calls to the National Response Center (NRC); (2) an initial written report to the EPA Region; (3) a follow-up written report to the EPA Region one year after the submission of the initial written report; (4) notification to the EPA Region of any changes in release information previously submitted; (5) the immediate notification of any statistically significant increase (SSI) in the quantity of release to the NRC; (6) comply with EPA-mandated response activities; (7) and keep records on the release, including documentation of the annual evaluation. Activities (4), (5), and (6) are conditional activities expected to be necessary for only a small fraction of the continuous releases reported each year.

Burden Statement: The estimated public reporting burden for this collection of information is 14.8 hours per affected facility. This estimate includes time for determining if the hazardous substance release qualifies for reporting under the continuous release final rule, gathering and maintaining the required information, completing and reviewing the telephone and written reports, and recordkeeping.

Respondents: Any facility subject to the hazardous substance notification requirements of CERCLA section 103(a).

Estimated No. of Respondents: 12,628 affected facilities.

Estimated Total Annual Burden on Respondents: 187,379 hours.

Frequency of Collection: On occasion, when "continuous" releases meet the criteria of CERCLA 103(f)(2).

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20530.

Dated: June 12, 1991.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 91–14624 Filed 6–18–91; 8:45 am]

BILLING CODE 6560–50–M

[PP OG3819/T608; FRL 3925–9]

Chloroethoxyphos; Extension of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has extended temporary tolerances for the combined residues of the insecticide chloroethoxyphos (phosphorothioic acid, O,O-diethyl O-(1,2,2,2,-tetrachloroethyl) ester) in or on certain raw agricultural commodities.

DATES: These temporary tolerances expire April 9, 1992.

FOR FURTHER INFORMATION CONTACT By mail: Dennis Edwards, Product Manager (PM) 12, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 202, CM#2, 1921 Jefferson Davis Highway, Arlington, VA (703)–557–2386.

SUPPLEMENTARY INFORMATION: EPA issued a notice, which was published in the **Federal Register** of June 14, 1990 (55 FR 24151), announcing the establishment of temporary tolerances for the combined residues of the insecticide chloroethoxyphos (phosphorothioic acid, O,O-diethyl O-(1,2,2,2,-tetrachloroethyl) ester) in or on the raw agricultural commodities field corn, grain, forage and fodder at 0.02 part per million (ppm). These tolerances were issued in response to pesticide petition (PP) 0G3819, submitted by E. I. du Pont de Nemours and Co., Inc., Agricultural Products, P.O. Box 80038, Wilmington, DE 19880–0038.

These temporary tolerances have been extended to permit the continued marketing of the raw agricultural commodities named above when treated in accordance with the provisions of experimental use permit 352–EUP–152, which is being extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that the extension of these temporary tolerances will protect the public health. Therefore, the temporary tolerances have been extended on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. E. I. du Pont de Nemours and Co., Inc., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire April 9, 1992. Residues not in excess of this amount remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: May 21, 1991.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 91–14207 Filed 6–18–91; 8:45 am]

BILLING CODE 6560–50–F

[PP 9G3797/T607; FRL 3892–3]

Quinclorac; Establishment of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established temporary tolerances for residues of the herbicide quinclorac in or on certain raw agricultural commodities. These temporary tolerances were requested by BASF Corp., Agricultural Chemicals Division.

DATES: These temporary tolerances expire March 1, 1992.

FOR FURTHER INFORMATION CONTACT: By mail: Robert Taylor, Product Manager (PM) 25, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 245, CM#2, 1921 Jefferson Davis Highway, Arlington, VA (703)–557–1800.

SUPPLEMENTARY INFORMATION: BASF Corp., Agricultural Chemicals Division, P.O. Box 13528, Research Triangle Park, NC 27709-3528, has requested in pesticide petition (PP) 9G3797, the establishment of temporary tolerances for residues of the herbicide quinclorac 3,7-dichloro-8-quinoline carboxylic acid in or on the raw agricultural commodities rice at 5.0 parts per million (ppm); rice straw at 12.0 ppm; rice bran at 15.0 ppm; milk at 0.05 ppm; eggs at 0.05 ppm; meat and fat of cattle, goats, hogs, sheep, horses, and poultry at 0.05 ppm; meat byproducts of cattle, goats, hogs, sheep, and horses at 0.05 ppm; and meat byproducts of poultry at 0.10 ppm. EPA issued a related food additive regulation (40 CFR 186.5225) for quinclorac, published in the **Federal Register** of April 10, 1991 (56 FR 14473). These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 7969–EUP–25, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. BASF Corp. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire March 1, 1992. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirement of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority:21 U.S.C. 346a(j).

Dated: May 29, 1991.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 91–14206 Filed 6–18–91; 8:45 am]

BILLING CODE 6560–50–F

[OPP–66146; FRL 3885–7]

Sodium Arsenite; Receipt of Request to Cancel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Receipt to Cancel Registrations.

SUMMARY: This Notice, pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq., announces EPA's receipt of a November 13, 1990 request from Agtrol Chemical Products to voluntarily cancel their registrations for products containing sodium arsenite.

DATES: Unless the request is withdrawn, a cancellation order is likely to be issued on or about September 17, 1991.

FOR FURTHER INFORMATION CONTACT: By mail: Lisa Engstrom, Special Review and Reregistration Division (H7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Special Review Branch, rm. 2N6, Westfield Building # 3, 2800 Jefferson Davis Highway, Arlington, VA. (703) 308–8010.

SUPPLEMENTARY INFORMATION: This notice announces receipt of a request to cancel the registrations for products containing sodium arsenite.

I. Background

Sodium arsenite is used to control two types of fungus on grapes, Phomopsis and Black Measles, for which no alternative chemical control is known to exist. The use of sodium arsenite is limited to California since outbreaks occur only in that state. The chemical, which is packaged as a spray and applied by a unique vertical boom application, is used during December and January on dormant grape vines. The amount used is determined by the extent of disease infestation: while no treatment is required some years, other years up to 60,000 gallons may be used on up to 40,000 acres of grape vines.

II. Intent to Cancel and Delist

On November 13, 1990, the registrant, Agtrol Chemical Products submitted a letter to EPA requesting voluntary cancellation of their two products containing sodium arsenite, Sodium Arsenite Solution # 4 (EPA # 55146–35) and Sodium Arsenite Solution # 6 (EPA # 55146–25). As the basis for requesting voluntary cancellation, the company concluded the cost of generating required data did not justify continued registration of their products. It should be noted that several studies were overdue on or about the time of the cancellation request. Had voluntary cancellation not been requested, EPA would have proceeded with suspension action pursuant to FIFRA section 3(c)(2)(B). In addition, sodium arsenite is currently undergoing a Special Review for carcinogenicity concerns for workers. Sodium arsenite, an inorganic arsenical, is classified as a Group A, or known human carcinogen.

Section 6(f) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

If a valid registration for a sodium arsenite pesticide is transferred from Agtrol Chemical Products to another person desiring retention of theregistration during the 90–day period pursuant to 40 CFR 152.135, EPA will not issue the cancellation order. Nevertheless, the new registrant would be responsible for all outstanding data requirements, As noted above, at the time voluntary cancellation was

requested, Agtrol Chemical Products was overdue on several data requirements and EPA planned to initiate a suspension action. Thus, if a sodium arsenite registration is transferred during the 90–day period, the new registrant would be at risk of suspension until all outstanding data requirements are met.

Comments on this voluntary cancellation request may be submitted to the contact person listed under **FOR FURTHER INFORMATION CONTACT** by September 17, 1991. In addition, interested persons desiring retention of a registration should contact the registrant directly during this 90–day period at the following address: Dr. Herbert O'Neal, Agtrol Chemical Products, 7322 Southwest Freeway, suite 1400, Houston, TX 77074, (713) 995–0111.

Unless the request for voluntary cancellation is withdrawn by the registrant, or a registration is transferred as described above, within 90 days of publication of this notice, an order is likely to be issued cancelling all registrations for sodium arsenite.

Unless the burden of supporting sodium arsenite through reregistration is assumed by the current registrant or another party who acquires the rights to a current registration containing it, sodium arsenite will no longer be a registered active ingredient and will be removed from List B. Once an active ingredient is cancelled, any person wishing to bring the pesticide back on the market would need to apply to EPA for a "new chemical" registration. Such a registration generally would not be approved until all applicable data requirements are satisfied.

III. Procedures for Withdrawal of Request

If the registrant chooses to withdraw its request for cancellation, it must submit such withdrawal in writing to Lisa Engstrom at the address given earlier, postmarked before September 17, 1991. This written withdrawal of the request for cancellation must include a commitment to pay any reregistration or registration maintenance fees due, and to fulfill any applicable unsatisfied data requirements. It should be noted, however, that because Agtrol Chemical Products is currently overdue on several studies, it may be subject to a suspension action until all outstanding data requirements are met.

IV. Existing Stocks Determination

Also included in Agtrol's voluntary cancellation request was provision for allowing the registrant to sell all stocks until depletion. The company noted they have 30,000 gallons of stock ready for the next growing season. It is not EPA policy to allow a registrant unlimited stocks provision, especially in light of an imminent suspension action. EPA therefore proposes to allow the registrants to sell and distribute their products containing sodium arsenite for 1 year after the date of cancellation. EPA will allow sale and use of products containing sodium arsenite by those holding stocks already in chains of distribution (i.e., stocks already in the hands of dealers or users). Because sodium arsenite use each year is unpredictable, EPA believes it is appropriate to allow sale and use until stocks already in chains of distribution are exhausted rather than impose a time limit on use of existing stocks, so that persons who have legally purchased stocks of sodium arsenite will be able to sell or use those stocks without violating the cancellation order.

Dated: May 24, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 91–14628 Filed 6–18–91; 8:45 am]

BILLING CODE 6560–50–F

[OPTS–140144; FRL–3882–8]

Access to Confidential Business Information by Research and Evaluation Associates, Incorporated

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Research and Evaluation Associates, Incorporated (REA), of Chapel Hill, North Carolina, for access to information which has been submitted to EPA under section 5 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than July 1, 1991.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, TSCA Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: Under contract number 68–D8–0118, contractor REA, of 100 Europa Drive, suite 590, Chapel Hill, North Carolina, will assist the Office of Toxic Substances (OTS) in preparing hazard and health assessments of existing chemicals, and Community Right-to-Know Fact Sheets for substances regulated under TSCA and the Superfund Amendments and Reauthorization Act (SARA).

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–D8–0118, REA will require access to CBI submitted to EPA under section 5 of TSCA to perform successfully the duties specified under the contract. REA personnel will be given access to information submitted to EPA under section 5 of TSCA. Some of the information may be claimed or determined to be CBI. EPA is issuing this notice to inform all submitters of information under section 5 of TSCA that EPA may provide REA access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters and 411 Chapel Hill St., Durham, North Carolina facilities only.

Clearance for access to TSCA CBI under this contract may continue until September 30, 1992.

REA personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: June 13, 1991.

George A. Bonina,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 91–14627 Filed 6–18–91; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[DA 91–710]

Comments Invited on Kansas Public Safety Plan

June 12, 1991.

The Commission has received the public safety radio communications plan for Kansas (Region 16).

In accordance with the Commission's Report and Order in General Docket No. 87–112 implementing the Public Safety National Plan, parties may file comments on or before July 19, 1991 and reply comments on or before August 5, 1991. (See Report and Order, General Docket No. 87–112, 3 FCC Rcd 905 (1987), at paragraph 54.)

In accordance with the Commission's Memorandum Opinion and Order in General Docket No. 87–112, Region 16 consists of the State of Kansas. (See Memorandum Opinion and Order, General Docket No. 87–112, 3 FCC Rcd 2113 (1988).)

Comments should be clearly identified as submissions to PR Docket 91–162 Kansas—Region 16, and commenters should send an original and five copies to the Secretary, Federal Communications Commission, Washington, DC 20554.

Questions regarding this public notice may be directed to Betty Woolford, Private Radio Bureau, (202) 632–6497 or Ray LaForge, Office of Engineering and Technology, (202) 653–8112.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91–14496 Filed 6–18–91; 8:45 am]

BILLING CODE 6712–01–M

[GEN Docket No. 90–217; DA 91–713]

Filing Requirements for Pioneer's Preference

Dated: June 13, 1991.

In the *Report and Order* in GEN Docket No. 90–217, the Commission adopted rules that provide preferential treatment in its licensing processes for parties requesting spectrum allocation rule changes associated with the development of new communications services and technologies.[1] This public notice is issued to address inquiries received by Commission staff regarding application of the *Report and Order* to matters now pending before the Commission.

For Commission proceedings initiated before April 9, 1991 (the date of adoption of the *Report and Order*), a preference applicant will not be required to submit a petition for rule making provided that it has previously submitted a petition for rule making or experimental license application or submits an experimental license application (or demonstration of technical feasibility) before the July 30, 1991 effective date of the *Report and Order.*[2] As the Commission stated in the *Report and Order:* "In situations where a petition for rule making has been filed or a notice of inquiry adopted, a request for a pioneer's preference may be filed by entities that either filed a petition for rule making proposing a new service or innovative technology or who filed some other request with the Commission (*e.g.*, an experimental license application) proposing a new service or innovative technology. This approach will avoid treating unfairly entities who did not file separate petitions for rule making at a time when doing so did not provide any licensing benefits, but who had come forward with a new service or innovative technology proposal."[3]

A preference request may be filed at any time subsequent to release of the *Report and Order.* While the *Report and Order* specified an effective date of July 30, 1991, preference requests filed after release of the *Report and Order* on May 13, 1991, will be accepted. However, such requests will not receive a higher ranking or other special consideration in relation to other preference requests also submitted during this initial filing period.

The Commission periodically will issue public notices soliciting comment on those requests for a pioneer's preference filed in proceedings initiated prior to the adoption of the *Report and Order.* An applicant submitting such a request should reference on the first page the rule making or docket number to which the request relates. Each such request will be assigned a file number and will be available for public inspection at the Commission's Dockets Reference Center, Room 239, 1919 M Street, NW, Washington, DC 20554, or through purchase from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1114 21st Street, NW, Washington, DC 20036.

This action is taken by the Chief Engineer pursuant to authority found in §§ 0.31 and 0.241 of the Commission's Rules. For further information, contact Rodney Small, (202) 653–8116.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91–14647 Filed 6–18–91; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–906–DR]

Mississippi; Amendment to a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Mississippi (FEMA–906–DR), dated May 17, 1991, and related determinations.

DATES: June 11, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: The notice of a major disaster for the State of Mississippi, dated May 17, 1991, is hereby amended to add Public Assistance and include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 17, 1991:

The counties of Pontotoc, Prentiss, and Union for Individual Assistance and Public Assistance; and the counties of Humphreys, Itawamba, Lee, Leflore, Monroe, Quitman, Sunflower, Tallahatchie, Tishomingo, and Washington for Public Assistance (already designated for Individual Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91–14440 Filed 6–18–91; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Port of New Orleans/Coastal Cargo Company, Inc; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit protests or 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 and protests are found in §§ 560.602 and/or 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.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that

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[1] *See Report and Order,* GEN Docket No. 90–217, released May 13, 1991, FCC 91–112.

[2] A proceeding will be considered to have been initiated before the adoption of the *Report and Order* if the Commission adopted a notice of inquiry before this date (as was the case, for example, in GEN Docket No. 90–314, dealing with new personal communications services, and GEN Docket No. 90–357, dealing with new digital audio radio services) or if a petition for rule making was filed and accepted before this date (as was the case, for example, in RM No. 7334, dealing with a petition filed by Orbital Communications Corporation to establish a low-Earth orbit satellite service).

[3] *Report and Order,* at para. 70.

document to the person filing the agreement at the address shown below.

Agreement No.: 224–200447–002.

Title: Port of New Orleans/Coastal Cargo Company, Inc. Terminal Agreement.

Parties: Port of New Orleans (Port) Coastal Cargo Company, Inc.

Filing Party: Joseph W. Fritz, Jr., Staff Attorney, The Port the New Orleans, P.O. Box 60046, New Orleans, LA 70160.

Synopsis: The Agreement, filed June 7, 1991, provides for an increased rental rate for the second year of the basic agreement for the lease of certain portions of the Port's Mandeville Street Wharf.

By Order of the Federal Maritime Commission.

Dated: June 13, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91–14500 Filed 6–18–91; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 450, as amended:

Costa Cruise Lines N.V., Costa Crociere S.P.A. Milestone N.V. and Prestige Cruises N.V., World Trade Center, 80 S.W. 8th Street, Miami, FL 33130–3097

Dated: June 13, 1991.

Vessel: DAPHNE

Joseph C. Polking,

Secretary.

[FR Doc. 91–14499 Filed 6–18–91; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

[Docket No. R–0718]

Federal Reserve Bank Services

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of Final Action.

DATE: June 13, 1991.

SUMMARY: The Board has approved a requirement that all depository institutions that originate or receive commercial automated clearing house (ACH) transactions through Federal Reserve Banks establish electronic access to the Reserve Banks for ACH services by July 1, 1993. The Board anticipates significant increases in nonelectronic input and output fees in January 1992 and January 1993, reflecting the higher cost of providing those aspects of the ACH service in an increasingly electronic environment. The Board has determined that the anticipated increases in nonelectronic input and output fees should provide sufficient encouragement for depository institutions to convert to electronic access. Therefore, the Board has not adopted the per transaction surcharge to nonelectronic endpoints that was proposed to be implemented in January 1993.

An all-electronic ACH will improve the efficiency of the ACH mechanism by promoting timely posting of ACH payments to customer accounts and will enhance the attractiveness of the ACH system by allowing greater processing flexibility. Also, an all-electronic ACH will enhance the integrity of the ACH mechanism by reducing credit and fraud risk, providing a higher level of security, and improving contingency and disaster recovery capabilities.

EFFECTIVE DATE: The requirement that institutions that originate or receive commercial ACH transactions through Federal Reserve Banks establish electronic connections to the Reserve Banks for ACH services will be effective July 1, 1993. The new fee structure for the nonelectronic aspects of the ACH service will be effective January 1, 1992.

FOR FURTHER INFORMATION CONTACT: Louise L. Roseman, Assistant Director (202/452–3874), Gayle Brett, Manager (202/452–2934), or Scott Knudson, Senior Financial Services Analyst, (202/452–3959), Division of Reserve Bank Operations and Payment Systems; for the hearing impaired only: Telecommunications Device for the Deaf, Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION:

Background

The ACH is a value-dated electronic payments mechanism that supports both debit and credit payments. In ACH debit transactions, funds flow from the depository institution receiving the transaction to the institution originating the transaction. Debit payments include the collection of insurance premiums, mortgage and loan payments, consumer bill payments, point-of-sale transactions, and corporate cash concentration transactions. In ACH credit transactions, funds flow from the depository institution originating the transaction to the institution receiving the transaction. Examples of credit payments include direct deposit of payroll and corporate payments to contractors and vendors. In 1990, the Reserve Banks processed 490.8 million commercial debit transactions valued at $3.18 trillion, and 424.5 million commercial credit transactions valued at $989.2 billion.[1]

Unlike Fedwire, in which funds transfers are processed individually and settled immediately at the time of processing, the ACH is a batch-processing system in which transactions are generally deposited at Reserve Banks for processing one or two days before the settlement date and are processed and delivered to receiving institutions during either the day or night processing cycle.

As of March 31, 1991, approximately 7,200 of the 10,050 endpoints that receive commercial ACH services directly from the Reserve Banks did not have electronic data communications links with the Reserve Banks for ACH services. These nonelectronic endpoints receive ACH transactions using magnetic tape, diskette, or paper media. Some nonelectronic endpoints use messengers to deposit ACH input and either pick up ACH output or receive it by Federal Reserve check courier or by mail.

Because of the additional time required to deliver ACH output to nonelectronic endpoints, ACH credit payment information necessary to update customers' accounts may not be received by some receiving institutions until after the opening of business on the settlement day. In addition, the need to deliver some ACH output nonelectronically restricts the Federal Reserve's ability to offer ACH deposit and distribution schedules that better meet the needs of depository institutions and their customers. Moreover, the need to originate many ACH credit payments up to two days prior to settlement date in order to help ensure timely receipt by the nonelectronic endpoints makes the ACH system unattractive for certain payment applications and increases credit risk in the system. Finally, the security and disaster recovery capabilities associated with nonelectronic delivery of ACH payments are inferior to those associated with electronic transmission.

[1] Commercial ACH transactions are ACH transactions originated by depository institutions. Government ACH transactions are originated by the federal government.

Proposal to Implement an All-Electronic ACH

The Board believes that the Federal Reserve could make significant improvements to its ACH service if all participating institutions accessed the service electronically to originate and receive ACH transactions. Some of these improvements cannot be fully acheived unless all ACH endpoints send and receive ACH transactions electronically.

The Monetary Control Act directs the Federal Reserve to consider, in its pricing principles, the provision of an adequate level of service nationwide. This provision relates not only to the availability of the service to all depository institutions, but also to the level of service that is provided. The Board believes that the establishment of an all-electronic ACH is consistent with the Monetary Control Act and Federal Reserve policies concerning payment services in that it will enable the Federal Reserve to make major improvements to its ACH service.

An all-electronic ACH will enable Federal Reserve Banks to make significant improvements to their processing schedules. Current schedules are constrained by the timing of check courier dispatches because check couriers deliver ACH output to many receiving institutions. The elimination of these constraints will allow for later deposit deadlines, thereby facilitating the use of the ACH for a broader range of payment applications.

Another benefit of an all-electronic ACH is the increased speed with which ACH payments can be delivered. This would ensure that all institutions, regardless of their volume or location, would receive ACH output on a timely and consistent basis to enable them to post payment information to customers' accounts sooner and thereby provide more prompt funds availability. The assurance of timely delivery may facilitate the use of the ACH for payments, such as hourly payroll, that are not generally made via the ACH today.

Depository institutions in an all-electronic environment will be able to reduce the credit risks associated with ACH credit transfers because the time between the time of deposits and settlement of transactions can be reduced. Credit risk associated with debit return items is also reduced because the originating institution generally will receive the return item one or two days sooner than if it were received in nonelectronic form.

An all-electronic ACH network will result in a higher level of security for all ACH transactions. The Reserve Banks currently offer data encryption and other security procedures to electronic endpoints to ensure confidentiality of ACH transactions and authenticity of the sender. This provides a significantly higher level of security than for nonelectronic deposit and delivery alternatives.

Finally, an all-electronic ACH will improve disaster recovery and contingency processing capabilities. Electronic access to ACH services will eliminate delays associated with transporting nonelectronic input and output media to and from a remote site in a contingency processing or disaster recovery situation.

The Reserve Banks have already taken certain steps to require electronic access. Beginning January 1, 1991, new commercial ACH receiving points (including endpoints that had received only government ACH transactions but begin to receive commercial transactions) were required to receive ACH transactions from the Reserve Banks electronically. In addition, beginning July 1, 1991, new sending points will be required to originate ACH transactions to Reserve Banks electronically.

If the benefits of an all-electronic ACH are to be realized within the next few years, the Board believes that the Federal Reserve will have to encourage more actively the development of an all-electronic ACH network. In December 1990, the Board requested comment on a proposal to require depository institutions that originate or receive commercial ACH transactions through the Federal Reserve Banks to establish electronic connections with the Reserve Banks for ACH services (55 FR 53051, December 26, 1990). Specificially, the Board proposed that the Federal Reserve's commercial ACH service would no longer be provided to institutions that could not deposit and receive ACH transactions electronically, beginning July 1, 1993. In order to encourage institutions to establish electronic connections prior to the conversion deadline and thus avoid a large number of requests for electronic access immediately prior to the deadline, the Board also proposed that a per transaction surcharge on commercial ACH transactions originated or received be assessed to depository institutions using nonelectronic ACH deposit or delivery alternatives, beginning January 1, 1993. In addition, to further encourage nonelectronic endpoints to convert to electronic access, the Board indicated that ACH fees for nonelectronic input and output media likely would be increased significantly.

Summary of Comments

The Board received 81 comments on the proposal. The following table reflects the number of comments by category of respondent.

	Comments Received
Commercial Banks/Bank Holding Companies	42
ACH Associations	15
Trade Associations	8
Credit Unions	6
Data Processors	4
Savings Bank	1
Corporation	1
Department of the Treasury	1
Federal Reserve Banks	3
Total	81

Seventy commenters supported the Board's proposal to establish an all-electronic ACH. Thirty-three commenters supported the proposal in its entirety, and thirty-seven commenters supported the Board's objective to establish an all-electronic ACH but expressed some reservations about certain aspects of the proposal. The reservations generally centered on the use of incentive pricing (i.e., the proposed transaction surcharge and the anticipated increase in nonelectronic input and output fees), and the cost to small depository institutions of establishing an electronic connection. The commenters that opposed the use of transaction surcharges and nonelectronic input and output fee increases argued that incentive pricing is inconsistent with provisions of the Monetary Control Act and were concerned that the Federal Reserve would use the revenue obtained from the incentive fees to subsidize other ACH fees, thereby creating potential competitive inequities between the Federal Reserve and private-sector ACH processors.

Eleven commenters opposed the proposal. These commenters, which were small depository institutions concerned about the cost to establish an electronic connection for delivery of ACH transactions, generally questioned the benefits to them of an all-electronic ACH. These commenters were generally less than $50 million in asset size and generally originated and/or received an average of approximately 1,000 items per month.

Commenters generally supported the establishment of a conversion deadline for electronic access. These commenters indicated that transaction surcharges and nonelectronic input and output fee

increases alone would not be sufficient to encourage all depository institutions (particularly smaller institutions) to convert to an electronic connection. Commenters generally indicated that there are no significant obstacles to prevent them from converting by the mid-1993 proposed conversion deadline. Several commenters expressed concern that the Federal Reserve may not be able to provide training and installation support sufficient to meet the proposed conversion deadline. Several other commenters expressed a preference for an earlier conversion date.

Overall, the commenters believed that the Federal Reserve's electronic access alternatives—computer interface (bulkdata or vendor software), Fedline, and FLASH-Light [2]—are sufficient to meet the institutions' needs. There was some concern, however, that these alternatives may be too expensive for very low-volume institutions. Finally, several commenters suggested that in order to ensure the success of the conversion effort, there needs to be more publicity and awareness of the effort, and the Federal Reserve System should work closely and cooperatively with the ACH associations and other industry groups.

The Board, after considering the comments received, has adopted a mandatory conversion deadline for an all-electronic ACH of July 1, 1993. In addition, the Board anticipates that it will increase significantly, beginning January 1992, the nonelectronic tape input and output fees and paper output fees to reflect the higher cost of providing these aspects of the ACH service in an increasingly electronic environment. The Board believes that these fee increases also will serve to provide sufficient encouragement for depository institutions to convert to electronic access for Federal Reserve ACH services and therefore has not adopted the per transaction surcharge to nonelectronic endpoints proposed to be implemented in January 1993. The following discusses the specific issues raised by the commenters and the Board's response.

[2] The Federal Reserve currently offers depository institutions several connection alternatives to facilitate the conversion to electronic access for ACH services. The alternatives are designed to meet the needs of institutions with various transaction volume levels. Medium- to high-volume institutions can use a computer interface connection using either the Federal Reserve's bulkdata software or vendor software that meets Federal Reserve protocol specifications. Low- to medium-volume institutions can use Fedline intelligent-terminal software, and low-volume institutions can use FLASH-Light intelligent-terminal software with receive-only capabilities.

Conversion Deadline. The Board proposed that the Federal Reserve will no longer provide commercial ACH services to depository institutions that have not established an electronic connection for ACH services, beginning July 1, 1993. Sixty-seven commenters supported the imposition of a conversion deadline for electronic access. Of those, six commenters expressed concerns regarding the Federal Reserve's ability to convert the large number of nonelectronic endpoints by that date. Seven commenters that supported a conversion deadline indicated that the Federal Reserve could set an earlier target date to achieve an all-electronic ACH and two commenters recommended that the Federal Reserve set an earlier conversion date. Two commenters that supported the concept of an all-electronic ACH questioned the need for a mandatory conversion date.

The Board has adopted the proposed July 1, 1993, conersion deadline. This deadline should provide reasonable time for depository institutions to establish electronic access. The Board believes that this schedule is ambitious but realistic in terms of the ability of the Federal Reserve Banks to support the conversion. The Reserve Banks have developed conversion plans and are devoting additional resources to the electronic conversion effort. To ensure that the conversion deadline is achieved and to avoid a large number of conversions at the end of the transition period, nonelectronic endpoints should allow sufficient lead time when requesting electronic access to allow for ordering equipment, testing, and training their staffs. Therefore, depository institutions requiring computer interface (bulkdata or vendor software) connections should place orders for the connections no later than February 28, 1993. Depository institutions planning to use Fedline or FLASH-Light connections should place orders no later than March 31, 1993. The earlier date for computer interface connections reflects the additional time required for testing and training when installing these connections.

Nonelectronic Input and Output Fee Increases and transaction Surcharge The Board proposed that a transaction surcharge be assessed on commercial ACH transactions originated and received by nonelectronic deposit and delivery alternatives, beginning January 1, 1993. The Board also indicated that ACH fees for nonelectronic input and output media would be increased significantly, beginning January 1, 1992. Forty-one commenters supported the fee increases or indicated that higher fees would encouarge the conversion to electronic connections. Fourteen commenters opposed the use of the surcharge. Although the Board did not anticipate that the proposed fee increases would result in an overrecovery of the cost of providing ACH services, eleven commenters opposed the nonelectronic input and output fee increases and transaction surcharges on the gorunds that all fees should be based on the cost of providing the service. They argued that, if the Federal Reserve were to base fees on factors other than cost, these fees could be used to subsidize the ACH transaction fee assessed to electronic endpoints, which could create competitive inequities between the Federal Reserve and private-sector ACH processors. Other commenters opposing the surcharge stated that the higher costs could be punitive for small depository institutions, which may elect to cease participation in the ACH.

Under the current fee structure, both paper and tape output are assessed the same fee, with a higher fee assessed for output delivered by the Federal Reserve rather than picked up by the depository institution. To reflect more accurately the significant differences in cost between tape and paper output, separate fees will be assessed for tape and paper output, beginning January 1, 1992.

Nonelectronic input and output fees have increased significantly in recent years to better reflect the cost of providing these aspects of the ACH service. In its request for comment, the Board indicated that nonelectronic input and output fees may increase by 50 to 100 percent in January 1992. The Board anticipates that the tape input and output fees and paper output fees will increase substantially in 1992 because, in the case of the tape fees, the current fees do not fully recover the cost of providing these nonelectronic aspects of the ACH service, and because the fixed costs of providing these input and output options will be spread over fewer nonelectronic endpoints as conversions occur. These fees will further increase in 1993 as the number of nonelectronic endpoints continues to decrease.

The Board anticipates that it will set the tape input fees at the same level as the tape output fees and that these fees will be in the range of $12.00 to $15.00 (compared to $4.50 or $5.25 for output or $6.00 for input in 1991). The Board anticipates that paper output fees in 1992 will be in the range of $6.00 to $9.00 (compared to $4.50 or $5.25 in 1991). Output fees may be set somewhat higher for output delivered by the Federal

Reserve rather than picked up by the depository institution. The Board anticipates that these increases in nonelectronic input and output fees should be sufficient to encourage an orderly migration to an all-electronic environment, and thus has not adopted the proposed transaction fee surcharge.

Depository institutions that wish to establish an electronic connection in 1991 and thus avoid the 1992 nonelectronic input and output fee increases should allow sufficient lead time when requesting electronic access. Depository institutions planning to establish Fedline or FLASH-Light connections in 1991 should request their conversion to electronic access no later than September 30, 1991. Depository institutions that plan to establish computer interface (bulkdata or vendor software) connections in 1991 should request their conversion no later than August 31, 1991. To avoid further nonelectronic input and output fee increases in 1993, depository institutions that plan to establish computer interface connections (bulkdata or vendor software) during 1992 should request their connections by August 31, 1992. Institutions that plan to establish Fedline or FLASH-Light connections during 1992 should request their connections by September 30, 1992. A depository institution that requests, by the applicable date noted above, to establish an electronic connection will not be assessed the increased input and output fees that take effect the following year if there is a delay in the installation of the electronic connection that is not attributable to the depository institution.

Several commenters suggested an alternative approach to the proposed pricing incentives that would encourage depository institutions to convert to electronic access prior to the conversion deadline. They recommended that the Federal Reserve waive the installation and training fees that are assessed when an electronic connection is established, noting that this approach would be similar to measures taken by the New York Clearing House in its all-electronic ACH conversion effort. Although the Board agrees that this approach would provide further incentive to depository institutions to establish electronic access for ACH services, it believes this approach would be unfair to those depository institutions that have already established an electronic connection and paid the applicable training and installation fees.

Electronic Access Alternatives Twenty-six respondents commented on the acceptability of the currently available electronic access alternatives. Ten of these commenters indicated that the alternatives are acceptable and meet the needs of depository institutions. Fourteen commenters, however, believed that the alternatives are expensive, especially for low-volume institutions, and may not provide enough features to be cost effective for all institutions. A few commenters believed that the personal computers on which Fedline is run cannot be used efficiently for other purposes, and noted that institutions with FLASH-Light connections lack the ability to originate return items and notifications of change (NOCs) electronically.

Depository institutions are not required to dedicate a personal computer to Fedline use. The personal computer used for Fedline can be used to support other software applications. A recent System study of Fedline users indicated that currently about 40 percent of the users also use their Fedline personal computer for other purposes. Federal Reserve Bank personnel are working closely with institutions to improve their level of service by dedicating their personal computers for Fedline use to only certain peak times during the day. The Federal Reserve will continue its efforts to improve the ease of use and the efficiency of the Fedline software. Software compression techniques have been developed to make the Fedline applications run more efficiently, and the capability of offering Fedline on a modular basis is being researched. In addition, the Federal Reserve will enhance the FLASH-Light software to enable it to receive Fedwire funds transfers, in addition to ACH transactions.

To enable FLASH-Light users to have a more automated means of originating return items and NOCs via telephone access, all Reserve Banks will offer return item database services by year-end 1991, and telephone voice-response access capabilities by year-end 1992. These services will create the return item or NOC transaction from information about the transaction that is stored on a database and accessed via touch-tone telephone by the depository institution. Although the cost of these services is more than the cost of an electronically originated return item or NOC, it is considerably less than the current cost of a paper return or NOC.

Two respondents indicated that reductions in the up-front cost of establishing an electronic connection could be achieved if a larger variety of personal computers is certified by the Federal Reserve. The Federal Reserve System has certified Fedline software to run on IBM and some IBM-compatible personal computers. In addition, some districts have certified other compatible personal computer hardware. The majority of personal computers in use should be capable of running Fedline software. The Federal Reserve Banks will work with institutions to identify whether a specific model of personal computer will support Fedline software if there is sufficient demand. To assist those depository institutions that might not have a compatible computer, the Federal Reserve Banks have entered into group purchase agreements with a number of vendors in order to obtain equipment at a reasonable cost.

The Board acknowledges that in some cases very low-volume depository institutions may conclude that they cannot justify the cost of an electronic connection for their ACH activity and may elect to stop participating in the ACH. In lieu of incurring the cost of an electronic connection, these institutions can continue to participate in ACH through a correspondent institution or other service provider that has established an appropriate electronic connection with the Federal Reserve.

Two commenters that indicated that the current electronic access alternatives are too expensive identified the need for a low-cost fax alternative for the very low-volume depository institutions. The Federal Reserve System recently completed a pilot test using current fax technology for low-volume ACH receivers. The results of the study indicated that current fax technology does not meet the minimum security standards required by the Federal Reserve for its ACH service. Once adequate security features are added, the cost of fax would exceed the cost of intelligent-terminal access.

Additional Issues Fourteen commenters stated that in order for the Federal Reserve System to establish an all-electronic ACH within the projected timeframe, there needs to be a strong education and marketing effort that is closely coordinated between the Federal Reserve Banks and ACH associations and other industry trade groups. The Federal Reserve Banks are working closely with the appropriate ACH groups to encourage conversion to electronic connections. For example, the Federal Reserve Banks have informed the local ACH associations of which of their members obtain Federal Reserve ACH services electronically and nonelectronically and have provided a contact name at each Federal Reserve Bank, enabling the associations to work with their members interested in establishing electronic connections to the Federal Reserve. In addition, the

Federal Reserve will continue to work with other trade associations that are interested in disseminating information regarding the all-electronic ACH effort to their memberships.

Seven commenters stated that government-only ACH receivers should be treated the same as commercial ACH receivers and also be required to establish electronic connections to more fuly realize the benefits of an all-electronic ACH. The Board believes that the majority of the benefits of an all-electronic ACH environment can be derived for commercial ACH participants even if some government-only endpoints remain nonelectronic. Nonetheless, an all-electronic environment for government ACH transactions would provide benefits both to the receiving institutions and to the U.S. government. Therefore, the Board is continuing to work with the Treasury on plans to establish an all-electronic ACH for government-only receivers, and anticipates that it will request comment in late 1991 on a proposal to achieve this objective.

Several commenters raised issues related to contingency backup in an all-electronic ACH environment. They suggested that magnetic tape capabilities should continue to be made available for backup purposes. Improved contingency processing and disaster recovery capabilities are benefits of an all-electronic processing environment. Electronic access to ACH services would eliminate the delays associated with delivering physical input and output media from a remote processing site in a contingency processing or disaster recovery situation. Moreover, depository institutions can send payment file corrections to their Reserve Bank more quickly through electronic transmission than if physical delivery of the payment file information were necessary, reducing the likelihood of a delay in normal processing as well as in a contingency processing situation. For those contingency situations where electronic backup cannot be utilized, the Federal Reserve plans to maintain capabilities for nonelectronic input and output options.

The Federal Reserve Bank of Minneapolis recently lost its primary computer processing capability and was required to begin processing its ACH and other electronic payments at the Federal Reserve's backup processing center in Culpepper, Virginia. This experience demonstrated that depository institutions that were electronically connected to the Federal Reserve Bank were able to send and receive ACH transactions on a more timely and efficient basis than were nonelectronic depository institutions.

Competitive Impact Analysis

The Board does not believe that this action will have any adverse effects on the ability of other ACH service providers to compete effectively with the Federal Reserve in providing ACH services. The New York Automated Clearing House currently requires its members to send and receive ACH transactions electronically. Other ACH service providers also predominately serve participants electronically.

By order of the Board of Governors of the Federal Reserve System, June 13, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-14584 Filed 6-18-91; 8:45 am]

BILLING CODE 6210-01-M

NBD Bancorp, Inc.; 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 July 8, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. NBD Bancorp, Inc., Detroit, Michigan; to acquire 100 percent of the voting shares of FNW Bancorp, Inc., Mount Prospect, Illinois, and thereby indirectly acquire Countryside Bank of Stratford, Bloomingdale, Illinois; The First National Bank of Elgin, Elgin, Illinois; The Larkin Bank, Elgin, Illinois; The First National Bank of Lake Zurich, Lake Zurich, Illinois; The Heritage Bank of Lemont, Lemont, Illinois; Countryside Bank, Mount Prospect, Illinois; The First National Bank of Mount Prospect, Mount Prospect, Illinois; and The Heritage Bank, Woodridge, Illinois.

In connection with this application, Applicant also proposes to acquire FNW Capital, Inc., Mount Prospect, Illinois, and thereby engage in commercial leasing activities pursuant to § 225.25(b)(5) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 13, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-14582 Filed 6-18-91; 8:45 am]

BILLING CODE 6210-01-F

National City Corporation, 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 July 8, 1991.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. National City Corporation, Cleveland, Ohio; to acquire 100 percent of the voting shares of Gem Bank, National Association, Dayton, Ohio, a *de novo* bank.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First of Huron Corporation, Bad Axe, Michigan; to acquire 100 percent of the voting shares of State Bank of Port Hope, Port Hope, Michigan.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Laredo National Bancshares, Inc., Laredo, Texas; to acquire 100 percent of the voting shares of Southshares, Inc., Laredo, Texas, and thereby indirectly acquire South Texas National Bank of Laredo, Laredo, Texas.

Board of Governors of the Federal Reserve System, June 13, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-14581 Filed 6-18-91; 8:45 am]

BILLING CODE 6210-01-F

Shawmut Corp.; 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 July 8, 1991.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Shawmut Corporation, Boston, Massachusetts; to engage *de novo* through its subsidiary, Shawmut Development Association Inc., Boston, Massachusetts, in making equity and debt investments in corporations or projects designed primarily to promote community welfare pursuant to § 225.25(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 13, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-14583 Filed 6-18-91; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Transactions Granted Early Termination Between: 052791 and 060791

Name of Acquiring Person, Name of Acquired Person, Name of Acquired Entity	Pmn Number	Date Terminated
Colorado National Bankshares, Inc., Citizens First Bancorp, Inc., Citizens First National Bank of New Jersey	91-0862	05/29/91
GATX Corporation, Itel Corporation, Itel Distribution Systems, Inc.	91-0914	05/29/91
Wallace Computer Services, Inc., MGI Industries, Inc., MGI Industries, Inc	91-0866	05/30/91
Amelia Holdings, Blenheim Group PLC, Blenheim Group PLC	91-0922	05/30/91
Thorn EMI plc, Charles A. Koppelman, SBK Records	91-0934	05/30/91
V.F. Corporation, Anthony B. Ritter, The Barbizon Corporation & Barbizon Lingerie Co., Inc	91-0943	05/30/91
Maurice Wilder, c/o Wilder Corporation of Delaware, George N. Gillett, Jr., The Norris Farm, Inc	91-0944	05/30/91
The Meiji Mutual Life Insurance, American General Corporation, Hawaiian Life Insurance Co., Ltd	91-0957	05/30/91
Marmon Holdings, Inc., TIE/Communications, Inc., TIE/Communications, Inc	91-0973	05/30/91
Edwards Dunlop and Company Limited, The Meade Corporation, Seaboard Paper Company	87-1488	05/30/91
Sentara Health System, Humana, Inc., Humana Virginia Hospital Corporation, et al	90-2191	05/31/91
Gemina S.p.A., The Kassar Family Trust, Carolco Pictures, Inc	91-0935	05/31/91
Sisters of Charity of Leavenworth Health Services Corp., Archdiocese of Kansas City, Providence—St. Margaret Health Center	91-0947	06/03/91

Name of Acquiring Person, Name of Acquired Person, Name of Acquired Entity	Pmn Number	Date Terminated
First Union Corporation, First Security Corporation of Kentucky, First Security National Bank & Trust Co. of Lexington	91-0975	06/03/91
Golder, Thoma, Cressey Fund III Limited Partnership, OII Associates, Limited Partnership, HCRC Inc.	91-0990	06/03/91
Laidlaw Inc., Kenneth N. Bigham, Technical Environmental Systems, Inc., Safeco	91-0948	06/04/91
Carrefour, Office Depot, Inc., Office Depot, Inc	91-0956	06/04/91
Carrefour, Office Depot, Inc., Office Depot, Inc	91-0968	06/04/91
Tele-Communications, Inc., United Cable Television of Oakland County, Ltd., United Cable Television of Oakland County, Ltd	91-0969	06/04/91
Peter Karmanos, Jr., XA Systems Corporation, XA Systems Corporation	91-0977	06/04/91
The Prudential Insurance Company of America, The May Department Stores Co., Montgomery Mall Ltd. Partnership	91-0979	06/04/91
The May Department Stores Co., The Prudential Insurance Company of America, Montgomery Mall Limited Partnership	91-0980	06/04/91
Beiersdorf AG, Ms. Georgette Mosbacher, La Prairie, Inc	91-0985	06/05/91
Berkshire Hathaway Inc., Estate of Ray W. Heffernan, H.H. Brown Shoe Company, Inc	91-0998	06/05/91
Minorco, Inspiration Resources Corporation, Inspiration Resources Corporation	91-0915	06/06/91
HRM Holdings Corp., Philips Electronics N.V., Philips Optical Media Corporation	91-0956	06/06/91
Salomon Inc., JM Petroleum Corporation, JM Petroleum Corporation	91-0976	06/06/91
Inoco Plc, Nycal Corporation, Nycal Corporation	91-0999	06/06/91
Nycal Corporation, Gulf Resources & Chemical Corporation, Gulf Resources & Chemical Corporation	91-1000	06/06/91
THORN EMI, plc., THORN EMI, plc, SBK Records	91-0942	06/07/91
GEICO Corporation, The NWNL Companies, Inc., Merastar Insurance Company	91-0991	06/07/91
Boston Ventures Limited Partnership III, The News Corporation Limited [an Australian company], NENQ, Inc	91-1006	06/07/91
The Liberty Corporation, Fund C under Trust Agreement of Garvice D. Kincaid, Kentucky Central Life Insurance Company	91-1007	06/07/91
900 Partners' Investments, Pacific Telesis Group, Gensub, Inc	91-1011	06/07/91

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 91-14572 Filed 6-18-91; 8:45 am]

BILLING CODE 6750-01-M

[File No. 892-3081]

Taylor Woodcraft, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Malta, Ohio, furniture company from representing that any household furniture product is constructed of a solid wood, unless every exposed surface of the furniture is made of that solid wood.

DATES: Comments must be received on or before August 19, 1991.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Kelly Larrick-Serrat, Cleveland Regional Office, Federal Trade Commission, 668 Euclid Ave., suite 520–A, Cleveland, OH 44114, (216) 522–4210.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Taylor Woodcraft ("proposed respondent"), a corporation, and it now appearing that proposed respondent is willing to enter into an agreement containing an Order to Cease and Desist from the use of the acts or practices being investigated,

It is Hereby Agreed by and between proposed respondent, by its duly authorized officer and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located in Malta, Ohio.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft Complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's Decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this Agreement; and

(d) Any claim under the Equal Access to Justice Act, 5 U.S.C. 504.

4. This Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission, it, together with the draft Complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information with respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its Complaint (in such form as the circumstances may require) and Decision, in disposition of the proceeding.

5. This Agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft Complaint here attached.

6. This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant

to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its Complaint corresponding in form and substance with the draft Complaint and its Decision containing the following Order to Cease and Desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the Order to Cease and Desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the United States Postal Service of the Complaint and Decision containing the agreed-to Order to proposed respondent's address as stated in this Agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The Complaint attached hereto may be used in construing the terms of the Order. No agreement, understanding, representation, or interpretation not contained in the Order or the Agreement may be used to vary or contradict the terms of the Order.

7. Proposed respondent has read the proposed Complaint and Order contemplated hereby. It understands that once the Order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the Order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

For purposes of this Order, the following definition applies:

(A) *Exposed surface* means those parts and surfaces exposed to view when furniture is placed in the generally accepted position for use. Included in this definition are visible backs of such items of furniture as open bookcases, hutches, etc.

I

It Is Ordered that respondent Taylor Woodcraft, a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the the manufacture, advertising, offering for sale, sale, or distribution of any household furniture in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that such furniture is constructed of a solid wood, unless every exposed surface of such product is made of that solid wood.

II

It Is Further Ordered that respondent shall maintain for a period of three (3) years, and upon request make available to the Commission for inspection and copying, accurate records of all materials relied upon by respondent to substantiate any representation covered by this Order.

III

It Is Further Ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in respondent, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of the Order.

IV

It Is Further Ordered that respondent shall:

A. Notify any purchaser, prior to delivering the purchaser's order from household furniture and excluding those purchasers to whom the respondent has distributed this order under B of this paragraph, that the furniture contains exposed veneered surfaces, if the respondent has made representations that the furniture is solid wood and the furniture, in fact, contains exposed veneered surfaces.

B. Distribute this order to the following:

1. Each of its operating divisions, officers and other personnel responsible for the preparation or review of promotional material;

2. Each distributor, retail outlet, and wholesale outlet that stocks or has stocked Taylor Woodcraft's furniture and to which it has sold or delivered household furniture since January of 1987; and

3. Each distributor, retail outlet and wholesale outlet to which Taylor Woodcraft has sold or delivered household furniture for which it received payment of $2,000 or more in any year since January of 1987.

V

It Is Further Ordered that respondent shall, within sixty (60) days after service of this Order, file with the Commission a report, in writing, setting forth in detail the manner in which it has complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an Agreement to a proposed Consent Order from Taylor Woodcraft. The agreement would settle charges by the Commission that Taylor Woodcraft violated section 5 of the Federal Trade Commission Act by misrepresenting its furniture in promotional materials.

The proposed Consent Order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the Agreement and the comments received, and will decide whether it should withdraw from the Agreement and take other appropriate action or make final the proposed Order contained in the Agreement.

This matter concerns promotional materials for Taylor Woodcraft's household furniture which claim that certain furniture is made of solid wood.

The Commission's Complaint in this matter charges Taylor with disseminating promotional materials containing false and unsubstantiated representations regarding the content of its furniture. Some of the promotional materials imply that certain of Taylor's furniture pieces are constructed entirely of solid wood. The Complaint alleges that these claims are, in fact, false, because such furniture contains veneered exposed surfaces. Claims such as these are inconsistent with the Commission's "Guides for the Household Furniture Industry," 16 CFR 250.2(b).

The Consent Order contains provisions designed to remedy the violations charged, as well as prevent Taylor from engaging in similar acts and practices in the future. Part I of the Order prohibits Taylor from representing, directly or by implication, that its furniture is constructed of solid wood, unless every exposed surface of the furniture is made of solid wood.

Part II of the Order requires Taylor Woodcraft to retain all substantiation relied upon for its promotional materials for a period of three (3) years.

Part III of the Order requires Taylor to report to the Commission at least thirty (30) days before certain corporate changes are made.

Part IV of the Order requires that Taylor Woodcraft provide a copy of the Order to many of its distributors, retail outlets and wholesale outlets and notify certain future purchasers that furniture

contains exposed veneered surfaces if Taylor has falsely represented that the furniture is solid wood.

The purpose of this Analysis is to facilitate public comment on the proposed Order. It is not intended to constitute an official interpretation of the Agreement and proposed Order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 91-14571 Filed 6-18-91; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89D-0368]

Action Levels for Residues of Certain Pesticides in Food and Feed; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; general statement of policy; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a document that published in the **Federal Register** on July 27, 1990 (55 FR 307976). The July 27, 1990, document was also intended to correct an error that appeared in the **Federal Register** of April 17, 1990 (55 FR 14350), by changing the residue level in the table under the heading "C. Chlordane" for the last five commodity entries to read "0.01" rather than ".1". However, this was not appropriate and the residue level should have remained ".1". This notice intends to resolve any confusion that may have resulted from the July 1990 publication.

FOR FURTHER INFORMATION CONTACT: John R. Wessel, Office of Regulatory Affairs (HFC-6), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1815.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 17, 1990, FDA published a notice explaining how the agency will use action levels in regulating residues of certain pesticides (55 FR 14359). FDA subsequently published corrections to the April 17, 1990, notice in the **Federal Register** of July 27, 1990 (55 FR 30796). Item 3 of the correction notice stated "On page 14361, in the third column, in the table for C. Chlordane, the last five entries in the second column should read '0.01'." FDA has since determined that the correction set out in item 3 of the July 7, 1990, notice was in error. Accordingly, FDA confirms that the correct action level for chlordane residues in sweet potatoes, swiss chard, tomatoes, turnips (with or without tops), and turnip greens should read ".1," as originally set out in the April 17, 1990, notice.

Dated: June 13, 1991.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-14509 Filed 6-18-91; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection request it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on June 7, 1991.

(Call PHS Reports Clearance Officer on 202-245-2100 for copies of request.)

1. National Exposure Registry—0923-0001—ATSDR will establish a National Registry of individuals exposed to toxic substances. This Registry will serve as a permanent record of persons exposed to toxic chemicals and will aid in assessing long-term health consequences of this exposure. *Respondents:* Individuals or households; *Number of Respondents*: 28,244; *Number of Responses per Respondent:* 1; *Average Burden per Response:* .396 hours; *Estimated Annual Burden:* 11,175 hours.

2. Surveillance and Associated Epidemiologic Investigations of Occupationally-Related Infection with Human Immunodeficiency Virus in Health Care & Public Safety Settings—N/A—The data collection instrument is designed to gather information on documented or presumed occupational exposure to HIV and to establish whether seroconversion or an illness consistent with an acute retroviral illness has occurred. *Respondents:* Individuals or households; Number of *Respondents*: 100; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 1 hours; *Estimated Annual Burden:* 100 hours.

3. Infant Feeding Practices Study—0910-0220—A sample of women will be followed by mail questionnaires from late pregnancy through the baby's first year to provide data for describing infant feeding patterns, health promotion activities, and market related behaviors. The information will be used to meet FDA's commitments in the feeding safety and health promotion of infants. *Respondents:* Individuals and households; *Number of Respondents:* 610; *Number of Responses per Respondent:* 11; *Average Burden Per Response:* .228 hours; *Estimated Annual Burden:* 1,530 hours.

4. Nursing Student Education Loan Demonstration Program—New—Full-time nursing students wishing to participate in the Nursing Student Education Loan Program must complete an application. Applicants must arrange employment at an eligible facility and secure an employer's commitment to repay the education loans in return for services provided by the applicant. *Respondent:* Individuals or households, businesses or other for-profit, small businesses or organizations.

	No. of respondents	No. of responses per respondent	No. of hours per response
Nursing Student Applicant	30	1	15
Employment Confirmation	30	1	1
School Documents	30	1	1

Estimated Annual Burden.....510 hours

5. National Survey of Worksite Health Promotion Activities 1991—New—The Office of Disease Prevention and Health Promotion is sponsoring this survey of worksites with 50 or more employees to determine the nature and extent of activities, to measure progress since a 1985 survey and to assess success on achieving 1990 and Year 2000 disease prevention/health promotion objectives. *Respondents:* Businesses or other for-profit, non-profit institutions; *Number of Respondents*: 1,551; *Number of Responses per Respondent:* 1; *Average Burden per Response:* .475 hours; *Estimated Annual Burden:* 739 hours.

6. Loans for Disadvantaged Students and Scholarships for Disadvantaged Students—New—Health Professions schools applying to participate in the Loans for Disadvantaged Students (LDS) and/or Scholarships for Disadvantaged Students (SDS) programs provide information on the application about the schools' programs and the race/ethnicity of full-time students and minority faculty. This information is needed to determine program eligibility. *Respondents:* Non-profit insitutions; *Number of Respondents*: 500; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 5 hours; *Estimated Annual Burden:* 2,500.

7. NIDA Quick Response Surveys—Concept—New—The National Institute on Drug Abuse (NIDA) proposes to undertake an indefinite quantity of telephone, mail, and public interception surveys at the request of the Office of National Drug Control Policy and other Federal policy bodies. *Respondents:* Individuals or households, State or local governments, businesses or other for-profit, non-profit institutions, small businesses or organizations; *Annual Reporting Burden:* Since this is a concept clearance, definitive burden estimates are not yet available. These estimates will be provided when the study design and questionnaires are final and the final clearance request is submitted.

8. National Sample Survey of Registered Nurses V—New—The Bureau of Health Professions (BHPr), Health Resources and Services Administration, does not have current national data on the employment and practice of registered nurses needed to assess the current supply and project the future availability of nurses. This proposed project will provide detailed statistics on the registered nurse population needed to prepare the mandated Secretary's Report to Congress. *Respondents*: Individuals or households; *Number of Respondents:* 33,000; *Number of Responses per Respondent: 1; Average Burden per Response:* .33 hours; *Estimated Annual Burden:* 11,000 hours.

OMBB Desk Officer: Shannah Koss-McCallum.

4. Nursing Student Education Loan Demonstration Program—New—Full-time nursing students wishing to participate in the Nursing Student Education Loan Program must complete an application. Applicants must arrange employment at an eligible facility and secure an employer's commitment to repay the education loans in return for services provided by the applicant. *Respondents:* Individuals or households, businesses or other for-profit, small businesses or organizations.

	No. of respond-ents	No. of re-sponses per respond-ent	No. of hours per response
Nursing Student Applicant	30	1	15
Employment Confirmation	30	1	1
School Docments	30	1	1

Estimated Annual Burden..... 510 hours

Written comments and recommendations for the proposed information collections should be sent directly to the OMB Desk Officer designated above at the following address: Human Resources and Housing Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: June 13, 1991.

Sandra K. Mahkorn,

Deputy Assistant Secretary for Public Health Policy.

[FR Doc. 91–14585 Filed 6–18–91; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–91–3283]

Notice of Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to:

Wendy Swire, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 11, 1991.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Monthly Report of Excess Income.

Office: Housing.

Description of the Need for the Information and its proposed use: Owners of Section 236 insured and uninsured projects are required by law to pay to HUD the total rental charges collected that are in excess of the basic rents approved for all occupied units. Owners use the HUD–93104/A to compute any required payment due HUD.

Form: HUD–93104 and 93104A.

Respondents: Businesses or Other For-Profit, Federal Agencies or Employees, and Non-Profit Institutions.

Frequency of Submission: Monthly.

Reporting Burden:

	Number of respondents	X	Frequency of response	X	Hours per response	=	Burden hours
HUD forms HUD-93104/A	4,523		12		0.5164		28,043

Total Estimated Burden hours: 28,048.
Status: Revision.
Contact: James J. Tahash, HUD, (202) 708-3944, Wendy Swire, OMB, (202) 395-6880.

Dated: June 11, 1991.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Community Development Block Grants for Indian Tribes and Alaskan Native Villages.

Office: Community Planning and Development.

Description of the Need For the Information and its Proposed Use: HUD will use the information collection requirement of the Indian CDBG Program to select the best projects for funding during annual competitions. In addition, these requirements are essential to monitor grants to assure that grantees are using Federal dollars properly.

Form Number: SF 269, SF 424, HUD 4121, 4122, 4123, 4125, and 4126.

Respondents: State or Local Governments and Indian Tribes.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	X	Frequency of response	X	Hours per response	=	Burden hours
Application (SF-424, HUD 4121, 4123 and Maps)	260		1.1		60		17,160
Preaward Requirements (HUD-4123, 4125, and 4126	120		.1		20		2,400
Supporting Documentation	10		.1		20		200
Force Account Approval	40		.1		5		200
Status Report	120				10		1,200

Total Estimated Burden hours: 21,160.
Status: Extension.
Contact: Stephen M. Rhodeside, HUD, (202) 708-1322, Wendy Swire, OMB, (202) 395-6880.

Dated: June 11, 1991.

[FR Doc. 91 14640 Filed 6-18-91; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-020-01-4212-12; AZA 25309]

Realty Action; Exchange of Public Lands, Pima County, AZ

BLM proposes to exchange public land in order to achieve more efficient management of the public land through consolidation of ownership.

The following public land is being considered for disposal by exchange pursuant to the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

Gila and Salt River Meridian, Arizona

T. 17 S., R. 10 E.,
Sec. 23, Lots 1, 2, NW¼NE¼, W½;
Sec. 27, S½;
Sec. 34, N½.
T. 18., R. 12 E.,
Sec. 11, Lots 1, 2, S½NE¼, E½NW¼, NE¼SW¼, N½SE¼;
Sec. 12, All unpatented land.
Containing approximately 1600 acres.

Final determination on disposal will await completion of an environmental analysis.

In accordance with the regulations of 43 CFR 2201.1 (b), publication of this Notice will segregate the affected public lands from appropriation under the public land laws, including the mining laws, but not the mineral leasing laws or Geothermal Steam Act.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the **Federal Register** of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Dated: June 10, 1991.

Henri R. Bisson,

District Manager.

[FR Doc. 91-14504 Filed 6-18-91; 8:45 am]

BILLING CODE 4310-32-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-759359

Applicant: Rey Stroube, Houston, TX.

The applicant requests a permit to import a sport-hunted trophy of a bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by F.W.M. Bowker, Jr., Grahmstown, Republic of South Africa for the purpose of enhancement of propagation of the species.

PRT-759340

Applicant: St. Louis Zoological Park, St. Louis, MO.

The applicant requests a permit to import a captive born male Malayan tapir (*Tapirus indicus*) from Zoo Mulhouse, Mulhouse, France for breeding educational purposes. The tapir will be held and maintained at the Minnesota Zoological Garden, Apple Valley, Minnesota.

PRT-757093

Applicant: Hummer's Acid-Wetland Flora, Arlington, VA.

The applicant requests a permit to export for sale in foreign commerce the following species of artificially propagated pitcher plants: *Sarracenia alabamensis alabamensis* and *S. jonesii*.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, 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: June 14, 1991.

Maggie Tieger,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 91–14619 Filed 6–18–91; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

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 (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collections of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget; Paperwork Reduction Project (1010–0006); Washington, DC 20503, telephone (202) 395–7340, with copies to John V. Mirabella; Acting Chief, Engineering and Standards Branch; Engineering and Technology Division; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070–4817.

Title: Outer Continental Shelf Minerals, General (30 CFR part 256).

OMB approval number: 1010–0006.

Abstract: Respondents submit information necessary for MMS to determine which tracts will be leased, to identify areas for environmental study and further consideration for leasing, and to determine if the applicant or bidder for an Outer Continental Shelf (OCS) lease is qualified to hold such a lease.

Bureau form numbers: None.

Frequency: On occasion.

Description of respondents: Federal OCS oil and gas lessees, potential bidders, and the public.

Estimated completion time: 1.8 hours (rounded).

Annual responses: 2,693.

Annual burden hours: 4,809.

Bureau clearance officer: Dorothy Christopher, (703) 787–1239.

Dated: May 15, 1991.

Thomas Gernhofer,

Associated Director for Offshore Minerals Management.

[FR Doc. 91–14506 Filed 6–18–91; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Rock Creek Park—Tennis Stadium and Surrounding Recreational Fields and Facilities; Intention To Prepare an Environmental Impact Statement

SUMMARY: Over the past months National Park Service staff from Rock Creek Park have met with several neighborhood citizen associations and the Carter Barron Community Task Force regarding recent proposals to introduce additional activities to the Rock Creek Park tennis complex at 16th and Kennedy Streets. The Park Service is aware of the concerns expressed by the park's neighbors regarding the additional activities and is sensitive to the potential impacts such activities may cause.

The National Park Service intends to establish a policy which will regulate additional activities and govern the use of those park fields and facilities.

Given that potential conflicts may arise from additional activities at the Tennis Center, and in accordance with section 102(c) of the National Environmental Policy Act of 1969, the National Park Service is preparing an Environmental Impact Statement (EIS) for the management of Rock Creek Park Tennis Stadium and its surrounding facilities.

The area is more specifically identified as being within Rock Creek Park, Washington, DC bounded by 16th Street on the east, Colorado Avenue on the south, Stage Road on the West, and Kennedy Place on the north. The area is known as the Brightwood Park area and is frequently referred to as Carter Barron, which is the name of the nearby amphitheater located on Colorado Avenue. The operation of the Carter Barron Amphitheater is not included within the scope of this EIS.

The role of Rock Creek Park in the community has traditionally been interpreted to include providing community focused recreation in the Brightwood Park area. There is an extensive history of meeting that role with the fields along 16th Street being used for recreational purposes as early as the 1920's. Later, the National Park Service provided a recreation center which included tennis courts, a small tennis stadium and concession facilities. More recently, the Park Service entered into an agreement with the Washington Tennis Foundation to expand those facilities in an effort to promote instructional tennis programs for youth, seniors and special populations.

This use policy will in no way abrogate any right or privilege which the United States has previously agreed to with the Washington Tennis Foundation with respect to the sponsoring of a men's professional tennis tournament and a women's professional tennis tournament.

The primary mission of the area is to provide for the recreational needs of the public. It is recognized that activities which limit public access to park facilities must be balanced with the needs of the public.

A public scoping meeting will be held at the Rock Creek Park Nature Center July 11, at 7:30 p.m. to elicit public comment on issues and alternatives for the Environmental Impact Statement. A scoping document will be prepared as an outcome of this meeting.

The responsible official is Robert Stanton, Regional Director, National Capital Region, National Park Service.

Dated: June 13, 1991.

Robert Stanton,

Regional Director, National Capital Region.

[FR Doc. 91–14631 Filed 6–18–91; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–324]

Certain Acid-Washed Denim Garments and Accessories; Decision Not To Review an Initial Determination Terminating the Investigation as to One Respondent on the Basis of a Consent Order

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has determined not to review the presiding administrative law judge's (ALJ's) initial determination (ID) (Order No. 8) granting a joint motion to terminate the investigation as to respondent Bon Jour International, Ltd., Inc., on the basis of a consent order.

FOR FURTHER INFORMATION CONTACT: William T. Kane, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436; telephone: (202)–252–1116. Copies of the ID, consent order, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E. Street, SW., Washington, DC 20436; telephone: (202)–252–1000. Hearing-impaired individuals are advised that information on this matter can be obtained by contracting the Commission's TDD terminal at (202)–252–1810.

SUPPLEMENTARY INFORMATION: On January 2, 1991, Greater Texas Finishing Corporation and Golden Trade S.R.L. filed a complaint alleging a violation of section 337 in the importation, sale for importation, or sale after importation of acid-washed denim products by reasons of infringement of claims 6 and 14 of U.S. Letters Patent 4,740,213 (the '213 patent). The Commission voted to institute an investigation of the complaint on January 28, 1991, and published notice of institution of the investigation in the **Federal Register**. 56 FR 4851 (Feb. 6, 1991).

On April 19, 1991, complainants and respondent Bon Jour moved jointly pursuant to interim rule 210.51 to terminate the investigation as to Bon Jour on the basis of a consent order and consent order agreement (Motion Docket No. 324–10). The Commission investigative attorney filed a response in support of the joint motion. On May 3, 1991, the presiding administrative law judge issued an ID granting the motion (AL] Order No. 8). Notice of the ID was published in the **Federal Register** on May 22, 1991. 56 FR 23596. No petitions for review or agency or public comments were received.

This action is taken pursuant to section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and Commission interim rules 210.53 and 211.21 (19 CFR 210.53 and 211.21, as amended).

Issued: June 10, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–14600 Filed 6–18–91; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 332–227]

Annual Report on the Impact of the Caribbean Basin Economic Recovery Act on U.S. Industries and Consumers

AGENCY: International Trade Commission.

ACTION: Notice of deadline to submit comments in connection with 1990 annual report.

EFFECTIVE DATE: June 6, 1991.

FOR FURTHER INFORMATION CONTACT: James E. Stamps (202–252–1227), Trade Reports Division, Office of Economics, U.S. International Trade Commission, Washington, DC 20436.

BACKGROUND: Section 215(a) of the Caribbean Basin Economic Recovery Act (CBERA) (19 U.S.C. 2704(a)) requires that the Commission submit annual reports to the Congress and the President on the impact of the act. The Commission instituted the present investigation under section 332(b) of the Tariff Act of 1930 (19 U.S.C. 1332(b)) on March 21, 1986, for the purpose of gathering and presenting such information through the termination of duty-free treatment under the CBERA. Notice of institution of the investigation and the schedule for such reports was published in the **Federal Register** of May 14, 1986 (51 FR 17678). The sixth report, covering calendar year 1990, is to be submitted by September 11, 1991.

In the original notice of investigation, it was announced that, as provided in section 215(b) of the CBERA, the Commission in such reports is required to assess the actual effect of the act on the United States economy generally as well as on appropriate domestic industries and to assess the probable future effect which the act will have on the United States economy generally and on such domestic industries.

WRITTEN SUBMISSIONS: The Commission does not plan to hold a public hearing in connection with the sixth annual report. However, interested persons are invited to submit written statements concerning the matters to be addressed in the report. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Priactice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons in the Office of the Secretary to the Commission. To be assured of consideration by the Commission, written statments relating to the Commission's report should be submitted at the earliest practical date and should be received no later than July 26, 1991. All submissions should be addressed to the Secretary to the Commission, U.S. International Trade Commission, 500 E St., SW., Washington, DC 20436.

Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 252–1809.

Issued: June 10, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–14599 Filed 6–18–91; 8:45 am]

BILLING CODE 7020–02–M

[Investigations Nos. 731–TA–474 and 475 (Final)]

Chrome-Plated Lug Nuts From the People's Republic of China and Taiwan

AGENCY: Untied States International Trade Commission.

ACTION: Revised schedule for the subject investigations.

EFFECTIVE DATE: June 13, 1991.

FOR FURTHER INFORMATION CONTACT: Bruce Cates (202–252–1187), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain informaiton 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 202–252–1000.

SUPPLEMENTARY INFORMATION: On April 18, 1991, the Commission instituted the subject investigations and established a schedule for their conduct (56 FR 21390, May 8, 1991). Subsequently, the Department of Commerce extended the date for its final determinations in the investigations from June 24, 1991 to July 25, 1991, for Taiwan and to September 3, 1991, for China. The Commission, therefore, is revising its schedule in the investigations to conform with Commerce's new schedules.

The Commission's new schedule for the investigaitons is as follows: requests to appear at the hearing must be filed with the Secretary to the Commission not later than July 25, 1991; the prehearing conference will be held at

the U.S. International Trade Commission Building on July 29, 1991; the prehearing staff report will be placed in the nonpublic record on July 19, 1991; the deadline for filing prehearing briefs is July 29, 1991; the hearing will be held at the U.S. International Trade Commission on August 1, 1991; and the deadline for filing posthearing briefs is August 9, 1991. In addition, the Commission will allow parties in the investigation involving China to comment on Commerce's final determination; such comments will be due no later than one working day after the day Commerce announces its final determination.

For further inforamtion concerning these investigations see the Commission's notice of investigations cited above and 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 C (19 CFR part 207, as amended by 56 FR 11918, Mar. 21, 1991).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules.

Issued: June 14, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-14601 Filed 6-18-91; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-473 (Final)]

Certain Electric Fans From the People's Republic of China

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-473 (Final) under section 735(b) of the Tariff act of 1930 (19 U.S.C. 1673d(b)) (the act) to determine whether 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 the People's Republic of China of certain electric fans,[1] provided for in subheading 8414.51.00 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this investigation, hearing procedures, 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 C (19 CFR part 207, as amended by 56 FR 11918, Mar. 21, 1991).

EFFECTIVE DATE: May 31, 1991.

FOR FURTHER INFORMATION CONTACT: Woodley Timberlake (202-252-1188), 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 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of oscillating fans and ceiling fans from the People's Republic of China are being sold in the United States at less than fair value within the meaning of section 733 of the act (19 U.S.C. 1673b). The investigation was requested in a petition filed on October 31, 1990, by Lasko Metal Products, Inc., West Chester, PA.

Participation in the investigation and public service list.—Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than twenty-one (21) 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 entires of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) 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.

Staff report.—The prehearing staff report in this investigation will be placed in the nonpublic record on August 5, 1991, and a public version will be issued thereafter, pursuant to section 207.21 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on August 22, 1991, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before August 13, 1991. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on August 14, 1991, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules.

Written submissions.—Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.22 of the Commission's rules; the deadline for filing is August 15, 1991. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.24 of the Commission's rules. The deadline for filing posthearing briefs is August 29, 1991; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before August 29, 1991. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

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[1] For the purposes of this investigation, the term "certain electric fans" is defined as oscillating fans and ceiling fans, with a self-contained electric motor of an output not exceeding 125 watts. Oscillating fans direct a flow of air using a fan blade/motor unit that pivots back and forth on a stationary base ("oscillates"). Ceiling fans direct a downward and/or upward flow of air using a fan blade/motor unit; ceiling fans are designed for permanent or semi-permanent installation. The petition does not include industrial or commercial ventilation fans or window fans.

In accordance with sections 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 207.20 of the Commission's rules.

Issued: June 14, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-14602 Filed 6-18-91; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-516 (Preliminary)]

Fresh Kiwifruit From New Zealand

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from New Zealand of fresh kiwifruit, provided for in subheading 0810.90.20 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On April 25, 1991, a petition was filed with the Commission and the Department of Commerce by the Ad Hoc Committee for Fair Trade of the California Kiwifruit Commission and individual Califonia kiwifruit grower members of the Committee, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of fresh kiwifruit from New Zealand. Accordingly, effective April 25, 1991, the Commission instituted preliminary antidumping investigation No. 731-TA-516 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of May 1, 1991 (56 FR 20023). The conference was held in Washington, DC, on May 15, 1991, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on June 10, 1991. The views of the Commission are contained in USITC Publication 2394 (June 1991), entitled "Fresh kiwifruit from New Zealand: Determination of the Commission in Investigation No. 731-TA-516 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: June 11, 1991.

By order of the Commission:

Kenneth R. Mason,

Secretary.

[FR Doc. 91-14595 Filed 6-18-91; 8:45 am]

BILLING CODE 7020-02-M

[Inv. No. 731-TA-523 (Preliminary)]

Commercial Microwave Ovens, Assembled or Unassembled, From Japan

AGENCY: 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-523 (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 commercial microwave ovens, assembled or unassembled, (CMOs),[1] 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 July 25, 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: June 10, 1991.

FOR FURTHER INFORMATION CONTACT: Fred Fischer (202-252-1179), 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 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background. This investigation is being instituted in response to a petition filed on June 10, 1991, by Menumaster, Inc., Sioux Falls, SD.

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 Monday, July 1, 1991, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Fred Fischer (202-252-1179) not later than Wednesday, June 26, 1991, to

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[1] The products covered by this investigation are commercial microwave ovens, whether assembled or unassembled. These products are provided for in subheading 8419.81.10 but may enter under subheading 8516.50.00 of the Harmonized Tariff Schedule of the United States (HTS).

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 on or before Friday, July 5, 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 § 207.12 of the Commission's rules.

Issued: June 12, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–14593 Filed 6–18–91; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–323]

Certain Monoclonal Antibodies Used for Therapeutically Treating Humans Having Gram Negative Bacterial Infections: Decision To Grant Application for Appeal of Administrative Law Judge Order No. 5; Reversal of Order Denying Respondent's Renewed Motion To Suspend the Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to grant respondents' motion for interlocutory appeal of Administrative Law Judge Order No. 5. denying respondents' renewed motion to suspend the above-captioned investigation. On appeal, the Commission has determined to reverse Order No. 5. The Commission's action suspends the investigation until after completion of post-trial briefing in *Xoma Corp* v. *Centocor, Inc.* Civil Action No. C 90 1129 (RHS)(N.D. Cal.).

ADDRESSES: Copies if the ID, the Commission's order, the Commission memorandum opinion, and all other non-confidential documents filed in connection with this investigation are or will be able for inspection during official business (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–252–1104. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

SUPPLEMENTARY INFORMATION: On December 20, 1990, Xoma Corp. of Berkeley, California filed a complaint with the Commission alleging violations of section 337 of the Tariff Act of 1930 in the importation and sale of certain monoclonal antibodies covered by claims 6 and 7 of U.S. Patent No. 4,918,163 under license to Xoma. Such monoclonal antibodies are used to treat patients having gram negative bacterial infections. The Commission instituted an investigation of Xoma's complaint on January 30, 1991. 56 FR 3484–85. The Commission's notice of institution named Centocor, Inc., and Centocor Partners II, L.P., both of Malvern, Pennsylvania, and Centocor B.V. of Leiden, The Netherlands (collectively, Centocor) as respondents.

On February 15, 1991, Centocor moved to suspend the Commission's investigation until the U.S. District Court for the Northern District of California issued its final judgment in concurrent litigation between Xoma and Centocor, *Xoma Corp. v. Centocor, Inc.*, Civil Action No. C 90 1129 (RHS). On April 3, 1991, the Commission reversed the ID suspending the investigation. 56 FR 14536 (April 10, 1991).

On May 21, 1991, Centocor filed a renewed motion to suspend the investigation, this time until the completion of post-trial briefing in *Xoma Corp. v. Centocor, Inc.* Centocor's motion requested suspension of the Commission investigation so that a conflict between the Commission evidentiary hearing and the district court trial would be avoided. The renewed motion was opposed by Xoma and supported by the Commission investigation attorney. On May 24, 1991, the ALJ issued an order denying Centocor's motion. On the same date, the ALJ certified Order No. 5 for interlocutory review by the Commission. On May 30, 1991, Xoma filed an opposition to the application for interlocutory appeal. The Commission investigation attorney responded in support of the application on May 31, 1991.

Authority: This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and §§ 210.59(b) and 210.70(b) of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.59(b) and 210.70(b)).

Issued: June 11, 1991.

By order of the Commission.

Kenneth R. Mason.

Secretary.

[FR Doc. 91–14597 Filed 6–18–91; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–517 (Preliminary)]

Refined Antimony Trioxide From the People's Republic of China

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from the People's Republic of China of refined antimony trioxide, provided for in subheading 2825.80.00 of the Harmonized Tariff Schedule of the United States,[3] that are alleged to be

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)) (as amended, 56 FR 11924 (March 21, 1991)).

[2] Acting Chairman Brunsdale determines that there is a reasonable indication that an industry in the United States is materially injured by reason of dumped imports of refined antimony trioxide from the People's Republic of China.

[3] For purposes of this investigation, refined antimony trioxide (also known as antimony oxide) is a crystalling powder of the chemical formula (Sb_2O_3). The refined antimony trioxide which is the subject of this investigation includes blends with organic or inorganic additives comprising up to and including 20 percent of the blend by volume or weight.

sold in the United States at less than fair value (LTFV).

Background

On April 25, 1991, a petition was filed with the Commission and the Department of Commerce by the Coalition for Fair Trade in Refined Antimony Trioxide,[4] alleging that an industry in the United States is materially injured and it threatened with material injury by reason of LTFV imports of refined antimony trioxide from the People's Republic of China. Accordingly, effective April 25, 1991, the Commission instituted preliminary antidumbing investigation No. 731–TA–517 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of May 3, 1991 (56 FR 20443). The conference was held in Washington, DC, on May 16, 1991, and all persons who requested the opportunity were permitted to appear in person or by counsel.

Issued: June 12, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–14596 Filed 6–18–91; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–464 (Final)]

Sparklers From China

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act), that an industry in the United States is materially injured by reason of imports from China of sparklers, provided for the subheading 3604.10.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

[4] The individual member firms comprising the coalition include: (1) Anzon, Inc., Philadelphia, PA; (2) Atochem North America, Inc., Philadelphia, PA; (3) Laurel Industries, Inc., Cleveland, OH; (4) United States Antimony Corp., Thompson Falls, MT; and (5) United States Antimony Sales Corp., Natick, MA.

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

Background

The Commission instituted this investigation effective December 17, 1990, following a preliminary determination by the Department of Commerce that imports of sparklers from China were being sold at LTFV within the meaning of section 733(b) of the act (19 U.S.C. 1673b(b)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of January 16, 1991 (56 FR 1650). The hearing was held in Washington, DC, on April 30, 1991, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on June 10, 1991. The views of the Commission are contained in USITC Publication 2387 (June 1991), entitled "Sparklers from the People's Republic of China: Determination of the Commission in Investigation No. 731–TA–464 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: June 11, 1991.

By Order of The Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–14594 Filed 6–18–91; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–325]

Certain Static Random Access Memories and Integrated Circuit Devices Containing Same, Processes for Making Same, Components Thereof, and Products Containing Same; Determination Not to Review an Initial Determination Designating the Investigation "More Complicated"

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ) initial determination (ID) designating the above-captioned investigation "more complicated". The deadline for completion of the investigation is extended by six months, *i.e.*, from February 21, 1992, to August 21, 1992.

FOR FURTHER INFORMATION CONTACT: Cynthia P. Johnson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–252–1098.

SUPPLEMENTARY INFORMATION: On April 23, 1991, all of the respondents filed a motion to designate the investigation "more complicated". The complainant opposed the motion and the Commission investigative attorneys supported the motion. On May 9, 1991, the presiding ALJ issued an ID (Order No. 5) designating the investigation as "more complicated". The ID states that the case involved 28 claims of four SRAM patents, and that because of the complexity of semiconductor technology, the subject matter of the case supports the "more complicated" designation.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule § 210.53, 19 CFR 201.53.

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

Issued: June 10, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–14598 Filed 6–18–91; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–55 (Sub 386X)]

CSX Transportation, Inc.; Abandonment Exemption—in Raleigh County, WV

Applicant has filed a notice of exemption under 49 CFR part 1152, subpart F—*Exempt Abandonments* to abandon its 2.24-mile line of railroad between milepost 0.00, at Pettus, and milepost 2.24, at Marfolk, in Raleigh County, WV.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed

by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 19, 1991 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by July 1, 1991.[3] Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by July 9, 1991, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Karen A. Koster, 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by June 24, 1991. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: June 12, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–14411 Filed 6–18–91; 8:45 am]

BILLING CODE 7035–01–M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C. 2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

[Docket No. AB–286 (Sub-No. 2X)]

The New York, Susquehanna and Western Railway Corporation Abandonment Exemption; Portion of the Edgewater Branch in Bergen Co., NJ

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by the New York, Susquehanna and Western Railway Corporation of 1.6 miles of rail line in Bergen County, NJ, subject to standard labor protective conditions and completion of the section 106 process of the National Historic Preservation Act.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 19, 1991. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by June 29, 1991, petitions to stay must be filed by July 1, 1991, and petitions for reconsideration must be filed by July 9, 1991.

ADDRESSES: Send pleadings referring to Docket No. AB–286 (Sub-No. 2X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and

(2) Petitioner's representatives: Nathan R. Fenno, Michael F. Armani, The New York, Susquehanna and Western Railway Corporation, One Railroad Avenue, Cooperstown, NY 13326.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245, [TDD for hearing impaired: (202) 275–1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275–1721.]

Decided: June 11, 1991.

By the Commission, Chairman Philbin, Vice chairman Emmett, Commissioners Simons, Phillips, and McDonald. Commissioner McDonald. concurred in the result with a separate expression. Chairman Philbin did not participate in the disposition of this proceeding.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–14635 Filed 6–18–91; 8:45 am]

BILLING CODE 7035–01–M

[1] *See Exempt. of Rail Line Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Resource Conservation and Recovery Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on June 10, 1991 a proposed Consent Decree in *United States* v. *Metropolitan Council et al.*, Civil Action No. 4–88–600, was lodged with the United States District Court for the District of Minnesota. The proposed Consent Decree concerns the Blue Lake Wastewater Treatment Plant located in Shakopee, Minnesota, and the Seneca Wastewater Treatment Plant in Egan, Minnesota. The proposed Consent Decree requires defendants Metropolitan Council and the Metropolitan Waste Control Commission ("defendants") to pay the United States $395,000, in settlement of defendants' liability for violations of the Clean Water Act, 33 U.S.C. 1251 for failure to comply with final effluent limits on July 1, 1988. In addition to paying the civil penalty, the defendants will also carry out a study of infiltration and inflow problems in the area of the Blue Lake and Seneca plants.

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 for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Metropolitan Council*, D.J. Ref. 90–5–1–1–3160.

The proposed Consent Decree may be examined at the office of the United States Attorney, District of Minnesota, 234 U.S. Courthouse, 110 South 4th Street, Minneapolis, Minnesota 55401, and at the Region V Office of the Environmental Protection Agency, 111 West Jackson Street, Chicago, Illinois 60604. The proposed Consent Decree may be examined at the Environmental Enforcement Section Document Center, 1333 F Street, NW., suite 600, Washington, DC 20004, 202/347–2072. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $13.00 (25 cents per page reproduction cost), payable to Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91–14508 Filed 6–18–91; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice pursuant to the National Cooperative Research Act of 1984—High Speed Serial Data Communication Research and Development Partnership

Notice is hereby given that, on May 20, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the High Speed Serial Data Communication Research and Development Partnership ("Partnership") has filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the Partnership and (2) the Partnership's nature and objectives. The notification was filed for the purpose of invoking the Act's provisions limiting the potential recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the Partnership and its general area of planned activities are given below.

The Current members to the Partnership are: Chrysler Corporation; Ford Motor Company; and General Motors Corporation. The computerization and Research Program of SAE International is not a party to the Partnership, but has provided administrative assistance during its ongoing development and intends to continue to provide such assistance.

The parties intend to identify opportunities of joining aspects of their independent research and development efforts pertaining to high speed serial data communication within motor vehicles. The objectives are to avoid inefficient duplication of effort and expense, improve general scientific knowledge in this area by answering fundamental questions, and accelerate the development of this technology so that all companies can intelligently participate on an individual basis in standard activities. To meet these objectives, the Partnership will collect, exchange and analyze research information in these areas; conduct tests and develop basic engineering techniques of use in proof of theories and concepts in the relevant topics; interact with domestic or international organizations to further this research; encourage the use of its fruits through actions short of petitions for standard-setting; and perform further acts allowed by the National Cooperative Research Act that would advance the Partnership's objectives in this area. The parties intend to file additional written notification disclosing all changes in membership of this project.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91–14057 Filed 6–18–91; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Manufacturer of Controlled Substances Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on January 30, 1991, Ganes Chemicals, Inc., Industrial Park Road, Pennsville, New Jersey 08070, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug:	Schedule
Amobarbital (2125)	II
Secobarbital (2315)	II
Pentobarbital (2270)	II
Methadone (9250)	II
Metopon (9254)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA **Federal Register** Representative (CCR), and must be filed no later than July 19, 1991.

Dated: May 31, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91–14550 Filed 6–19–91; 8:45am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Application

Pursuant to 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on January 4, 1991, Mallinckrodt Specialty Chemicals Company, Mallinckrodt and Second Streets, St. Louis, Missouri 63147, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic class of controlled substances listed below:

Drug:	Schedule
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Etorphine Hydrochloride (9059)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Methadone (9250)	II
Methadone-intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273)	II
Morphine (9300)	II
Thebaine (9333)	II
Opium extracts (9610)	II
Opium fluid extract (9620)	II
Opium tincture (9630)	II
Opium, powdered (9639)	II
Opium, granulated (9640)	II
Oxymorphone (9652)	II
Fentanyl (9801)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, attention: DEA **Federal Register** Representative (CCR), and must be filed no later than July 19, 1991.

Dated: May 31, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91–14551 Filed 6–19–91; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances, Registration

By Notice dated April 8, 1991, and published in the **Federal Register** on April 16, 1991, (56FR15382), Knoll Pharmaceuticals, 30 North Jefferson Road, Whippany, New Jersey 07981, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
	Schedule
Drug:	
Dihydromorphine (9145)	I
Hydromorphone (9150)	II
Hydrocodone (9193)	III

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: June 5, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91–14552 Filed 6–19–91; 8:45 am]

BILLING CODE 4410–09–M

Importation of Controlled Substances; Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedules I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on February 13, 1991, Sigma Chemical Company, 3500 Dekalb Street, St. Louis, Missouri 63118, made application to the Drug Enforcement Administration to be registered as an importer of a basic classes of controlled substances listed below:

Drug	Schedule
Etrophine (Except HCl)(9056)	I
Heroin (9200)	I
Mescaline (7381)	I
1-Methyl-4-Phenyl-4-propionoxypiperidine (MPPP)(9661).	I
Difenoxin (9168)	I
Pyrrolidine analog of phencyclidine (7458).	I
Fenethylline (1503)	I
Morphine-N-Oxide (9307)	I
4-methoxyamphetamine (7411)	I
3,4-methylenedioxyamphetamine (MDA)(7400).	I
3,4-methylenedioxymethamphetamine (MDMA)(7405).	I
Alpha-methylfentanyl (9814)	I
3-Methylfentanyl (9813)	I
Psilocyn (7438)	I
Dimethyltryptamine (7435)	I
Diethyltryptamine (7434)	I
Marihuana (7360)	I
Ethylamine analog of phencyclidine (7455).	I
4-bromo-2,5-Dimethoxyamphetamine (7391).	I
4-methyl-2,5-dimethoxy-amphetamine (7395).	I
Thiophene analog of phencyclidine (7470).	I
Lysergic acid diethylamide (7315)	I
2,5-dimethoxyamphetamine (DMA)(7396).	I
Psilocybin (7437)	I
Bufotenine (7433)	I
Tetrahydrocannabinols (7370)	I
Ibogaine (7260)	I
Normorphine (9313)	I
Thiophene analog of phencyclidine (7470).	I
Tetrahydrocannabinols (7370)	I
Methaqualone (2565)	I
Beta-hydroxyfentanyl (9830)	I
Pentobarbital (2270)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
1-piperidinocyclohexanecarbonitrile (PCC)(8603).	II
Oxymorphone (9652)	II
Ethylmorphine (9190)	II
Morphine (9300)	II
Anileridine (9020)	II
Diprenorphine (9058)	II
Secobarbital (2315)	II
Benzoylecgonine (9180)	II
Amphetamine (1100)	II
Cocaine (9041)	II
Codeine (9050)	II
Methamphetamine (1105)	II
Fentanyl (9801)	II
Methadone (9250)	II
Morphine (9300)	II
Phencyclidine (7471)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Oxymorphone (9652)	II
Meperidine (pethidine) (9230)	II

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than July 19, 1991.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e) and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e) and (f) are satisfied.

Dated: May 31, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91–14554 Filed 6–18–91; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR),

this is notice that on February 5, 1991, Smithkline Beecham Chemicals, Division of Smithkline Beecham Corporation, 900 River Road (L–11), Conshohocken, Pennsylvania 19428, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug:	Schedule
4-methoxyamphetamine (7411)	I
Amphetamine (1100)	II
Phenylacetone (8501)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, attention: DEA Federal Register Representative (CCR), and must be filed no later than July 19, 1991.

Dated: May 31, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91–14553 Filed 6–19–91; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Use of Alternative Dispute Resolution and Negotiated Rulemaking Procedures by the Department of Labor

AGENCY: Office of the Secretary.

ACTION: Extension of comment period.

SUMMARY: The Department is extending the period for interested parties to submit comments which will be used in developing a policy to implement two important and recently enacted amendments to the Administrative Procedure Act. These amendments are the result of the Administrative Dispute Resolution Act (ADR) and the Negotiated Rulemaking Act (Neg-Reg). Both of these acts authorize and encourage agencies to use arbitration, mediation, negotiated rulemaking, and other consensual methods of dispute resolution.

Section 3(a) and the ADR requires the Department to adopt a policy as to how it intends to implement that statute in each of the following areas: (a) Formal and informal adjudications; (b) rulemakings; (c) enforcement actions; (d) issuing approvals and variances; (e) contract administration; (f) litigation brought against or by any part of the Department; and (g) other Departmental actions. The Department is seeking comments at this time so that the affected public may be involved at the outset in the development of procedures to implement both ADR and Neg-Reg in the Department of Labor.

On May 22, 1991, the Department published a notice in the Federal Register (56 FR 23599) requesting that comments be submitted by July 22, 1991. In order to provide interested parties sufficient time to prepare and submit substantive comments, the period for submission is being extended.

DATES: Comments are due by August 23, 1991.

ADDRESSES: Send comments to Roland Droitsch, Deputy Assistant Secretary for Policy, U.S. Department of Labor, room S–2312, Frances Perkins Building, 200 Constitution Avenue NW., Washington, DC 20210. Telephone 202–523–6197.

FOR FURTHER INFORMATION CONTACT: Roland Droitsch, Deputy Assistant Secretary for Policy, U.S. Department of Labor. Telephone 202–523–6197.

SUPPLEMENTARY INFORMATION: In response to a requirement of the Administrative Dispute Resolution Act, Public Law 101–552, the Department intends to develop a general policy which encourages greater use of alternative dispute resolution techniques whenever the parties involved agree to them and it is practical to do so in light of other statutory requirements. Among the alternative dispute resolution techniques mentioned in the law is the use of negotiated rulemaking under appropriate circumstances, the criteria for which are set forth in more detail in a separate enactment, the Negotiated Rulemaking Act, Public Law 101–648.

The scope of these two new statutes is broad. In enacting the ADR, Congress expressed concern that administrative proceedings have become too formal and lengthy, and asserted that alternative procedures may, in at least some instances, be faster, less contentious, and more economical. However, ADR techniques will not be appropriate in every situation; the statute indicates, for example, they should not be used for precedent setting cases, those where a formal record is essential, and those bearing on significant policy questions. Within such limitations, the Department plans to explore extensive use of ADR techniques, including whether any of its current procedures and rules need to be modified to allow for greater use of ADR.

In enacting the Neg-Reg statute, Congress indicated its concern that traditional rulemaking procedures may discourage affected parties from communicating openly with each other with Federal agencies, and encourages them to assume extreme conflicting positions which often results in costly and time-consuming litigation. While agencies have been able to experiment with alternative techniques to avoid these consequences, the Neg-Reg Act amended the Administrative Procedure Act to clearly establish a process for negotiating a proposed rule.

The Department will develop its ADR policy with full consultation with the Administrative Conference of the United States and the Federal Mediation and Conciliation Service as required by Section 3(a) of the ADR Act. To this end, the Department has already designated its ADR Specialist (the Assistant Secretary for Policy) to serve as liaison with those agencies and as coordinator of the Department's ADR implementation. A full survey of existing Departmental practices is planned.

Commenters are encouraged to provide specific comments that relate to activities of the Department; and most particularly, to bring to the attention of the Department any experience to date with ADR or Neg-Reg activities of the Department, areas of the Department's operations which might readily benefit from the use of such techniques, areas in which such techniques should be limited or not used at all, or any other matter which they believe would be of interest to the Department as it develops its policy in these areas.

Signed at Washington DC this 13th day of June, 1991.

Debra R. Bowland,

Acting Assistant Secretary for Policy.

[FR Doc. 91–14591 Filed 6–18–91; 8:45 am]

BILLING CODE 4510–23–M

NATIONAL SCIENCE FOUNDATION

Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received Under the Antarctic

Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to these permit applications by July 22, 1991. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, room 627, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers at the above address or (202) 357–7817.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States Citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The applications received is as follows:

1. Applicant

Deneb Karentz, Laboratory for Radiobiology & Environmental Health, University of California, San Francisco, CA 94143.

Activity for Which Permit Requested

Introduction of non-indigenous species into Antarctic. The applicant is conducting research on the physiological ecology of UV-absorbing compounds in Antarctic organisms. The research requires culturing of invertebrate larvae in enclosed tanks. A permit is requested to take unicelluar algae to Antarctic to use as food for the larvae. These algae will be species of *Dunaliella* and/or *Rhodomonas*. None of these cultures will be released to the Antarctic environment.

Location: Palmer Station, Antarctica
Dates: August 1991

2. Applicant

Wayne Z. Trivelpiece, Old Dominion University Research Foundation, P.O. Box 955, Bolinas, CA 94924

Activity for Which Permit Requested

Taking, import into U.S.A., enter site of special scientific interest. The applicant is conducting research on the behavioral ecology and population biology of penguins and their principal avian predators. He proposes to band up to 2000 Adelie, Gentoo, and Chinstrap penguins. Up to 50 adults of each penguin species will be fitted with radio transmitters and time depth recorders. All birds will be released after the experiments are completed. The study site is within the borders of site of special scientific interest #8, Admiralty Bay, King George Island. The applicant also proposes to salvage and import to the U.S.A. carcasses or skeletons of penguins or other birds for educational and scientific study. No birds would be killed to obtain these materials.

Location: Antarctica peninsula area
Dates: October 1991–March 1992

3. Applicant

G.A. McFeters, Department of Microbiology, Montana State University, Bozeman, Montana 59717

Activity for Which Permit Requested

Inroduction of non-indigenous species into Antarctica. The applicant is conducting research on enteric bacteria in the Antarctic environment. Permission is requested to take three bacterial cultures to McMurdo Station, Antarctica: *Escherichia coli; Hersinia enterocolitica,* and *Salmonella typhimurium.* Although it is nearly certain that these bacteria are already present in the human population in Antarctica, the research requires that pure cultures be used. None of these pure cultures will be released to the Antarctic environment after the completion of the experiments.

Location: McMurdo Station, Antarctica
Dates: October 1991–January, 1992

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 91–14546 Filed 6–18–91; 8:45 am]
BILLING CODE 7555–01–M

OFFICE OF MANAGEMENT AND BUDGET

Privacy Act of 1974; Index of Government-wide Systems of Records

AGENCY: Office of Management and Budget (OMB).

ACTION: Notice.

SUMMARY: OMB has oversight responsibility for implementation of the Privacy Act of 1974, 5 USC 552a. OMB is publishing this notice as a finding aid to the current **Federal Register** notices for all government-wide systems of records under the Privacy Act of 1974.

Seven agencies have responsibility for one or more government-wide systems of records under the Privacy Act. These agencies are:

Equal Employment Opportunity Commission
Federal Emergency Management Agency
General Services Administration
Department of Labor
Merit Systems Protection Board
Office of Government Ethics
Office of Personnel Management

Following the name of each agency is the name and phone number of the individual who can best answer questions regarding the system(s) of that agency. Then follows the name of each system, a citation to the most recent full system notice published in the **Federal Register,** and a short description.

FOR FURTHER INFORMATION CONTACT: Maya A. Bernstein, Information Policy Branch, Office of Information and Regulatory Affairs, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503. Telephone: (voice) 202/395–3785 (fax) 202/395–7285.

Government-wide Systems of Records:

Equal Employment Opportunity Commission (EEOC)

Contact: Thomas J. Schlageter (Office of Legal Counsel), 202/663–4670

EEOC/GOVT–1

SYSTEM NAME:

EEOC Records and Appeal Records. System notice last published at: 56 F.R. 10900, March 14, 1991.

Description:

EEOC/GOVT–1 is a collection of records on applicants for Federal employment and current and former Federal employees who file complaints of discrimination or reprisal, or who file appeals with EEOC from agency decisions, petitions for review of decisions of the Merit System Protection Board, or requests for review of final

decisions in negotiated grievance actions.

FEDERAL EMERGENCY MANAGEMENT ASSOCIATION (FEMA)

Contact: Sandra Jackson, 202/646–3840

FEMA/GOVT–1

SYSTEM NAME:

National Defense Executive Reserve System (NDER).

System notice last published at: 55 FR 37191, September 7, 1990.

Description:

FEMA/GOVT–1 includes records on applicants for and incumbents of NDER assignments. The system contains FEMA Form 85–3, NDER Qualifications Statement, which is used to determine membership for units of the NDER in Federal departments and agencies in accordance with Executive Order No. 11179 as amended by Executive Order No. 12148.

GENERAL SERVICES ADMINISTRATION (GSA)

Contact: Helen Maus (Office of the General Counsel), 202/501–1460; Mary Cunningham (Information Collection), 202/501–2691

GSA/GOVT–2

SYSTEM NAME:

Employment Under Commercial Activities Contracts.

System notice last published at: 48 FR 6176, February 10, 1983.

Description:

GSA/GOVT–2 includes records on former Federal employees involuntarily separated from government employment as a result of a commercial activity contract. The system is used to provide government agencies with necessary information on former Federal employees hired by contractors to ensure the proper distributions of severance pay by the government.

GSA/GOVT–3

SYSTEM NAME:

Travel Charge Card Program.

System notice last published at: 48 FR 44656, September 29, 1983.

Description:

This system includes records of current Federal employees who use government assigned charge cards while in travel status. It is used to provide government agencies with (1) necessary information on the commerical travel and transportation payment and expense control system which will provide travelers charge cards for official travel and related travel expenses on a worldwide basis, (2) attendant operational and control support, and (3) management information reports for expense control purposes.

GSA/GOVT–4

SYSTEM NAME:

Contracted Travel Service Program.

System notice last published at: 50 FR 20294, May 15, 1985, (amended 50 FR 28988, July 17, 1985).

Description:

This system includes records on individuals who are current Federal employees on travel and individuals being provided travel by the government. It is used to enable travel agents who are under contract to the Federal government to issue and account for travel provided to individuals.

DEPARTMENT OF LABOR (DOL)

Contact: Miriam Miller (Office of the Solicitor), 202/523–8188

DOL/ESA 13

SYSTEM NAME:

Employment Standards Administration, Office of Workers' Compensation Programs, Federal Employees' Compensation Act File.

System notice last published at: 55 FR 7121, February 28, 1990.

Description:

DOL/ESA–13 records are kept on FECA benefit recipients. These are Federal employees injured in the performance of duty, or beneficiaries of employees killed in the performance of duty. These records provide information and verification about covered employees' work related injuries. Entitlement to medical treatment and vocational rehabilitation are based on these records. Entitlement to and computation of continuation of pay, compensation, survivors' benefits under FECA, and certain other statutes, are also based on these records.

DOL/ETA 14

SYSTEM NAME:

Employment Training Administration (ETA) Job Corpsman Records.

System notice last published at: 55 FR 7137, February 28, 1990.

Description:

The system includes information on ETA Job Corps enrollees and terminees. These records are maintained to ensure that all appropriate documents of the corpsmember's stay in Job Corps (from entrance to placement and/or termination) are retained and are available to those officials who have a legitimate need for the information in performing their duties. These records also serve the interest of the corpsmembers in accordance with 29 U.S.C. 1691 et seq.

MERIT SYSTEMS PROTECTION BOARD (MSPB)

Contact: Michael Hoxie (Office of the Clerk), 202/653–7124

MSPB/GOVT–1

SYSTEM NAME:

Appeal and Case Records.

System notice last published at: 55 FR 17842, April 27, 1990.

Description:

This sytem includes records on two categories of individuals: (a) Current and former Federal employees, applicants for employment, annuitants, and other individuals who have filed appeals with MSPB, or with respect to whom a Federal agency has petitioned MSPB concerning any matter over which the Board has jurisdiction, and (b) current and former employees of State and local governments who have been investigated by the Special Counsel and have had a hearing before MSPB concerning possible violation of the Hatch Act.

The records are used to document and adjudicate appeals and other matters arising under the MSPB original and appellate jurisdiction. They also serve a management information function by providing statistical data for reports, physical file location, and staff productivity.

OFFICE OF GOVERNMENT ETHICS (OGE)

Contact: William (Bill) Gressman, (202/FTS) 523–5757 x1110

OGE/GOVT–1

SYSTEM NAME:

Executive Branch Public Financial Disclosure Reports and Other Ethics Program Records.

System notice last published at: 55 6328, FR February 22, 1990.

Description:

This system includes records on the President, the Vice President, candidates for those offices, Administrative Law Judges, members of uniformed services at pay grade 0–7 or higher, the Postmaster General and Deputy Postmaster General, designated agency ethics officials, appointed civilians to the Executive Office of the President, nominees for positions requiring Senate confirmation, and

many government officials classified at the equivalent of grade level GS–16 or higher, as well as Schedule C appointees. The system includes records on both former and current employees, and may contain records on any employee of the executive branch if required for the administration of the Ethics in Government Act of 1978 and the Ethics Reform Act of 1989.

These records are maintained to meet the requirements of the Ethics in Government Act of 1978 and the Ethics Reform Act of 1989, as amended, regarding the filing of financial status reports, reports concerning certain agreements between the covered individual and any prior private sector employer, ethics agreements, and the preservation of waivers issued to an officer or employee pursuant to section 208 of title 18, U.S.C., and certificates of divestiture issued pursuant to section 502 of the Ethics Reform Act. Such statements and related records are required to assure compliance with these acts and to preserve and promote the integrity of public officials and institutions.

OGE/GOVT–2

SYSTEM NAME:

Confidential Statements of Employment and Financial Interests.

System notice last published at: 55 FR 6330, February 22, 1990.

Description:

This system includes records of former or current employees required by their agency to file such statements. The records are maintained to meet requirements of Executive Order Nos. 12674 (as modified by 12731), 12565, and 11222, agency regulations and section 107 of the Ethics in Government Act of 1978 concerning the filing of employment and financial interest statements. They assist in assuring compliance with standards of conduct for government employees and to determine if a conflict of interest exists between the employment of individuals by the Federal government and their personal employment and financial interests.

OFFICE OF PERSONNEL MANAGEMENT (OPM)

Contact: John Sanet, 202/606–1955

OPM/GOVT–1

SYSTEM NAME:

General Personnel Records.

System notice last published at: 55 FR 3838, February 5, 1990.

Description:

General Personnel Records include current and former Federal employees as defined in 5 USC 2105. This system covers OPM's Central Personnel Data File and related agency personnel management information systems. The Official Personnel Folder (OPF) and other general personnel records files are the official repository of the records, reports of personnel actions, and the documents and papers required in connection with these actions effected during an employee's Federal service. The personnel action reports and other documents, some of which are filed as long-term records in the OPF, give legal force and effect to pesonnel transactions and establish employee rights and benefits under pertinent laws and regulations governing Federal employment.

These files and records provide the basic source of factual data about a person's Federal employment while in the service and after his or her separation. Records in this system have various uses by agency personnel offices.

OPM/GOVT–2

SYSTEM NAME:

Employee Performance File System Records.

System notice last published at: 55 FR 3842, February 5, 1990.

Description:

OPM/GOVT–2 includes records on current or former Federal employees, including appointees to the Senior Executive Service. These records are maintained to ensure that all appropriate records on an employee's performance are retained and are available (1) to agency officials having a need for the information; (2) to employees; (3) to support actions based on the records; (4) for use by the Office of Personnel Management in connection with its personnel management evaluation role in the executive branch; and (5) to identify individuals for personnel research.

OPM/GOVT–3

SYSTEM NAME:

Records of Adverse Actions and Actions Based on Unacceptable Performance.

System notice last published at: 55 FR 3845, February 5, 1990.

Description:

OPM/GOVT–3 includes records on current or former Federal employees, including Senior Executive Service employees, against whom such an action has been proposed or taken in accordance with 5 CFR parts 432, 732, 752, or 754 of OPM's regulations. These records result from the proposal, processing, and documentation of these actions taken either by OPM or agencies against employees in accordance with 5 CFR parts 432, 752, or 754 of OPM's regulations.

OPM/GOVT–4

[Reserved.] Formerly Executive Branch Public Financial Disclosure Reports and Other Ethics Program Records. [Replaced by OGE/GOVT–1]

OPM/GOVT–5

SYSTEM NAME:

Recruiting, Examining, and Placement Records.

System notice last published at: 55 FR 3847, February 5, 1990.

Description:

This system includes two categories of record subjects: (1) Persons who have applied to OPM or agencies for Federal employment, and current and former Federal employees submitting applications for other positions in the Federal service; and (2) applicants for Federal employment believed or found to be unsuitable for employment on medical grounds.

The records are used in considering individuals who have applied for positions in the Federal service by making determinations of qualifications (including medical qualifications), for positions applied for, and to rate and rank applicants applying for the same or similar positions. They are also used to refer candidates to Federal agencies for employment consideration, including appointment, transfer, reinstatement, reassignment or promotion. Records derived from OPM-developed or agency-developed assessment center exercises may be used to determine training needs of participants. These records may also be used to locate individuals for personnel research.

OPM/GOVT–6

SYSTEM NAME:

Personnel Research and Test Validation Records.

System notice last published at: 55 FR 3850, February 5, 1990.

Description:

OPM/GOVT–6 includes records on current and former Federal employees, applicants for Federal employment, current and former State and local government employees, and applicants for State and local government employment, selected private sector employees and applicants for sample comparison groups. The records are

collected, maintained, and used by OPM or other Federal agencies for the construction, analysis, and validation of written tests, and for research on and evaluation of personnel/organizational management and staffing methods, including workforce effectiveness studies.

OPM/GOVT–7

SYSTEM NAME:

Applicant—Race, Sex, National Origin and Disability Status Records.

System notice last published at: 55 FR 3852, February 5, 1990.

Description:

This database includes records on current and former Federal employees and individuals who have applied for Federal employment. The records are used by OPM and agencies to evaluate personnel/organizational measurement and selection records, implement and evaluate Federal Equal Opportunity Recruitment and affirmative action programs, prepare reports regarding breakdowns by race, sex, and national origin of applicants, and to locate individuals for personnel research.

OPM/GOVT–8

[Reserved.] Formerly Confidential Statement of Employment and Financial Interest. [Replaced by OGE/GOVT–2]

OPM/GOVT–9

SYSTEM NAME:

File on Position Classification Appeals, Job Grading Appeals, and Retained Grade or Pay Appeals.

System notice last published at: 55 FR 3854, February 5, 1990.

Description:

This database includes records on current and former Federal employees who have either: (a) Filed a position classification appeal or a job grading appeal with OPM's Agency Compliance and Evaluation, an OPM regional office, or with their agencies; or (b) filed a retained grade or pay appeal with OPM's Agency Compliance and Evaluation or an OPM regional office. These records are used primarily to document the processing and adjudication of a position classification appeal, job grading appeal, or retained grade or pay appeal. Internally, OPM may use these records to locate individuals for personnel research.

OPM/GOVT–10

SYSTEM NAME:

Employee Medical File System Records.

System notice last published at: 55 FR 3855, February 5, 1990.

Description:

This database includes records on current and former civilian Federal employees. Some records are required to be maintained on a long-term basis. They also provide data to ensure proper medical evaluation, diagnosis, history, treatment, and continuity of care. They provide documentation of hazard exposures, treatment, medically-related employment decisions, and communications among health care providers. They are also used to enable planning of further care, evaluate quality of health care rendered, and to ensure proper operation of an agency's drug testing program.

James B. MacRae, Jr.,

Acting Administrator and Deputy Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 91–14589 Filed 6–18–91; 8:45 am]

BILLING CODE 3110–01–M

POSTAL SERVICE

Privacy Act of 1974; System of Records

AGENCY: Postal Service.

ACTION: Advance notice of revisions to an existing system.

SUMMARY: The purpose of this document is to publish, as required by 5 U.S.C. 552a(e)(11), advance notice of modifications to Privacy Act system of records USPS 120.070, Personnel Records—General Personnel Folder (Official Personnel folders and Records Related thereto). This change is necessary due to amendement of the Federal Employees Health Benefits (FEHB) Program under the provisions of Public Law 100–654, which requires the Postal Service to maintain information on certain former spouse and family members who may be eligible for health benefits coverage under the FEHB Program. For USPS 120.070, the Postal Service proposes to expand the category of individuals covered by the system and make editorial corrections and revisions to the system.

EFFECTIVE DATE: This notice is effective on an interim basis upon publication June 19, 1991, in order to correspond with the implementation provisions of Public Law 100–654. However, interested persons are invited to submit written data, views, or arguments concerning the changes in compliance with 5 U.S.C. 552a(e)(11). Comments must be received on or before July 19, 1991.

ADDRESSES: Comments may be mailed to: Records Officer, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington DC 20260–5010 or delivered to room 8141 at the above address between 8:15 a.m. and 4:45 p.m. Comments received may also be inspected during the above hours in room 8141.

FOR FURTHER INFORMATION CONTACT: Rubenia Carter, Records Office (202) 268–4872.

SUPPLEMENTARY INFORMATION: Under the provisions of Public Law 100–654, the children and former spouse of a current or former employee who lost eligibility for coverage on or after January 1, 1990, may qualify for temporary continuation of coverage under the FEHB Program. As a result, the Postal Service will maintain health benefits information pertaining to the former spouse and children who qualify and apply for health benefits coverage.

As provided by 5 U.S.C. 552a(e)(11), interested persons are invited to submit written data, views or arguments on this proposal. Prior to publication of this proposal, a report describing the proposed changes has been filed with Congress and the Office of Management and Budget for their evaluation. A waiver of the 60-day advance period, pursuant to OMB Circular A–130, has been requested. If the waiver is granted, and unless comments suggest the need for revisions, it is expected that the system changes will become effective as proposed following the expiration of the 30-day comment period.

The most recent description of USPS 120.070 appears at 54 FR 43652, dated October 26, 1989. The description is modified as shown in italics below.

USPS 120.070

SYSTEM NAME:

Personnel Records—General Personnel Folder (Official Personnel Folders and records related thereto), 120.070.

SYSTEM LOCATION:

Personnel offices at all USPS facilities; National Personnel Records Center, St. Louis, MO: Information Services Branch, Headquarters; Postal Data Center, Minneapolis, MN; National Test Administration Center Alexandria, VA; and selected contractor sites.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former USPS employees; and current employees' children or former spouses and former employees' family members or former spouses who qualify and apply for Federal Employees Health Benefits coverage under Public Laws 98–615 or 100–654.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications, resumes, merit evaluations, promotion/salary change and other personnel actions, health benefit and life insurance elections and other documents pertaining to preemployment, prior Federal employment and current service as prescribed by USPS directives.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 1001, 1005; 42 U.S.C. 2000–16. Executive Orders 11478 and 11590.

PURPOSE:

Used by administrators, *managers, selection review committees,* and individual employee supervisors to perform routine personnel functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, C, D, E, F, *G,* H, *J,* K, L, and M *listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:*

1. To provide information to a prospective employer of a USPS employee or former USPS employee.

2. To provide statistical reports to Congress, agencies, and the public on characteristics of the USPS work force.

3. To provide data for the compilation of a local seniority list that is used by management to make decisions pertaining to appointment and assignments among craft personnel. The list is posted in local facilities where it may be reviewed by USPS employees.

4. *To* transfer to the OPM upon retirement of an employee *information necessary* for processing retirement benefits.

5. Disclosure of relevant and necessary information pertaining to an employee's participation in health, life insurance and retirement programs may be made to the Office of Personnel Management and private carriers for the provision of related benefits to the participant (also see USPS 050.020).

6. Disclosure of minority designation codes may be made to the Equal Employment Opportunity Commission for the oversight and enforcement of Federal EEO regulations.

7. Disclosure of records of discipline relating to individual employees may be made to State Employment Security Agencies at the initial a determination level of the unemployment compensation claim process.

8. Information pertaining to an employee who is a retired military officer will be furnished to the appropriate service finance center as required under the provisions of the Dual Compensation Act.

9. May be disclosed to a Federal or State agency, providing parent locator services or to other authorized persons as defined by Pub. L. 93–647.

10. Records in this system are subject to review by an independent certified public accountant during an official audit of Postal Service finances.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files, preprinted forms, Official Personnel Folders, magnetic tape and other computer storage devices.

RETRIEVABILITY:

Employee name and location of employment and social security number.

SAFEGUARDS:

Folders are maintained in locked cabinets to which only authorized personnel have access; *automated records are* protected by computer passwords and tape or disc library physical security.

RETENTION AND DISPOSAL

a. Official Personnel Folder (OPF) Records—These records are considered to be permanent and are maintained until employee is separated, and then are sent to the National Personnel Records Center, St. Louis, for storage, or to another Federal agency to which the individual transfers employment.

b. Personnel Work Sheets—Destroy 30 days after a new PS 50 is issued.

c. Temporary Records of Individual Employees—Destroy when 2 years old, upon separation, or upon transfer of employee, whichever is sooner.

d. Service Record Cards—Destroy 3 years after separation or transfer of employee.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, Employee Relations Department, Headquarters, *Washington, DC 20260-4200.*

NOTIFICATION PROCEDURE:

Employees wishing to gain access to their Official Personnel Folders should submit requests to the facility head where employed. Headquarters employees should submit requests to the System Manager. Former Postal Service employees should submit request to any Postal Service facility head giving name, date of birth and social security number. Former Post Office Department employees having no Postal Service employment (prior to July 1971) should submit the request to the Office of Personnel Management (formerly the U.S. Civil Service Commission), *Compliance and Investigations Group, Washington, DC 20415-0001.*

RECORD ACCESS PROCEDURE:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification and Record Access procedures above.

RECORD SOURCE CATEGORIES:

Individual employee, personal references, former employers and USPS 050.020 [Finance Records–Payroll System].

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The USPS has claimed exemptions from certain provisions of the Act for several of its other systems of records as permitted by 5 U.S.C. 552a (j) and (k). See 39 CFR 266.9. To the extent that copies of exempt records from those other systems are incorporated into this system, the exemptions applicable to the original primary system shall continue to apply to the incorporated records.

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 91–14488 Filed 6–18–91; 8:45 am]

BILLING CODE 7710–12

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–29301; File No. SR–BSE–91–4]

Self-Regulatory Organizations; the Boston Stock Exchange; Order Granting Temporary Accelerated Approval to Proposed Rule Change and Amendments No. 1 and 2 Relating to Price Protection of Limit Orders

I. Introduction

On May 13, 1991, the Boston Stock Exchange ("BSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4

[1] 15 U.S.C. 78s(b)(1) (1988).

thereunder,[2] a proposed rule change to add a new Chapter IIB, Facilitation of GTX Orders, to the Exchange's Rules of the Board of Governors which would require BSE specialists to provide primary market protection for limit orders, designated as executable after the BSE close, based on volume that prints in the primary market's after-hours session.[3] Amendments No. 1 and 2, submitted on May 24 and May 29, 1991, respectively, further explain the proposed rule change.[4] The BSE requests accelerated approval of the proposed rule change.[5]

The proposed rule change was published for comment in Securities Exchange Act Released No. 29269 (June 3, 1991), 56 FR 26701 (June 10, 1991). No comments were received regarding the proposed rule change.

II. Description of the Proposal

The BSE proposal is designed to protect limit orders on the books of BSE specialists by providing primary market protection if an issue trades at the limit price in a primary market's after-hours trading session. The BSE submitted this rule change as a competitive response to the New York Stock Exchange's ("NYSE") Off-Hours Trading ("OHT") facility that was recently approved by the Commission.[6]

The BSE proposes to add a new Chapter IIB, Facilitation of GTX Orders, which would apply to the facilitation of certain orders after the close of the 9:30 a.m. to 4 p.m. trading session. Specifically, the new rules create a new type of order on the BSE—a "GTX" order. The BSE proposal defines a GTX order as an unconditioned "GTC" ("good 'till cancelled") [7] order designated by the entering broker as executable at 5:00 p.m. at the primary market closing price.[8] Under the BSE proposal, pursuant to the BSE Execution Guarantee Rule,[9] If an issue has traded at the limit price in a primary market's after-hours trading session, the BSE specialist would be required to fill GTX orders based on volume that prints in the primary market's after hours trading session.

Section 33.01(c) of the BSE' Execution Guarantee Rule requires a specialist to fill all agency limit orders if the issue is trading on the primary market at the limit price, unless it can be demonstrated that such order would not have been executed if it had been transmitted to the primary market, or the broker and specialist agree to a specific volume-related or other criteria requiring a fill. In effect, the BSE's new rule extends this execution guarantee rule by requiring that, if an issue has traded to the limit price in a primary market's after-hours trading session, the BSE specialist must fill limit orders, designated as executable after the BSE close by the GTX designation, based on volume that prints in the primary market's after-hours session.

Thus, the BSE proposal does not propose to establish a separate after-hours trading session. Instead, it proposes to amend the Exchange's execution guarantee rules to require Exchange specialists to fill certain limit orders (orders which satisfy certain stated criteria) after the close of the regular BSE auction market trading session.

Under the BSE proposal, the BSE's Automated Communications and Order Routing Network ("BEACON"), would scan the limit order books of BSE specialists for limit orders that are priced at the NYSE closing price and have been designated as GTX. The BSE proposal would give customers the option of deciding whether they want their limit orders to be designated as GTX orders and thus eligible for execution after the close of the regular BSE auction trading session.[10] If a limit order meets these criteria (*e.g.*, it has been designated as eligible for execution in an after-hours session and is priced at the NYSE closing price), then it would become eligible for a fill at the NYSE closing price based on volume that prints in the primary market's after-hours session. Under the proposal, customers could cancel GTX orders during the regular the 9:30 a.m. to 4 p.m. trading day and from 4 p.m. to 5 p.m.

The only two situations under which a BSE specialist would not be obligated to fill customer limit orders, designated as GTX, based on volume that prints in the primary market's after-hours session are: (1) If it can be demonstrated that the order would not have been executed if it has been transmitted to the primary market; and (2) if a customer cancels a GTX order. In other words, unless a specialist can demonstrate that, upon receipt of a customer's GTX order, a duplicate order was transmitted by the specialist to the NYSE, and that duplicate order was not executed in NYSE's Crossing Session I, or that a GTX order was cancelled at the initiation of a customer, the specialist would be required to fill all eligible GTX orders up to the amount of the volume that prints at the end of NYSE's Crossing Session I. GTX orders would retain the priority among themselves that exists on the specialist's books and would be entitled to an execution based on that priority. If a limit order that is eligible for execution in an after-hours session does not get executed, it will remain on the limit order book of the BSE specialist and would retain its priority during the next day's regular trading session.

Specialists would manually execute GTX orders once the appropriate volume in a particular security in NYSE's Crossing Session I has been determined. As a practical matter, this will occur at approximately 5 p.m. In addition, the BSE proposes to report GTX executions to the consolidated tape after the NYSE prints its 5 p.m. Crossing Session I transactions. Each individual trade would be reported "regular way,"

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[2] 17 CFR 240.19b–4 (1990).

[3] The Commission notes that the BSE proposal is substantially similar to proposals by the Midwest ("MSE"), Pacific ("PSE") and Philadelphia ("Phlx") Stock Exchanges which are also being approved on an accelerated basis by the Commission. See Files No. SR–MSE–91–11; SR–PSE–91–21; SR–Phlx 91–26.

[4] Amendments No. 1 and 2 do not change the substance of the proposed rule change, but instead add new language clarifying the specialists' obligations with respect to GTX orders under the requirements of the new rule.

[5] See Amendment No. 2 to File No. SR–BSE–91–4.

[6] The NYSE's OHT facility extends the NYSE's trading hours beyond the 9:30 a.m. to 4:00 p.m. trading session to establish two trading sessions: Crossing Session I and Crossing Session II. Crossing Session I permits the execution of single-stock single-sided closing-price orders and crosses of single-stock closing-price buy and sell orders. Crossing Session II allows the execution of crosses of multiple-stock aggregate-price buy and sell orders. See Securities Exchange Act Release No. 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) ("NYSE OHT Release") (approving Files No. SR–NYSE–90–52 and NYSE–90–53). The Commission approved the NYSE's OHT facility (Files No. SR–NYSE–90–52 and NYSE–90–53) on May 20, 1991. The NYSE has indicated to the Commission that it is prepared to begin the operation of its OHT facility on June 13, 1991.

[7] BSE chapter I, section 3 states that a GTC order is an order to buy or sell which remains in effect until it is either executed or cancelled.

[8] The new rules also define two other new order types. A one-sided single stock order ("OS") is defined as a buy or sell order entered after 4 p.m. for execution in after-hours trading session; and a two-sided single stock order ("TS") is defined as a coupled buy and sell order entered after 4 p.m. for execution in an after-hours trading session. At the current time, however, the BSE does not intend to change its trading hours and operations to accommodate OS and TS orders. The BSE has defined these new order types in this rule filing so that, if the Exchange decides at some future time to accommodate such orders, the Exchange Rules will already define them. See letter from Brian L. Riddell, Executive Vice President, Trading Services, BSE, to Howard Kramer, Assistant Director, Division of Market Regulations, SEC, dated May 23, 1991.

[9] See infra.

[10] The BSE states that it will use its existing systems to implement the proposed rule change and execute GTX orders. The BSE represents that it has no systems capacity concerns regarding the execution of GTX orders and that modifications to its systems to permit the execution of those orders were tested successfully prior to this order.

as is the current practice during the 9:30 a.m. to 4 p.m. trading session.[11]

Finally, the BSE seeks exemptive relief from the requirements of Rule 10a–1 under the Act ("short sale rule") for the limited purpose of providing full primary market protection for its GTX limit orders.[12]

III. Discussion and Commission Findings

After careful consideration, the Commission believes that the BSE proposal is reasonably designed to promote just and equitable principles of trade, perfect the mechanism of a free and open national market system, and, in general, further investor protection and the public interest in fair and orderly markets on national securities exchanges, as well as facilitate the linking of qualified markets through appropriate communication systems and the practicability of brokers executing investors' orders in the best market. For these reasons and for the additional reasons set forth below, the Commission finds that approval, for a temporary period ending on May 24, 1993, of the Exchange's proposal rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of sections 6 and 11A of the Act.[13]

In the recent Commission release approving the NYSE's OHT facility, the Commission noted the benefits that would accrue to investors through development of an after-hours trading session. The Commission in that order also stated that the NYSE OHT sessions should enhance competition by providing a service to customers that other exchanges currently are not providing.[14] In that release, the Commission noted that innovation that provides marketplace benefits to attract order flow to one marketplace does not result in unfair competition if the other markets are free to compete in the same manner.[15] In this regard, the Commission noted that, if other U.S. securities marketplaces desire to compete with the NYSE's OHT facility, they could provide a similar service.[16] Although the BSE proposal does not copy the NYSE's OHT facility, it nonetheless presents a reasonable competitive response. By allowing GTX orders that could be executed on the NYSE to receive a similar fill on the BSE, the Exchange is providing a mechanism for maintaining its own individual marketplace on a competitive level with the primary market. Accordingly, the Commission believes that the BSE proposal should be approved for many of the same reasons that the Commission approved the NYSE OHT facility.[17]

The Commission believes that both the instant BSE proposal and the NYSE's OHT facility, as well as several proposals recently received by the Commission from other U.S. marketplaces, demonstrate the competitiveness of the U.S. securities markets. As a result of these marketplace initiatives, U.S. investors soon will have new opportunities for trading, including the ability to have their orders executed on both the NYSE and the BSE after the close of the regular 9:30 a.m. to 4 p.m. trading session at the closing price established on the primary market. Moreover, the Commission believes that the increased competition that results from permitting BSE specialists to attract GTX orders should enhance the quality of customer order executions.

In addition, the Commission believes that the BSE proposal is consistent with the maintenance of fair and orderly markets and should contribute to the practicability of brokers achieving a best execution for customer orders. The new BSE rules would achieve this by imposing additional obligations on Exchange specialists to provide their customers with primary market price protection. The parameters of the new rule are expressed clearly in the text of the rule and do not leave any discretion to specialists in deciding which orders to fill and what priority to give these orders. The new rule makes clear that if customer limit orders are designated as GTX and are priced at the primary market closing price, then the specialist is obligated to fill those orders up to the volume that prints at the end of NYSE Crossing Session I.[18] The specialist is relieved of this obligation only if he or she can demonstrate that a particular order would not have been executed if it had been transmitted to the primary market. As discussed above, the Commission believes that the only way in which this can be demonstrated is by showing that an order was sent to the primary market and it was not filled or if a customer cancels a GTX order prior to its execution.

In addition, the BSE proposal does not disturb the priority rules currently in force at the Exchange. During the regular trading hours, orders on the specialist's book would maintain the same priority as existed before adoption of this proposal. Among GTX orders that are eligible after 4:00 p.m. for possible execution, priority is maintained as it was during the regular trading day. If a GTX order is not executed, it will remain on the specialist's book and will maintain its priority.

Furthermore, the Commission believes that, although BSE specialists will know which limit orders are designated "GTX" and will manually execute GTX orders, they should not be able to use this information to their own advantage. As discussed above, the BSE proposal constitutes an extension of the BSE's daytime executive guarantee system. It does not create an additional session where specialists can participate. Specialist participation would be limited to filling the contra side of a customer limit order that is eligible, pursuant to the new rule, for a fill. The specialist would have no discretion in choosing which orders to fill and which priority to give orders. Orders would be eligible for a fill based on strict criteria (*e.g.*, orders that are priced at the NYSE closing price and have been designated GTX are eligible to be filled based on volume that prints in the primary market's after-hours session). In addition, orders would be eligible to be filled according to the priority that already exists on the specialists' books. Thus, the Commission is satisfied that, although BSE specialists will have knowledge of which limit orders have been designated GTX, they will not be able to use this knowledge to the detriment of investors because their participation in the execution of GTX orders will be limited. The Commission expects, however, that the BSE will monitor carefully the execution of GTX orders to ensure that BSE specialists are not taking unfair advantage of this information. In this regard, the Commission expects the BSE to report, within 18 months of the date of

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[11] See letter from Karen A. Aluise, Regulatory Review Specialist, BSE, to Kathryn Natale, Assistant Director, Division of Market Regulation, SEC, dated May 31, 1991.

[12] See letter from Karen A. Aluise, Regulatory Review Specialist, BSE, to Larry Bergmann, Associate Director, Division of Market Regulation, SEC, dated May 29, 1991. The Commission will issue a letter that addresses the Exchange's request for an exemption from Rule 10a–1.

[13] 15 U.S.C. 78f and 78k–1 (1988).

[14] See NYSE OHT Release, *supra*, note 6.

[15] *Id.*

[16] Id.

[17] See NYSE OHT Release, *supra*, note 6.

[18] Under the BSE proposal, a broker and BSE specialist may agree upon a specific volume related or other criteria for requiring a fill, this means, however, that they may agree to have the specialist fill *more* than the amount of the NYSE Crossing Session I print, not *less* than the amount of the NYSE Crossing Session I print. Of course, if no volume prints in NYSE Crossing Session I in a particular stock, then the BSE specialist cannot execute any GTX orders after regular trading hours that day.

the approval of this order, on this issue. The Commission may, at that time, wish to revisit this issue.

The Commission notes that the NYSE's OHT facility was approved for a two year temporary period, commencing on May 24, 1991. In approving the NYSE proposal for a temporary period, the Commission noted that the NYSE OHT facility raised several "intermarket" issues, such as: (i) Whether the Intermarket Trading System ("ITS") should be operational during any time period when both the NYSE Crossing Sessions and another ITS market are accepting orders; (ii) whether the NYSE should be required to permit orders entered "GTX" on the books of regional specialists to "migrate" automatically at the close(s) of such regional exchanges to the NYSE Crossing Session I order book; (iii) if so, with what priority, if any; and (iv) who should bear the cost of developing a working mechanism for such transmittal.

In the release approving the NYSE OHT facility, the Commission also noted that, because at least one other exchange had proposed a trading session similar or identical to the NYSE's OHT facility, significant national market system issues would have to be resolved by the NYSE and the competing market, in conjunction with the SEC. Although the BSE proposal does not present an after-hours crossing session like the NYSE's OHT facility, it would establish an after-hours trading system that will compete directly with NYSE Crossing Session I. Accordingly, the Commission believes that a temporary approval period ending on May 24, 1993, is also appropriate for the BSE proposal.[19]

The Commission believes that this time period will provide an opportunity for the Commission and market participants to observe the actual operation of the NYSE's OHT facility and the BSE's after-hours proposal. Based on these observations the Commission and market participants will be in a better position to evaluate whether further steps to link the NYSE's OHT facility with comparable systems operating at the same time are necessary or appropriate to protect investors or promote fair competition and whether any other linkage issues arise. In this regard, 18 months from the date of approval of the instant proposal, the BSE should submit a new filing pursuant to Rule 19b–4 under the Act requesting permanent approval of its proposed rule change, as well as a report describing the BSE's experience with the new rule during that 18-month period. The report should include, but not be limited to, the following information (broken down by month) for the 18-month period:

- Whether customers who have entered GTX orders experienced any problems when they attempted to cancel such orders
- Whether the Exchange has experienced any difficulties in monitoring the activities of specialists with regard to determining their particular obligations to fill GTX orders
- The number, if any, of GTX orders executed after the close of the BSE's regular auction trading session pursuant to the new rule
- The number, if any, of GTX orders that remain unexecuted after the BSE specialist has fulfilled his or her obligations in connection with the new rule
- The number and percentage of GTC orders on the book that were designated "GTX" and thus eligible to be filled
- Whether the BSE marketplace has experienced any increased volatility during the last hour of the 9:30 a.m. to 4 p.m. trading sessions after the initiation of the new rule
- Whether there were greater (wider) quote spreads during the last hour of the 9:30 a.m. to 4 p.m. trading session after the initiation of the new rule
- Whether the Exchange or any specialist has given any special guarantees to execute GTX orders over and above the current requirements of the Execution Guarantee Rule and the requirements of the new rule

In addition, the Commission expects that the BSE, through use of its surveillance procedures, will monitor for, and report to the Commission, any patterns of manipulation or trading abuses or unusual trading activity resulting from the new rule. Finally, the Commission expects the BSE to keep the Commission apprised of any technical problems which may arise regarding the operation of the new rule, such as difficulties in order execution or order cancellation.

Finally, the Commission finds good cause for approving the proposed rule change and Amendments No. 1 and 2 prior to the thirtieth day after the date of publication of notice of filing thereof. The BSE's proposal merely extends the Exchange's execution guarantee procedures to incorporate GTX orders and the possibility of a 5 p.m. execution. It does not substantially alter current BSE procedures, nor does it raise issues not already addressed in the order approving the NYSE's OHT system. Accordingly, the Commission believes it is appropriate to approve the proposed rule change on an accelerated basis so that it can be in effect on the date that the NYSE's OHT facility commences operation. This will permit the BSE to compete with Crossing Session I of the NYSE's OHT facility, which in turn should benefit investors and promote competition among markets.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[20] that the proposed rule change is approved for a temporary period ending on May 24, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Dated: June 13, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–14611 Filed 6–18–91; 8:45 am]

BILLING CODE 8010–01–M

[19] To achieve uniformity, the temporary approval period would run until May 24, 1993, the sunset of the NYSE's OHT facility.

[20] 15 U.S.C. 78s(b)(2) (1988).

[21] 17 CFR 200.30–3(a) (12) and (15) (1990).

[Release No. 34–29289; International Series No. 289; File No. SR–CBOE–91–15]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Listing of Index Warrants Based on the Europe-Australia-Far East ("EAFE") Index

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 13, 1991, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE is proposing under Rule 31.5(E) of the Exchange's Rules to list and trade index warrants based on the Morgan Stanley Capital International ("MSCI") Europe-Australia-Far East ("EAFE") Index, which is a capitalization-weighted index representative of the stock market structure of Europe and the Pacific Basin. In accordance with the requirements set forth in Securities Exchange Act Release No. 28556

(October 19, 1990), 55 FR 43233, the CBOE has submitted this filing pursuant to Rule 19b–4 under the Act to obtain Commission approval to list these warrants.

The text of the proposed rule is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

CBOE Rule 31.5(E) sets forth the guidelines applicable to listing index warrants based on established foreign and domestic stock indexes. The Exchange is proposing to list index warrants based on the EAFE Index. EAFE is a broad-based index designed to represent the performance of an unmanaged portfolio of stocks listed for trading on stock markets other than those in North America. As of March 31, 1991, the Index consisted of 1,068 companies traded on stock markets in 18 countries in Europe and the Pacific Basin.[1] Unlike other broad-based indexes, the number of stocks included in EAFE is not fixed and may vary to enable the Index to continue to reflect the primary home markets of the constituent countries. Changes in the Index will be announced when made. EAFE is a capitalization-weighted index calculated by MSCI based on the official closing prices for each stock in its primary local or home market. The base value of the index was equal to 100.0 on January 1, 1970. As of March 27, 1991, the current value of the Index was 842.70.

The warrant issues will conform to the listing guidelines under Rule 31.5(E) which provide that (1) the issuer shall have assets in excess of $100,000,000 and otherwise substantially exceed the size and earnings requirements in Rule 31.5(A); (2) the term of the warrants shall be for a period ranging from one to five years from the date of issuance; and (3) the minimum public distribution of such issues shall be 1,000,000 warrants together with a minimum of 400 public holders, and have an aggregate market value of $4,000,000.

EAFE index warrants will be direct obligations of their issuer subject to cash-settlement during their term, and either exercisable throughout their life (*i.e.*, American style) or exercisable only on their expiration date (*i.e.*, European style). Upon exercise, or at the warrant expiration date (if not exercisable prior to such date), the holder of a warrant sturcutred as a "put" would receive payment in U.S. dollars to the extent that the EAFE Index has declined below a pre-stated cash settlement value. Conversely, holders of a warrant structured as a "call" would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the EAFE Index has increased above the pre-stated cash settlement value. If "out-of-the-money" at the time of expiration, the warrants would expire worthless.

The CBOE has adopted suitability standards applicable to recommendations to customers of index warrants and transactions in customer accounts. Exchange Rule 30.50 Interpretation .02 sets forth suitability standards applicable to recommendations to customers of index warrants and transactions in customer accounts. It applies the options suitability standards in Rule 9.9 to recommendations regarding index warrants; and recommends that index warrants be sold only to options-approved accounts.

In addition, Exchange Rule 30.50 Interpretation .03 requires that the standards of Rule 9.10(a) regarding discretionary orders be applied to index warrants. This Rule requires a Senior Registered Options Principal or a Registered Options Principal to approve and initial a discretionary order in index warrants on the day the order is entered. In addition, the Exchange, prior to the commencement of trading, will distribute a circular to its membership calling attention to specific risks associated with warrants on the EAFE Index.

In the generic approval order for index warrants,[2] the Commission noted that, with respect to foreign index warrants, there should be an adequate mechanism for sharing surveillance information with respect to the index's component stocks. In this regard, the CBOE is undertaking to establish an appropriate means to accomplish such information sharing.

The Exchange believes that the proposed rule change is consistent with the requirements of the Act, and, in particular, section 6(b)(5), as the warrants are designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and are not designed to permit unfair discrimination between customers, issuers, brokers of dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE believes that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up of 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 Fifty 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

[1] The weighing of the EAFE Index by country is as follows: (1) Australia (2.40%); (2) Austria (0.47%); (3) Belgium (1.18%); (4) Denmark (0.75%); (5) Finland (0.40%); (6) France (5.42%); (7) Germany (5.88%); (8) Hong Kong (1.64%); (9) Italy (2.38%); (10) Japan (50.68%); (11) Netherlands (2.67%); (12) New Zealand (0.18%); (13) Norway (0.44%); (14) Singapore/Malaysia (1.21%); (15) Spain (1.99%); (16) Sweden (1.74%); (17) Switzerland (3.22%); and (18) United Kingdom (17.38%).

and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submnitted by July 10, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 11, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-14521 Filed 6-18-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29288; International Series No. 288; File No. SR-NYSE-91-17]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Listing of Warrants Based on the European-Australia-Far East ("EAFE") Index

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 10, 1991, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to approve for listing and trading under section 703.17 (Index Warrants) of the Exchange's Listed Company Manual warrants based on the Europe-Australia-Far East ("EAFE") Index that Morgan Stanley Capital International ("MSCI") [1] owns, calculates and disseminates. the EAFE Index currently consists of 1,068 of the most highly capitalized and actively-traded stocks on stock exchanges located in Australia, New Zealand and 16 other countries throughout Europe and the Far East.

[1] EAFE, MSCI are trademarks and service marks of Morgan Stanley & Co. Incorporated.

The text of the proposed rule is available at the Office of the Secretary, NYSE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory 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 section (A), (B), and (C) below, or 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

Under section 703.17 (Index Warrants) of the NYSE's Listed Company Manual, the Exchange may approve for listing index warrants based on established foreign and domestic indexes. The NYSE is proposing to list index warrants based on the EAFE Index, an internationally-recognized, capitalization-weighted, broad-based index representing the performance of an unmanaged portfolio of stocks listed for trading on stock markets in Europe, New Zealand and the Far East. As of March 31, 1991, the Index consisted of 1,068 stocks traded on stock exchanges located in 18 countries.[2] The Index has been calculated since January, 1970.

MSCI currently disseminates the EAFE Index throughout the United States and other parts of the world by assorted publications and market data vendors. MSCI owns the EAFE Index and is responsible for calculating and maintaining the Index. It monitors corporate developments relating to the Index's component stocks and makes determinations as to additions to and deletions from the EAFE Index. MSCI has arranged to have an independent third party, The Economist, review its recommendations for additions and deletions in order to confirm that those recommendations conform to the stated methodology.

[2] The weighing of the EAFE Index by country is as follows: (1) Australia (2.40%); (2) Austria (0.47%); (3) Belgium (1.18%); (4) Denmark (0.75%); (5) Finland (0.40%); (6) France (5.42%); (7) Germany (5.88%); (8) Hong Kong (1.64%); (9) Italy (2.38%); (10) Japan (50.66%); (11) Netherlands (2.67%); (12) New Zealand (0.18%); (13) Norway (0.44%); (14) Singapore/Malaysia (1.21%); (15) Spain (1.99%); (16) Sweden (1.74%); (17) Switzerland (3. 22%); and (18) United Kingdom (17.38%).

EAFE Index warrant issues will conform to the listing guidelines under section 703.17 (Index Warrants) of the Listed Company Manual, which provides that (1) the issuer shall have assets in excess of $100,000,000 and otherwise substantially exceed the size and earnings requirements in section 102.01 of the Listed Company Manual; (2) the term of the warrants shall be for a period of at least one year from the date of issuance; and (3) the minimum public distribution of such issues shall be 1,000,000 warrants together with a minimum of 400 public holders, and have a minimum aggregate market value of $4,000,000.

EAFE Index warrants will be direct obligations of their issuer subject to cash-settlement during their term, and either exercisable throughout their life (*i.e.*, American style) or exercisable only on their expiration date (*i.e.*, European style). Upon exercise, or at the warrant expiration date (if not exercisable prior to such date), the holder of a warrant structured as a "put" would receive payment in U.S. dollars to the extent that the EAFE Index settlement price has declined below a pre-stated strike price. Conversely, holders of a warrant structured as a "call" would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the EAFE Index settlement price has increased above the pre-stated strike price. If "out-of-the-money" at the time of expiration, the warrants would expire worthless.

The NYSE has adopted suitability standards applicable to recommendations to customers of index warrants and transactions in customer accounts. Supplementary Material .30 of Rule 405 ("Diligence as to Accounts") applies the options suitability standard in Rule 723 ("Suitability") to recommendations regarding index warrants, and recommends that index warrants be sold only to options-approved accounts. Supplementary Material .10 of Rule 408 ("Discretionary Power in Customers' Accounts") requires a Senior Registered Options Principal or a Registered Options Principal to approve and initial a discretionary order in index warrants on the day the order is entered. In addition, the Exchange, prior to the commencement of trading, will distribute a circular to its membership calling attention to specific risks associated with warrants on the EAFE Index.

In the generic approval order for index warrants,[3] the Commission noted

[3] Securities Exchange Act Release No. 28153 (June 26, 1990), 55 FR 27734.

that, with respect to foreign index warrants, there should be an adequate mechanism for sharing surveillance information with respect to the index's component stocks. In this regard, the NYSE has entered into information sharing agreements with the regulatory authorities of a number of constituent countries and is seeking to enter into such agreements with the regulatory authorities of other constituent countries to provide for the sharing of necessary information between the Exchange and those authorities to fulfill their respective regulatory responsibilities.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section (b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NYSE believes that the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the 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. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 10, 1991.

For the Commission, by the Division of Market Regulation, purusant to delegated authority.

Dated: June 11, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-14523 Filed 6-18-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29292; File No. SR-DTC-91-12]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Fee Schedule for DTC Services

June 12, 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 May 24, 1991, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-DTC-91-12) 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 Depository Trust Company ("DTC") is filing herewith the following changes in the fee schedule for DTC services:

Service	Fee
SDFS Delivery Orders:	
● Via PTS, MDH or CCF for each delivery item presented Prior PM, AM opening to 6:15 PM.	$1.86 to the deliverer. $2.11 to the deliverer. $1.96 for each item received.
● ID System	$1.86 for each item delivered or received.
● Commercial Paper (CP).	$1.96 for each item delivered or received.
● CP Maturity Presentments.	$1.81 for each item delivered or received.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change, which will be effective for services provided after May 31, 1991, is to recover DTC's cost of expanding by $100 million its lines of credit for loans to facilitate SDFS settlement.

Since the proposed rule change relates to the equitable allocation of dues, fees and other charges among Participants, it is consistent with the requirements of section 17A(b)(3)(D) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change, Received From Members, Participants, or Others

DTC has not sought or received comments on the proposed rule change.

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 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 principal office of DTC. All submissions should refer to File No. SR–DTC–91–12 and should be submitted by July 10, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–14519 Filed 6–18–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–29296; File No. SR–DTC–91–13]

Self-Regulatory Organizations; the Depository Trust Co.; Notice of a Proposed Rule Change Relating to Expanded Use of the Seg–100 Account.

June 13, 1991.

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 31, 1991, the Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–DTC–91–13) as described in Items I, II, and III below, which items have been prepared by DTC. 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

In 1988, DTC introduced the Segregation Account No. 100 ("Seg-100") to allow participants to deposit foreign-owned shares of certain U.S. communications and maritime issues in their DTC accounts.[2] Until now, Seg-100 has been used exclusively for the segregatation of these types of issues.

Under the proposed rule change, participants may use Seg-100 to segregate securities with other specialized ownership restrictions that are imposed by applicable law and that are based on the beneficial owner's residence, domicile, or citizenship.

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC 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

DTC's current Seg-100 procedure allows participants to deposit foreign-owned shares of certain U.S. communications and maritime issues in their DTC accounts. The purpose of the proposed rule change is to enable participants to use Seg-100 to segregate securities with other specialized ownership restrictions that are imposed by applicable law and that are based on the beneficial owner's residence, domicile, or citizenship. For example, under applicable law beneficial owners of certain issues may lose tax benefits if the number of shares beneficially owned by citizens or residents of a particular political or geographical region exceeds a specified percentage of all shares issued and outstanding. At the time each issue with specialized ownership restrictions that are imposed by applicable law and that are based on the beneficial owner's residence, domicile, or citizenship is made eligible, DTC will announce to participants the CUSIP number of the securities and the issuer's description of the type of ownership restriction triggering the requirement that the securities must be segregated via the Seg-100 function.

In all other respects, Seg-100 will continue to operate as it does now. As participants know, DTC will notify the issuer or its agent periodically of the aggregate number of shares of a particular CUSIP number in participants' Seg-100 accounts. The issuer or its agent will then inform DTC if any transfers to participants' Seg-100 accounts caused the applicable restriction on ownership for that CUSIP number to be exceeded. In any such event, as is done currently, DTC will debit the account of the participant that last transferred shares to its Seg–100 account, and the participant will be required to withdraw those shares immediately from its DTC general account. Under these circumstances, DTC's current practice includes acting affirmatively to facilitate the certificate withdrawal, including, where necessary, disclosing to the issuer the identity of the affected participant and the number of shares to be withdrawn.

Seg-100 thus continues to centralize and automate communications between DTC participants and issuers of securities in cases where because of ownership restrictions imposed by applicable law the issuer or its agent must have specialized information about the citizenship, residence, or domicile of beneficial owners of securities registered in the name of DTC's nominee, Cede & Co.

The proposed rule change, therefore, is consistent with the requirements of section 17A of the Act and the rules and regulations thereunder. Because it removes a disincentive to registering certain shares in the name of DTC's nominee, it promotes the immobilization of securities certificates at DTC.

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[1] 15 U.S.C. 78s(b).

[2] Securities Exchange Act Release No. 25988 (August 10, 1988), 53 FR 30893 (notice of filing and immediate effectiveness of Seg-100). See also Securities Exchange Act Release No. 27346 (October 6, 1989), 54 FR 43010 (notice of filing and immediate effectiveness of proposed rule change clarifying procedures relating to Seg-100).

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

DTC has not solicited or received written comments on the proposed rule change. In discussions between DTC and representatives and counsel of the issuer and underwriter of the first CUSIP to be eligible for the expanded use of Seg-100, DTC ascertained that the existing Seg-100 function could be adapted to satisfy their needs.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 at the address above.

Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the File No. SR-DTC-91-13 and should be submitted by July 10, 1991.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-14607 Filed 6-18-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29291; File No. SR-DTC-91-08]

Self-Regulatory Organizations; The Depository Trust Co.; Order Approving a Proposed Rule Change Relating to a New Legal Notice System

June 12, 1991.

I. Introduction

On April 10, 1991, The Depository Trust Company ("DTC") filed a proposed rule change (File No. SR-DTC-91-08) with the Securities and Exchange Commission ("Commission") pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] Notice of the proposal was published in the **Federal Register** on May 6, 1991, to solicit comments from interested persons.[2] No comments were received. As discussed below, this order approves the proposal.

II. Description of the Proposal

The proposed rule change establishes procedures whereby DTC participants ("Participants") may order certain notices received by DTC that they wish to review. Participants will choose notices from a menu on their Participant Terminal System ("PTS) screen through DTC's Legal Notice System ("LENS").

According to DTC, its current notice distribution system has become an enormous and expensive enterprise requiring duplication and distribution of up to 850,000 copies per day. The expense for all of this is borne by Participants and is paid for out of their general fee. A recent DTC survey revealed that most Participants found that only a fraction of currently distributed notices were of interest to them.

Participants asked DTC to create a system that would reduce the amount of notices they receive. LENS was developed accordingly to allow Participants to prescreen certain notices that are received by DTC and that DTC chooses to make available to Participants via LENS. Notices include legal notices relating to bankruptcies and class actions and asset-backed notices relating to default and performance histories of asset-backed securities. LENS will enable Participants to avoid receiving and, ultimately, to avoid paying for the duplication and distribution of notices that are irrelevant to them.[3]

LENS also will allow, where practical, certain enhancements to the current distribution system. Under the proposal, Participants can: (1) Identify the CUSIP numbers associated with the issues that are the subject of the notices; (2) search for notices by CUSIP numbers; (3) conduct position checks by CUSIP numbers; and (4) access, with automatic order capability, an automated record of notices requested during the prior year. The proposal also will facilitate DTC's distribution of certain lengthy notices (*e.g.*, notices relating to default and performance histories of asset-backed securities) that might otherwise have been too expensive to duplicate and distribute to all DTC Participants.[4] DTC also believes the proposal will facilitate the DTC's effort to establish equitable fees for this service.[5]

Participants interested in obtaining a copy of a particular notice will order it through LENS. DTC will send the ordering Participant the notice by DD box [6] or first class mail early on the third business day following the request. DTC plans to charge Participants a per page fee for copies of notices ordered through LENS.[7]

III. Discussion

The Commission believes that DTC's proposed rule change is consistent with the Act and in particular with Section 17A of the Act. Accordingly, for the reasons discussed below, the Commission is approving the proposal.

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[1] 15 U.S.C. 78s(b).

[2] Securities Exchange Act Release No. 29133 (April 26, 1991), 56 FR 20631.

[3] As an alternative to the ordering process via PTS, DTC will provide a standard ordering agreement under which Participants may place a one time request to have a copy of each legal and/or asset-backed notice that DTC makes available automatically forwarded to them via their DTC DD box.

[4] Pursuant to the requirements under Commission Rule 17a-22 (17 CFR 240.17a-22), DTC will be required to file with the Commission copies of all LENS notices it issues or makes available to its participants.

[5] A Participant would not be charged any fee for the duplication and distribution of any notices in which the Participant was not interested and did not order. Currently, all Participants contribute to the cost of duplication and distribution out of DTC's general fees.

[6] DD box is DTC's designation for its lock-box system.

[7] In order to fully implement the proposal, DTC will be required to file with the Commission an additional proposed rule change setting forth the fees it intends to assess its Participants for their use of LENS.

The Commission believes that the proposal is consistent with sections 17A(a)(1) (B) and (C) of the Act.[8] Those sections articulate findings that new data processing and communications techniques create the opportunity for more efficient, effective, and safe procedures for clearance and settlement and that inefficient procedures for clearance and settlement impose unnecessary costs on investors and persons facilitating transactions by and acting on behalf of investors. DTC has indicated that LENS efficiently facilitates the communication to Participants of information that is germane to the Participants' clearance and settlement activities. The Commission concurs and believes that LENS will provide added speed and efficiency to the transfer of information between DTC and Participants and should help eliminate much of the waste built into the current system.

IV. Conclusion

For the reasons stated above, the Commission finds that DTC's proposal is consistent with section 17A of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that DTC's proposed rule change (SR–DTC–91–08) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–14608 Filed 6–18–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–29297; File No. SR–MSE–91–11]

Self-Regulatory Organizations; the Midwest Stock Exchange; Order Granting Temporary Accelerated Approval to Proposed Rule Change Relating to Price Protection of Limit Orders

I. Introduction

On May 7, 1991, the Midwest Stock Exchange ("MSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Article XX, Rule 37 (Guaranteed Execution System) of the Exchange's Rules of the Board of Governors and to add Interpretation and Policy paragraph .02, which would require MSE specialists to provide primary market protection for limit orders, designated as executable after the MSE close, based on volume that prints in the primary market's after-hours session.[3] The MSE requests accelerated approval of the proposed rule change.[4]

The proposed rule change was published for comment in Securities Exchange Act Release No. 29200 (May 16, 1991), 56 FR 23948 (May 24, 1991). No comments were received regarding the proposed rule change.

II. Description of the Proposal

The MSE proposal is designed to protect limit orders on the books of MSE specialists by providing primary market protection if an issue trades at the limit price in a primary market's after-hours trading session. The MSE submitted this rule change as a competitive response to the New York Stock Exchange's ("NYSE") Off-Hours Trading ("OHT") facility that was recently approved by the Commission.[5] In its rule filing, the MSE states that the proposal is designed to compete directly with NYSE "Crossing Session I," which enables orders in individual stocks to be executed at the NYSE closing price.

The MSE proposes to add new language to Rule 37 ("Guaranteed Execution System"). Rule 37.3 currently states that:

3. All agency limit orders in Dual Trading System [6] issues will be filled if one of the following conditions occur: (a) the bid or offering at the limit price has been exhausted in the primary market * * * (b) there has been a price penetration of the limit in the primary market, or (c) the issue is trading at the limit price on the primary market unless it can be demonstrated that such order would not have been executed if it had been transmitted to the primary market or the broker and specialist agree to a specific volume related or other criteria for requiring a fill.

The MSE proposal would amend this subsection to require that all agency limit orders in Dual Trading System issues be filled if the issue is trading at the limit price on the primary market in either the regular trading session or an after-hours trading session, unless it can be demonstrated that such order would not have been executed if it had been transmitted to the primary market or the broker and specialist agree to a specific volume related or other criteria for requiring a fill. New Interpretation and Policy .02 would qualify specialists' obligations under this amended subsection by providing that if the issue has traded at the limit price in a primary market's after-hours trading session the MSE specialist would fill limit orders, designated as executable after the MSE close, based on volume that prints in the primary market's after-hours session.

Thus, the MSE proposal does not propose to establish a separate after-hours trading session to compete with NYSE's Crossing Session I. Instead, it proposes to amend the Guaranteed Execution System to require its specialists to fill certain limit orders (orders which satisfy certain stated criteria) after the close of the regular MSE auction market trading session.

Under the MSE proposal, the MSE's Automated Execution System ("MAX") would scan the limit order books of MSE specialists at 4 p.m. for limit orders that are priced at the NYSE closing price and have been designated as "GTX" ("good 'til cancelled, executable in the after-hours session").[7] The MSE proposal would give customers the option of deciding whether they want their limit orders to be designated as GTX orders and thus eligible for execution after the close of the regular MSE auction trading session.[8] If a limit order meets these

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[8] 15 U.S.C. 78q-1(a)(1)(C).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1)((1988).

[2] 17 CFR 240.19b–4 (1990).

[3] The Commission notes that the MSE proposal is substantially similar to proposals by the Boston ("BSE"), Pacific ("PSE"), and Philadelphia ("Phlx") Stock Exchanges which are also being approved on an accelerated basis by the Commission. *See* Files No. SR–BSE–91–4; SR–PSE–91–21; SR–Phlx–91–26.

[4] *See* File No. SR–MSE–91–11 and letter from Daniel J. Liberti, Associate Counsel, MSE, to Mary Revell, Branch Chief, Division of Market Regulation, SEC, dated May 23, 1991.

[5] The NYSE's OHT facility extends the NYSE's trading hours beyond the 9:30 a.m. to 4 p.m. trading session to establish two trading sessions: Crossing Session I and Crossing Session II. Crossing Session I permits the execution of single-stock single-sided closing-price orders and crosses of single-stock closing-price buy and sell orders. Crossing Session II allows the execution of crosses of multiple-stock aggregate-price buy and sell orders. *See* Securities Exchange Act Release No. 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) ("NYSE OHT Release") (approving Files No. SR–NYSE–90–52 and NYSE–90–53). The Commission approved the NYSE's OHT facility (Files No. SR–NYSE–90–52 and NYSE–90–53) on May 20, 1991. The NYSE has indicated to the Commission that it is prepared to begin the operation of its OHT facility on June 13, 1991.

[6] The Dual Trading System of the MSE allows the execution of both round-lot and odd-lot orders in certain issues assigned to specialists on the MSE and listed on either the NYSE or the American Stock Exchange ("Amex"). MSE Guide, Explanatory Notes, at 803 (CCH 1990).

[7] The MSE proposal defines GTX orders as "good 'till cancelled, eligible for primary market protection based on volume that prints in a primary market's after-hours trading session." See letter from Daniel J. Liberti, Associate Counsel, MSE, to Mary R. Revell, Branch Chief, Division of Market Regulation, SEC, dated June 6, 1991.

[8] The MSE states that it will use its existing systems to implement the proposed rule change and

Continued

criteria (*e.g.*, it has been designated as eligible for execution in an after-hours session and is priced at the NYSE closing price), then it would become eligible for a fill at the NYSE closing price based on volume that prints in the primary market's after-hours session. The only two situations under which the MSE specialist would not be obligated to fill customer limit orders, designated as GTX, based on volume that prints in the primary market's after-hours session are: (1) If it can be demonstrated that the order would not have been executed if it had been transmitted to the primary market; and (2) if a customer cancels a GTX order.[9] In other words, unless a specialist can demonstrate that, upon receipt of a customer's GTX order, a duplicate order was transmitted by the specialist to the NYSE, and that duplicate order was not executed in NYSE's Crossing Session I, or that a GTX order was cancelled at the initiation of the customer, the specialist would be required to fill all eligible GTX orders up to the amount of the volume that prints at the end of NYSE's Crossing Session I. GTX orders would retain the priority among themselves that exists on the specialists' books and would be entitled to an execution based on that priority. If a limit order that is eligible for execution in an after-hours session does not get executed, it will remain on the limit order book of the MSE specialist and would retain its priority during the next day's regular trading session.

Specialists would manually execute GTX orders once the appropriate volume in a particular security in NYSE's Crossing Session I has been determined. As a practical matter, this will occur at approximately 5 p.m. (ET). The MSE proposes to report trades as a single print per issue which will show the aggregate size of the exeuctions.

Finally, the MSE seeks exemptive relief from the requirements of Rule 10a-1 under the Act ("short sale rule") for the limited purpose of providing full primary market protection for its GTX limit orders.[10]

execute GTX orders. The MSE represents that it has no systems capacity concerns regarding the execution of GTX orders, and that modifications to its systems to permit the execution of those orders were tested successfully prior to this order.

[9] Under the MSE proposal, a customer can cancel a GTX order during the regular 8:30 a.m. to 3 p.m. (CT) trading session and at any time up until the execution based on the NYSE Crossing Session I print.

[10] *See* letter from Daniel J. Liberti, Associate Counsel, MSE, to Larry Bergmann, Associate Director, Division of Market Regulation, SEC, dated June 3, 1991. The Commission will issue a letter that addresses the Exchange's request for an exemption from Rule 10a-1.

III. Discussion and Commission Findings

After careful consideration, the Commission believes that the MSE proposal is reasonably designed to promote just and equitable principles of trade, perfect the mechanism of a free and open national market system, and, in general, further investor protection and the public interest in fair and orderly markets on national securities exchanges, as well as facilitate the linking of qualified markets through appropriate communication systems and the practicability of brokers executing investors' orders in the best market. For these reasons and for the additional reasons set forth below, the Commission finds that approval, for a temporary period ending on May 24, 1993, of the Exchange's proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of sections 6 and 11A of the Act.[11]

In the recent Commission release approving the NYSE's OHT facility, the Commission noted the benefits that would accrue to investors through development of an after-hours trading session. The Commission in that order also stated that the NYSE OHT sessions should enhance competition by providing a service to customers that other exchanges currently are not providing.[12] In that release, the Commission noted that innovation that provides marketplace benefits to attract order flow to one marketplace does not result in unfair competition if the other markets are free to compete in the same manner.[13] In this regard, the Commission noted that, if other U.S. securities marketplaces desire to compete with the NYSE's OHT facility, they could provide a similar service.[14] Although the MSE proposal does not copy the NYSE's OHT facility, it nonetheless presents a reasonable competitive response. By allowing GTX orders that could be executed on the NYSE to receive a similar fill on the MSE, the Exchange is providing a mechanism for maintaining its own individual marketplace on a competitive level with the primary market. Accordingly, the Commission believes that the MSE proposal should be approved for many of the same reasons that the Commission approved the NYSE OHT facility.[15]

[11] 15 U.S.C. 78f and 78k-1 (1988).

[12] *See* NYSE OHT Release, supra, note 5.

[13] *Id.*

[14] *Id.*

[15] See NYSE OHT Release, *supra*, note 5.

The Commission believes that both the instant MSE proposal and the NYSE's OHT facility, as well as several proposals recently received by the Commission from other U.S. marketplaces, demonstrate the competitiveness of the U.S. securities markets. As a result of these marketplace initiatives, U.S. investors soon will have new opportunities for trading, including the ability to have their orders executed on both the NYSE and the MSE after the close of the regular 9:30 a.m. to 4 p.m. (ET) trading session at the closing price established on the primary market. Moreover, the Commission believes that the increased competition that results from permitting MSE specialists to attract GTX orders should enhance the quality of customer order executions.

In addition, the Commission believes that the MSE proposal is consistent with the maintenance of fair and orderly markets and should contribute to the practicability of brokers achieving a best execution for customer orders. The new MSE rule would achieve this by imposing additional obligations on Exchange specialists to provide their customers with primary market price protection. The parameters of the new rule are expressed clearly in the text of the rule and do not leave any discretion to specialists in deciding which orders to fill and what priority to give these orders. The new rule makes clear that if customer limit orders are designated as GTX and are prices at the NYSE closing price, then the specialist is obligated to fill those orders up to the volume that prints at the end of NYSE Crossing Session I. The specialist is relieved of this obligation only if he or she can demonstrate that a particular order would not have been executed if it had been transmitted to the primary market. As discussed above, the Commission believes that the only way in which this can be demonstrated is by showing that an order was sent to the primary market and it was not filled or if a customer cancels a GTX order prior to its execution.[16]

In addition, the MSE proposal does not disturb the priority rules currently in force at the Exchange. During the regular trading hours, orders on the

[16] Under the MSE proposal, a broker and MSE specialist may agree upon a specific volume related or other criteria for requiring a fill. This means, however, that they may agree to have the specialist fill more than the amount of the NYSE Crossing Session I print, not less than the amount of the NYSE Crossing Session I print. Of course, if no volume prints in NYSE Crossing Session I in a particular stock, then the MSE specialist cannot execute any GTX orders after regular trading hours that day.

specialist's book would maintain the same priority as existed before adoption of this proposal. Among GTX orders that are eligible after 4 p.m. (ET) for possible execution, priority is maintained as it was during the regular trading day. If a GTX order is not executed, it will remain on the specialist's book and will maintain its priority.

Furthermore, the Commission believes that, although MSE specialists will know which limit orders are designated "GTX" and will manually execute GTX orders, they should not be able to use this information to their own advantage. As discussed above, the MSE proposal constitutes an extension of the MSE's daytime execution guarantee system. It does not create an additional session where specialists can participate. Specialist participation would be limited to filling the contra side of a customer limit order that is eligible, pursuant to the new rule, for a fill. The specialist would have no discretion in choosing which orders to fill and which priority to give orders. Orders would be eligible for a fill based on strict criteria (*e.g.*, orders that are priced at the NYSE closing price and have been designated GTX are eligible to be filled based on volume that prints in the primary market's after-hours session). In addition, orders would be eligible to be filled according to the priority that already exists on the specialists' books. Thus, the Commission is satisfied that, although MSE specialists will have knowledge of which limit orders have been designated GTX, they would not be able to use this knowledge to the detriment of investors because their participation in the execution fo GTX orders will be limited. The Commission expects, however, that the MSE will monitor carefully the execution of GTX orders to ensure that MSE specialists are not taking unfair advantage of this information. In this regard, the Commission expects the MSE to report, within 18 months of the date of the approval of this order, on this issue. The Commission may, at that time, wish to revisit this issue.

The Commission notes that the NYSE's OHT facility was approved for a two year temporary period, commencing on May 24, 1991. In approving the NYSE proposal for a temporary period, the Commission noted that the NYSE OHT facility raised several "intermarket" issues, such as: (i) Whether the Intermarket Trading System ("ITS") should be operational during any time period when both the NYSE Crossing Sessions and another ITS market are accepting orders; (ii) whether the NYSE should be required to permit orders entered "GTX" on the books of regional specialists to "migrate" automatically at the close(s) of such regional exchanges to the NYSE Crossing Session I order book; (iii) if so, with what priority, if any; and (iv) who should bear the cost of developing a working mechanism for such transmittal.

In the release approving the NYSE OHT facility, the Commission also noted that, because at least one other exchange had proposed a trading session similar or identical to the NYSE's OHT facility, significant national market system issues would have to be resolved by the NYSE and the competing market, in conjunction with the SEC. Although the MSE proposal does not present an after-hours crossing session like the NYSE's OHT facility, it would establish an after-hours trading system that will compete directly with NYSE Crossing Session I. Accordingly the Commission believes that a temporary approval period ending on May 24, 1993 is also appropriate for the MSE proposal.[17]

The Commission believes that this time period will provide an opportunity for the Commission and market participants to observe the actual operation of the NYSE's OHT facility and the MSE's after-hours proposal. Based on these observations the Commission and market participants will be in a better position to evaluate whether further steps to link the NYSE's OHT facility with comparable systems operating at the same time are necessary or appropriate to protect investors or promote fair competition and whether any other linkage issues arise. In this regard, 18 months from the date of approval of the instant proposal, the MSE should submit a new filing pursuant to Rule 19b-4 under the Act requesting permanent approval of its proposed rule change, as well as a report describing the MSE's experience with the new rule during that 18-month period. The report should include, but not be limited to, the following information (broken down by month) for the 18-month period:

- Whether customers who have entered GTX orders experienced any problems when they attempted to cancel such orders
- Whether the Exchange has experienced any difficulties in monitoring the activities of specialists with regard to determining their particular obligations to fill GTX orders
- The number, if any, of GTX orders executed after the close of the MSE's regular auction trading session pursuant to the new rule
- The number, if any, of GTX orders that remain unexecuted after the MSE specialist has fulfilled his or her obligations in connection with the new rule
- The number and percentage of GTC orders on the book that were designated "GTX" and thus eligible to be filled
- Whether the MSE marketplace has experienced any increased volatility during the last hour of the 8:30 a.m. to 3 p.m. (CT) trading sessions after the initiation of the new rule
- Whether there were greater (wider) quote spreads during the last hour of the 8:30 a.m. to 3 p.m. (CT) trading session after the initiation of the new rule
- Whether the Exchange or any specialist has given any special guarantees to execute GTX orders over and above the current requirements of the Guaranteed Execution System and the requirements of the new rule

In addition, the Commission expects that the MSE, through use of its surveillance procedures, will monitor for, and report to the Commission, any patterns of manipulation or trading abuses or unusual trading activity resulting from the new rule. Finally, the Commission expects the MSE to keep the Commission apprised of any technical problems which may arise regarding the operation of the new rule, such as difficulties in order execution or order cancellation.

Finally, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. The MSE's proposal merely extends the Exchange's execution guarantee procedures to incorporate GTX orders and the possibility of a 4 p.m. (CT) execution. It does not substantially alter current MSE procedures, nor does it raise issue not already addressed in the order approving the NYSE's OHT system. Accordingly, the Commission believes it is appropriate to approve the proposed rule change on an accelerated basis so that it can be in effect on the date that the NYSE's OHT facility commences operation.

This will permit the MSE to compete with Crossing Session I of the NYSE's OHT facility, which in turn should benefit investors and promote competition among markets.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[18] that the proposed rule change is approved for a temporary period ending on May 24, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

[17] To achieve uniformity, the temporary approval period would run until May 24, 1993, the sunset of the NYSE's OHT facility.

[18] 15 U.S.C. 78s(b)(2) (1988).

[19] 17 CFR 200.30-3(a)(12) (1990).

Dated: June 13, 1991.

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-29298; File No. SR-MSRB-90-2]

Self-Regulatory Organization; Proposed Rule Change; Municipal Securities Rulemaking Board

The Self-Regulatory Organizations; Order Approving Proposed Rule Change of Municipal Securities Rulemaking Board Relating to the Proposed Operation of the Official Statement and Advance Refunding Document—Paper Submission System (OS/ARD) of the Municipal Securities Information Library System.

I. Introduction

The Municipal Securities Rulemaking Board ("MSRB" or "Board") submitted to the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change [1] on June 22, 1990, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [2] and Rule 19b-4 [3] thereunder. The proposed rule change would permit the Board to establish and operate a central electronic facility, the Municipal Securities Information Library ("MSIL"), through which information collected pursuant to MSRB Rule G-36 [4] would be made available electronically to market participants and information vendors.[5]

Notice of the filing of the proposal was published in Securities Exchange Act Release No. 28197 (July 12, 1990), 55 FR 29436. The Commission received 145 comment letters in response to this notice. Of those comment letters, 113 express support for the MSIL proposal, 28 are in opposition and four oppose the proposal as drafted but provide specific comments for its improvement. The Commission has determined, for the reasons discussed below, to approve the proposal.

II. Background

The creation of a central repository for municipal securities has been under consideration for several years by various sectors of the municipal industry. The Government Finance Officers Association ("GFOA") has supported the concept of a central repository since 1979,[6] and the National Association of State Auditors, Comptrollers and Treasurers ("NASACT") created a task force in 1989 to explore the feasibility of a centralized repository.[7]

Over the last five years, the Board has held many discussions on the need for a central source of official, descriptive information on municipal securities. One area on which the Board focused was the increasing complexity of municipal securities issues,[8] resulting in investor confusion and pricing inefficiencies. After extensive consideration of these and other problems, the Board concluded that the difficulties could be addressed only by ensuring enhanced access for all market participants to official information about municipal securities issues.

At the same time, the Commission was evaluating the adequacy of information dissemination in the municipal securities market. This effort resulted in the Commission's adoption in June of 1989 of Rule 15c2-12 under the Act.[9] Rule 15c2-12 was designed to establish standards for the procurement and dissemination of disclosure documents by underwriters as a means of enhancing the accuracy and timeliness of disclosure to investors in municipal securities. Among other things, the Rule requires underwriters to provide, for a specified period of time, copies of final OSs to any potential customer upon request.

After the Commission's adoption of the rule, the Board continued to consider a facility for the collection and dissemination of OSs and advance refunding documents ("ARDs").[10] The Board appointed a Repository Committee to oversee the development of the project. The Board also contracted with the MITRE Corporation to provide technical advice on the planning and implementation of the facility. The Board, the Repository Committee, the Board's staff and MITRE representatives discussed the repository idea with numerous parties, including investors, issuers, rating agencies, dealers, analysts, private information providers, industry and trade groups, and several parties who had expressed interest in becoming involved in the information dissemination process.

On June 1, 1990, the Commission approved MSRB Rule G-36.[11] The rule requires underwriters to provide OSs to the Board within time frames keyed to the production and delivery requirements of Rule 15c2-12 and applies to all issues, with certain exceptions for issues with limited placements, short-term issues and issues with short-term characteristics. The Board will accept OSs not subject to the rule, if voluntarily provided by underwriters. The Rule also requires underwriters to file with the Board Form G-36, which identifies the issue and its CUSIP number [12] and certain other information.

III. Description of the Proposal

The Board proposed to establish and operate MSIL initially to store and disseminate OSs collected pursuant to Rule G-36. The Board's stated purpose is to provide market participants and information vendors with better access to more descriptive information on municipal securities and their issuers. After extensive consultations with its technical advisor, the MITRE Corporation, the Board decided to use digital imaging technology, which allows the MSRB to accept paper copies, in any format, capture digitized electronic images of the documents and reproduce exact copies of the original.

The Board noted both practical considerations (comparatively inexpensive, long-term storage) and legal constraints (the Board is prohibited from dictating the form or content of issuer documents) [13] in describing its

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[1] File No. SR-MSRB-90-2.

[2] 15 U.S.C. 78s.

[3] 17 CFR 240.19b-4.

[4] Rule G-36 requires underwriters to provide Official Statements ("OS") to the Board within certain timeframes. See Securities Exchange Act Release No. 28081 (May 31, 1990), 55 FR 23333.

[5] The proposed rule change was filed simultaneously with two other rule changes: File No. SR-MSRB-90-3, Securities Exchange Act Release No. 28198 (July 12, 1990), 55 FR 29687, which would amend Rule G-36 to require underwriters to deliver advance refunding documents to the MSRB; and SR-MSRB-90-4, Securities Exchange Act Release No. 29199 (July 12, 1990), 55 FR 29691, which would permit the Board to establish and operate a central facility, the Continuing Disclosure Information/Electronic Submission ("CDI/ES") System, to accept voluntary submission of continuing disclosure information electronically. See Securities Exchange Act Release No. 29299 (June 13, 1991), approving File No. SR-MSRB-90-3.

[6] Letter from Jeffrey Esser, Executive Director, GFOA, to Jonathan G. Katz, Secretary, SEC, dated September 24, 1990 ("GFOA Letter"). The GFOA, however, opposes the proposal under consideration.

[7] NASACT, Municipal Disclosure Task Force Report (May 25, 1990).

[8] *E.g.*, complicated put and call provisions.

[9] 17 CFR 240.15c2-12. See Securities Exchange Act Release No. 26985 (June 28, 1989), 54 FR 28799.

[10] ARDs include information regarding a change in the credit of the security brought about by an advance refunding.

[11] See Securities Exchange Act Release No. 28081 (May 31, 1990), 55 FR 23333.

[12] The Committee on Uniform Securities Identification Procedures ("CUSIP") number is an identification number assigned to each issue, usually printed on the face of each individual certificate of the issue. The numbers are intended to help facilitate the identification and clearance of municipal securities.

[13] See discussion of the Board's authority below.

choice. Two initial outputs will be produced: single printed copies of OSs and ARDs and a magnetic tape containing all documents imaged in one day. Within three business days of receipt of new issue documents, the system will have completed its processing and will make the documents and an index available in both tape and paper form. Documents received by the Board will continue to be available at its public access facility ("PAF") on the day they are received.[14] The Board will also provide an interim list of documents processed each day by 9:00 a.m. the following business day.

Electronic storage involves storing images or characters on electronic devices controlled by computers. The digital imaging process converts the image of each page of a paper document into digitized code. The page images are stored in this form on computer readable media such as optical disks. With the assistance of a computer, the images of the pages then can be retrieved and printed with a very high quality of reproduction, similar to that achieved by top-quality photocopying machines. The process allows for electronic storage of documents, while preserving the graphic characteristics of each page (styles and sizes of type, page structure, etc.). The digital imaging process is now used by many companies and government agencies for efficient storage, access and reproduction of paper documents.[15]

The Board anticipates that users of the MSIL system will be value-added vendors, municipal securities professionals and individual investors. Several private information vendors currently provide a variety of information services to the market, including sales of OSs as well as summary information. The Board repeatedly has asserted that it will not summarize documents or sell document summaries, as is now done by private sources.[16]

A. Computer Index

One of the MSIL specifications established by the MSRB is that the system include a computer-based index of the system's contents. The MSRB will require the system contractor to develop an MSIL system index to track all documents received by the Board efficiently and access them quickly. In addition, because a number of documents may relate to the same issue (*e.g.*, an OS, ARD and continuing disclosure information ("CDI")),[17] the computer index also must record relationships between documents. The basic concept is that of an electronic "file folder"—all documents pertaining to an issue will be related through the index. This will facilitate the identification of documents that relate to specific issues.

B. Data and System Integrity [18]

The Board established quality standards that are intended to ensure that every document page is imaged and that the printed version is as legible as the original. The system contractor will apply exception procedures to pages of documents containing poorly printed text, foldouts, the use of color, and grey or halftone art work. In general, the imaging technology employed will store any information contained on a page with the same degree of accuracy as a photocopying machine. The system contractor will develop procedures in its quality assurance plan to be followed to ensure that these standards are met. MSIL also will retain paper copies of inputted documents for one year, then discard them.

The Board will require the system contractor to assure the reliability of the system, including a redundancy of critical hardware components, protection with a power line filter, an uninterruptible power supply and the development, implementation of a maintenance plan for all hardware components that will assure maximum availability.[19] The Board believes that the MSIL system will be reasonably designed to handle the estimated flow of documents through the system.

With respect to security, the MSRB will require the system contractor to have a written security plan that addresses physical, technical, personnel and administrative security.[20] The administrative security program will include, among other things, employee passwords that change at least once every six months, storing copies of critical data off-site and random unannounced security audits by a designated security officer. The personnel security program will include, among other things, the development, implementation, maintenance and enforcement of staff user access privileges. The physical security program will include, among other things, a dedicated locked room for the magnetic and optical storage devices. The technical security program will include, among other things, audit programs, logging access to all system activities and network protection from intrusion or hackers. In addition, off-site storage of backup media, as well as a catastrophic failure plan, will be instituted. The goal of the plan will be to relocate and make the MSIL system operational within 24 hours of a catastrophic failure.[21] The Board believes that the MSIL system will be reasonably designed to prevent external and internal physical attacks on the system.

C. Costs and Pricing

Since 1976, the Board has required underwriters to pay a fee to the Board based on the par amount of municipal securities underwritten. This fee has ranged from $.01 to $.05 during this period. The Board last raised the fee from $.01 to $.02 in October, 1989. The fee increase was based on the Board's declining fund balance and expected expenses to plan the MSIL system.

The Board expects to fund MSIL's operation through a combination of user fees and Board funds. The Board stated that, in planning the MSIL system, it believed that the average annual cost of contracting with a service provider for this facility would be $.01 or less per $1,000 par value of the bond based on current bond volume. The MITRE

[14] See letter from Diane G. Klinke, General Counsel, MSRB, to Elizabeth MacGregor, Attorney, Market Regulation Division, SEC, dated March 15, 1991.

[15] For example, copies of individual credit card sales receipts often are imaged and reprinted for inclusion with the monthly bill.

[16] The Board designed the facility to accommodate foreseeable changes in information dissemination technology and municipal securities disclosure practices without requiring the initial "imaging" system to be abandoned or redesigned. As an example, the technology chosen will allow amendments to OSs or ARDs to be accommodated in the system. In addition, some issuers have expressed an interest in providing documents to the facility that later could be incorporated by reference in an OS or other document submitted to the facility. The MSIL system will be designed to accommodate "modular submissions," in which separately submitted documents are combined into one document for dissemination. This should allow a quick evolution to accommodate issuers wishing to take these approaches. The Board intends that the MSIL system will have the flexibility to develop various services in which documents may be made available in formats different from the daily computer tape or paper copies.

[17] The voluntary collection of CDI is the subject of a separate filing. See SR–MSRB–90–4.

[18] The Board is required to report to the Commission on the integrity of the MSIL system before the system is permitted to operate. Specifically, the system should be tested for capacity to confirm that it can accept the volume that the MSRB expects to receive. The MSRB should submit to the Commission a representation that the system has been so tested.

[19] Additional information is provided in section C.11.1.12 of the Request for Proposal ("RFP").

[20] Moreover, when the MSIL system becomes operational, this plan should be made available to the Commission staff.

[21] Further information is available to Sections C.11.4, C.11.5, and C.11.6 of the RFP and Amendment No. 1 to the RFP.

Corporation provided estimates to the Board that ranged between $700,000 and $1 million, depending on the volume of documents that were processed. The Board believes that the current public access facility should cost approximately $200,000–$250,000 per year.

The Board plans to use its general revenues for the collecting, indexing and storing costs of MSIL system documents. The Board stated in its filing that, upon the Commission's approval of the MSIL system, the Board believes another $.01 fee increase (bringing the total fee to $.03) will be necessary to cover MSIL system expenses. The Board does not foresee additional fee increases based on MSIL system expenses. The costs of providing paper copies and the daily tape will be paid for by user fees. The Board believes that any further enhancements should be self-supporting.

Based on the information currently available to the Board, the Board anticipates charging approximately $15.00 for a paper copy of an OS or an ARD. The daily tape will be provided on an annual subscription basis of approximately $12,000. Postage or delivery fees also will be added to the tape or document price. Based on an average of 25 documents per daily tape, this will result in a per document cost of less than $2.00 per OS or ARD. The Board believes that subscribers will include users interested in maintaining their own comprehensive libraries for private use and vendors who wish to resell the documents through their own distribution channels or summarize, abstract or extract the documents and sell the information in a more compact form. The Board stated in its filing that it will review the MSIL system prices annually to ensure that the MSIL system dissemination costs are paid for from user fees. The Board does not expect to make a profit from the MSIL system.

D. Standards for System Contractor

The Board has stated that it will ensure that the MSIL system makes the information available to all parties on an equal basis. Information acquired from the Board also may be used, resold or disseminated by any person without restriction and without payment of additional fees.[22]

Any organization hired by the Board to operate the MSIL system will be subject to detailed oversight by the Board, both to ensure that information is provided to all parties on an equal basis and to ensure that operations proceed in a cost-effective manner. The Board will not permit the organization to use this access for its own benefit in the market. To ensure this, the Board's contract with the organization will prohibit the operator from brokering or dealing in municipal securities or engaging in municipal securities information services not covered by the contract that create the appearance of a conflict of interest with the purposes of the MSIL system. All MSIL system revenues collected by the system contractor will go directly to the Board to defray operating expenses. The system contractor will receive its MSIL system income solely from the Board.

IV. Summary of Comments

The Commission received a total of 145 comment letters on the proposed rule changes. Of those comment letters, 113 express support for the MSIL proposal, 28 are in opposition and four oppose the proposal as drafted but provide specific comments for its improvement.[23] In addition, the MSRB responded to the comments by letter.[24] A separate summary of comments was prepared and is available in the public file. The specific issues addressed by commentators will be discussed in the appropriate sections of this order.

V. Discussion

The Commission has determined to approve the Board's proposed rule change because it believes that the proposal is consistent with the Act, and in particular, section 15B(b)(2)(C), which authorizes the Board to adopt rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing and processing information with respect to transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and, in general, to protect investors and the public interest.[25] Most of the favorable

[22] This is similar to the requirement in Section 35A of the Securities Exchange Act, which applies to the retransmission of EDGAR information. See 15 U.S.C. 78kk.

[23] The Commission received comments from 20 broker-dealers; four issuer associations (See GFOA Letter and letters to Jonathan G. Katz, Secretary, SEC, from John T. McEvoy, Executive Director, National Council of State Housing Agencies, dated September 24, 1990 ("NCSHA Letter"); D. Kathryn Fern, President, National Council of Health Facilities Finance Authorities, dated September 24, 1990 ("NCHFFA Letter"); Mary Ellen Withrow, President, NASACT, dated September 24, 1990 ("September NASACT Letter"); and Edward Renfrow, President NASACT, dated January 17, 1991 ("January NASACT Letter")); 22 issuers; four municipal securities information vendors, all of whom are potential competitors of the Board; 13 arbitrators; 24 investors; seven trustees; three bond lawyers; 11 municipal securities analysts; the Public Securities Association (See letter from William W. Moore, Chairman, Municipal Securities Division, Public Securities Association, to Jonathan G. Katz, dated September 20, 1990 ("PSA Letter")); the National Association of Bond Lawyers (See letter from Stanley Keller, Chairman and Paul S. Maco, Director, National Association of Bond Lawyers, to Jonathan G. Katz, dated October 10, 1990 ("NABL Letter")); the American Bankers Association (See letter from Sarah A. Miller, Senior Government Relations Counsel, American Bankers Association Corporate Trust Committee, to Jonathan G. Katz, dated August 6, 1990 ("ABA Letter")); the Southern Municipal Finance Society (See letter from Robert W. Doty, Chairman, Southern Municipal Finance Society, to Jonathan G. Katz, dated September 20, 1990 ("SMFS Letter")); Doty Research and Development Company (See letter from Robert W. Doty, President, Doty Research and Development Company, to the Honorable Richard C. Breeden, Chairman, SEC, dated September 20, 1990 ("Doty Letter")); the National Federation of Municipal Analysts (See letter from the National Federation of Municipal Analysts Board of Governors Executive Committee, to Jonathan G. Katz, dated August 15, 1990 ("NFMA Letter")); the North American Securities Administrators Association (See letter from Sherwood N. Cook, Chairman, North American Securities Administrators Association Municipal Securities Committee, to Jonathan G. Katz, dated September 7, 1990 ("NASAA Letter")); the National Association of Securities Dealers (See letter from Frank J. Wilson, Executive Vice President and General Counsel, National Association of Securities Dealers, to Jonathan G. Katz, dated December 24, 1990 ("NASD Letter")); and one member of Congress (See letter from the Honorable John D. Dingell, Chairman, Committee on Energy and Commerce, U.S. House of Representatives, to the Honorable Richard C. Breeden, dated August 17, 1990 ("Dingell Letter")).

The Board received five comment letters apparently in response to the SEC's Notice. In addition, the Board received 16 comment letters in response to its Request for Comments on the proposal. The Board described those comments and responded to them in its submission to the Commission, which was described in the notice of the proposed rule change published by the Commission. See Sescurities Exchange Act Release No. 28197 (July 12, 1990), 55 FR 29436.

[24] See letter from Diane G. Klinke, General Counsel, MSRB, to Kathryn V. Natale, Assistant Director, Division of Market Regulation, SEC, dated October 12, 1990.

[25] The Commission conditions approval of the proposed rule change upon the representation by the MSRB that the Board will not offer any value-added dissemination services in connection with the MSIL system prior to filing a proposed rule change with the Commission for review under Rule 19b-4. In addition, before the system becomes operational, the Board must: (1) Report to the Commission on the integrity of the MSIL system; (2) file the annual subscription fee for the daily tape, the price for individual copies of OSs and any underwriter fee increase with the Commission for review under Rule 19b–4; and (3) file any substantive changes to the system with the Commission for review under Rule 19b–4. Finally, before the system becomes operational, the system contractor's written security plan should be made available to the Commission.

The MSRB will be required to report periodically prior to initiation of the service on any material developments. It must also provide a report on the operation of the system one year following intiation. The operational report should discuss in detail demand for the system, including a list of subscribers to the daily tape and a tally of requests

Continued

comments, as discussed below, cited a need for greater information dissemination in the municipal securities market. Moreover, the Commission believes that the MSIL system will provide a vastly superior mechanism for disseminating this information than the PAF or other paper-based systems could. The Commission agrees that there exists a lack of adequate information regarding municipal issuers and the terms of municipal securities in the market, and that increased availability of offering statements and other disclosure items already voluntarily prepared by municipal issuers would increase efficiency and fairness in the marketplace and provide needed protection to investors from sales practice fraud and manipulation. The Commission believes that MSIL will make municipal securities information more readily available, resulting in increased market efficiency and investor protection.

A. The Need for Enhanced Information and Benefits of MSIL

1. *Comments.* In general, the commentators, representing a diverse range of participants in the municipal securities market, agree that accurate, complete and timely disclosure is key to the efficient operation of the municipal securities market. Many commentators stated that they believe, however, that there is a lack of available and accessible information in the municipal market.[26] Many commentators complained that official statements are often difficult, and sometimes impossible, to obtain, and that the lack of availability and access to accurate information results in unfair and inefficient pricing.[27] One commentator defined the market's inability to provide efficient access to available information as a "chronic problem," and noted that, because the secondary market for municipal securities does not enjoy a reputation for great liquidity, investors demand an additonal increment of yield to compensate them, which increases borrowing costs.[28] Another commentator stated that the "more knowledge investors have about what they're buying, the lower the 'risk premium' they'll require."[29] This commentator therefore believes that "the broadest dissemination possible is the wisest course * * * [and] wholeheartedly supports and encourages the MSRB's initiatives." [30] Two issuer associations supporting the proposal believe that the MSIL system would benefit the market significantly by providing a centralized source for information on municipal securities issues.[31]

"One clear advantage of the MSRB repository is the assurance that there will be an archive for the documents it collects." [32] Another commentator noted that, in addition to permanence, a Board-sponsored respository would be "ultimately more accessible to the public than one sponsored by any private vendor where profitability is a primary motive." [33] This commentator believes that "[t]he best reason supporting the role of the MSRB as the library's sponsor is that the scope of the project can be expanded." [34] Another commentator believes that the MSIL system "would greatly enhance the marketability of . . . [municipal] securities by making appropriate credit risk information more accessible * * *." [35] Another commentator stated that the benefits of the Board's proposed repository "are substantial," and that "market disclousre may reduce the cost of * * * bond issuance by increasing purchaser confidence * * *." [36]

Furthermore, several commentators contended that not all dealers (or other market participants) have equal access to municipal securities information and that there is a "bona fide need" among dealers for better information.[37] One commentator stated that certain market participants currently have substantial information advantages and that a broadened information base will minimize this problem.[38] In addition, one commentator noted that "[i]t is also imperative that the facility providing the information be a neutral one that is available on equal terms to all users * * *." [39] Many commentators believe that by offering one central, public source for information, the MSIL system will increase and ensure access to complete and accurate information in a fair and non-discriminatory manner, and will result in fairer prices in both the primary and secondary markets.[40]

In a letter to SEC Chairman Breeden, Chairman Dingell of the Energy and Commerce Committee of the U.S. House of Representatives stated that his Committee is conducting a review of the adequacy of municipal securities industry disclosure and other practices to evaluate the need to address such

for individual copies of OSs. The report should state funds expended in operating the system for the first year, discuss any problems the MSRB has encountered in operating the system and any suggestions from users or potential users for improvements. The report should indicate the extent to which private information vendors have been able to interface with the system and detail suggestions by private vendors to improve the system. The report should discuss any system enhancements the MSRB has proposed or expects to propose.

[26] *E.g.*, letter from John W. Waechter, Executive Vice President, William R. Hough & Co., to Jonathan G. Katz, Secretary, SEC, dated July 30, 1990 ("Waechter Letter").

[27] *See, e.g.*, letters to Jonathan G. Katz, Secretary, SEC, from Daniel M. Hazard, Vice President, Eaton Vance High Yield Municipals Trust, dated July 16, 1990 ("Hazard Letter"); Robert J. Beck, General Principal, and Victoria Rupp Westall, C.P.A., C.F.A., Municipal Analyst, Edward D. Jones & Co., dated July 25, 1990; and Rachel Dennis, Vice President and Portfolio Manager, Aegon Insurance Group, dated July 31, 1990.

[28] Letter from Richard Evans, Finance Director, City of Savannah, Georgia, to the Honorable Richard C. Breeden, Chairman, SEC, dated July 18, 1990 ("Evans Letter").

[29] Letter from Leslie Nelman, Vice President, and Mark Macdonald, Director, Farmers Insurance Group of Companies, to Jonathan G. Katz, Secretary, SEC, dated Augut 2, 1990 ("Nelman Letter").

[30] *Id.*

[31] NCHFFA and NCSHA Letters.

[32] GFOA Letter.

[33] Letter from R. Duke McElroy, Duke McElroy & Company, to Jonathan G. Katz, Secretary, SEC, dated September 19, 1990 ("McElroy Letter"). See also letter from James W. Perkins, Palmer & Dodge, to Jonathan G. Katz, Secretary, SEC, dated September 21, 1990 ("J.W. Perkins Letter").

[34] McElroy Letter. For example, the commentator suggested that MSIL could include authorizing bond resolutions, trust indentures and current financial statements.

[35] Letter from James C. Boakes, to the SEC, dated September 19, 1990.

[36] NCHFFA Letter. This commentator bases it support of the MSIL system on the Board's representations that it will not be involved in the form and content of disclosure.

[37] Waechter and Nelman Letters and letter from F.E. James, Ph.D., James Investment Research, to Jonathan G. Katz, Secretary, SEC, dated July 24, 1990.

[38] Letter from H. Keith Brunnemer, Jr., Chairman, First Charlotte Corporation, to the Honorable Richard C. Breeden, Chairman, SEC, dated July 9, 1990. See also letters to the Honorable Richard C. Breeden, Chairman, SEC, from Richard F. Chapdelaine, Chairman of the Board, and Richard C. McDermott, Jr., President, Chapdelaine & Co., dated June 8, 1990 ("Chapdelaine Letter"); Robert J. Ellwood, President, R.W. Ellwood & Co., Inc., dated June 11, 1990; E.J. Bowler, Senior Vice President and Treasurer, West American Bank, dated August 10, 1990; and John E. Gilchrist, Chairman and Senior Managing Director, First Chicago Capital Markets, Inc., dated August 21, 1990.

[39] NFMA Letter and letter from John D. Boritzke, C.F.A., Vice President, M & I Investment Management Corp., to Jonathan G. Katz, Secretary, SEC, dated July 30, 1990. See also letter from Steven Goldspiel, President, Disclousre, Inc., to Jonathan G. Katz, Secretary, SE, dated Augutst 24, 1990 ("Goldspiel Letter").

[40] See, *e.g.*, Nelman and Hazard Letters and letters to Jonathan G. Katz, Secretary, SEC, from Thomas R. Hackett, Senior Vice President, Harris Trust Bank of Arizona, dated July 26, 1990; John L. Bowles, Vice President and Senior Investment Officer, First Virginia Banks, Inc., dated July 13, 1990; and Samuel A. Ramirez, President, Samuel A. Ramirez & Co., dated July 11, 1990.

issues this year. Chairman Dingell stated that "investors in municipal securities, particularly in the wake of WPPSS, deserve better protections than they have had heretofore." [41]

The American Bankers Association Corporate Trust Committee ("ABA") stated that the MSIL system is of "vital concern" to its membership, and that the MSIL system would "go a long way toward satisfying the information requirements of the marketplace." [42] The National Association of Securities Dealers ("NASD") stated that "there currently exists a critical need for improved access to information about municipal securities issues, and [the NASD] feel[s] that the MSIL will address this need, providing a centralized facility available on an equitable basis to both individual users and information vendors." [43]

A significant minority of commentators questioned whether MSIL serves a need in the municipal securities market. A number of issuers submitted virtually identical letters in which they stated that the MSIL and CDI systems "are overreactions to perceived problems and they should not be approved in their present form." [44] These same commentators believe that the Board's proposals "seek to fill an information gap that does not exist . . . [and there] is no crisis in the municipal market that warrants making untimely decisions." [45] Although the GFOA acknowledged that disclosure problems have been identified concerning information in the secondary market, it does not believe that "there is any evidence of crisis in the market that requires action immediately." [46]

Furthermore, these commentators stated that whatever the benefits to the market in terms of enhanced information disclosure, they would come at too high a cost. A number of commentators believe that the technology the MSRB has adopted for the proposed MSIL has not been shown to be necessary.[47] Several commentators believe that the Board has failed to do a detailed cost/benefit analysis, with a detailed consideration of alternatives to MSIL.[48] For example, the National Association of Bond Lawyers ("NABL") suggested that it may be preferable to build a linkage among the nationally recognized municipal securities information repositories ("NRMSIRs"). The NABL believes it is appropriate to require the NRMSIRs to share, at cost, OSs and to open the Board's OS files to them.[49]

Many issuers also expressed concern that the cost of the MSIL system will be financed by an assessment on underwriters that will be passed through to issuers and stated that, should MSIL be implemented, the direct beneficiaries of the system should pay for it.[50] In addition, two commentators claimed that the ability of users to support the facility has not been demonstrated [51] and questioned how the system will be financed if it is not self-supporting.[52]

2. *Commission Analysis.* The Commission concurs with the conclusion of numerous commentators that there currently are significant inadequacies in the availability of municipal securities disclosure. Currently, there are over $836 billion of outstanding municipal securities issues issued by more than 50,000 state and local government units.[53] Months or years after an offering of municipal securities, investors and even dealers may have difficulty in accessing information regarding either the terms of a municipal security or the municipal issuer. As a result, the Commission is aware of instances in which there has been substantial confusion in the market over items as critical as the call provisions for an issue of municipal securities.[54] Similarly, the lack of availability of offering statements or other disclosure items significantly decreases the ability of an investor to protect herself from misrepresentations or other fraudulent activities by municipal securities dealers' registered representatives. Finally, the Commission concurs with the conclusions of a number of commentators that the lack of an efficient and timely means to access disclosure regarding municipal securities may competitively disadvantage dealers who did not participate in the initial underwriting syndicate or otherwise do not have established relationships with the particular municipal issuer in question.

Moreover, the Commission believes that current market conditions underline the importance of efforts to enhance the availability of disclosure information. For example, regional economic pressures in many areas of the courntry have limited the availability of income and sales tax revenues and have contributed to a decline of the value of residential and commercial properties built with municipal financing. In such an environment, availability of disclosure statements becomes especially important to investors and potential investors in these securities. The MSIL system could be an important mechanism to enhance the timeliness and availability of disclosure information in the market.

With respect to technology, the Commission also believes that the Board made a responsible choice that will result in relatively small costs.[55] The MSIL system could have adopted, among other things, paper, microform or electronic storage. The Board concluded that paper-based storage would be unacceptable because: (1) Reproduction of paper documents requires handling that eventially would destroy the documents; (2) documents would have to be printed in a manner to assure that they would not physically age for the life of the bonds; (3) paper would not encourage or facilitate the development

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[41] Dingell Letter.

[42] ABA Letter.

[43] NASD Letter.

[44] Letters to Jonathan G. Katz, Secretary, SEC, from Arthur R. Lynch, Director of Finance, City of Glendale, Arizona, dated September 21, 1990; M.E. Poole, Director, Loudoun County, Virginia, dated September 27, 1990; Ruth M. Levine, Director of Finance, City of Milford, Connecticut, dated September 18, 1990; Paul E. Haney, Director of Finance, Monroe County, New York, dated September 18, 1990; William J. Cochran, Director of Finance, City of Hartford, Connecticut, dated September 19, 1990; Ronald A. Morris, Budget and Accounting Manager, New Castle County, Delaware, dated September 20, 1990; Arthur D. Heilman, Director, Bureau of Revenue, Cash Flow and Debt, Commonwealth of Pennsylvania, dated September 24, 1990; Richard G. Hilde, City Treasurer, City of Long Beach, California, dated September 24, 1990; George Greanias, City Controller, City of Houston, Texas, dated September 24, 1990; and E.J. VonOverbeke, Finance Director/City Clerk, City of Eagan, Minnesota, dated September 28, 1990.

[45] *Id.*

[46] GFOA Letter.

[47] See GFOA Letter.

[48] See NABL Letter.

[49] In addition, NABL stated that the MSRB should be designated a NRMSIR so that, by submitting OSs to the MSRB, underwriters may reduce their delivery obligations under Rule 15c2-12. Both the NABL and the GFOA support the idea of a Commission-sponsored advisory committee to provide a forum to discuss disclosure issues. See NABL and GFOA Letters.

[50] See, *e.g.*, GFOA Letter and letters to Jonathan G. Katz, Secretary, SEC, from Edward J. Mazur, C.P.A., Comptroller, Commonwealth of Virginia, dated September 24, 1990 ("Mazur Letter"); and Lynn Hampton, CPA, Chief Financial Officer, Washington Metropolitan Airports Authority, dated September 24, 1990.

[51] September NASACT Letter.

[52] Mazur Letter.

[53] PSA, An Investors Guide to Tax-Exempt Securities 1, 11 (1991).

[54] See Securities Exchange Act Release No. 26100 (September 22, 1988), 53 FR 37778 at 37781.

[55] For example, on a $10 million issue, the increase in underwriter fees attributable to MSIL would be approximately $200.

In addition, it could be argued that MSIL will reduce the cost to the market of the creation of redundant data bases by investment banks, institutional investors and others who collect information on the municipal securities market for their own use.

of information dissemination services by private vendors; and (4) paper requires a great deal of storage space. Likewise, the Board concluded that microform-based storage is unacceptable because: (1) It does not encourage or facilitate information dissemination by private vendors; (2) it is inflexible to adjust to changes in technology of document storage and dissemination and to changes in disclosure practices; and (3) original document quality problems can prevent generation of a good copy. Electronic storage involves storing images or characters on electronic devices controlled by computers. Electronic storage is highly flexible and can greatly improve the accessibility of information. Of the choices, electronic storage is clearly the most desirable. The Commission has received no indication that a lower cost system could have provided the necessary functionality for the system.

Several commentators expressed concern that the additional fees to finance the MSIL system will be inappropriately passed through to issuers rather than to the users of the system. The Commission has no basis to conclude that underwriters will, or even could, recover the costs of the system by increasing the underwriting spread charged issuers, or that to the extent these costs are itemized, the underwriting spread will not be equally reduced. Indeed, it appears at least as likely in terms of overall compensation that the underwriters will either recover those costs from their sales to customers or simply be forced, based on competitive forces, to absorb those costs. Even if underwriters are able to pass on the costs of MSIL to issuers without lowering their spread, that pass-through would be no different than costs incurred as a result of any other rule or regulation imposed by the SEC or the MSRB. In the final analysis, therefore, the fees assessed are consistent with the Act if the benefits of MSIL outweigh the costs to municipal securities dealers, issuers or customers. For the reasons stated above, the Commission believes that all market participants would benefit from the MSIL system. Moreover, the result of more efficient provision of disclosure information should be lower interest cost for resulting increased efficiency, fairness and public confidence in the municipal securities market.

As described above, some commentators expressed concern that the system would be funded through MSRB general revenues rather than through user fees.[56] The Board stated in its proposal that it plans to use general revenues for collecting, indexing and storing MSIL system documents. The costs of paper copies and the daily tape would be paid for through user fees. The Commission notes that several commentators, even those opposed to an electronic system, have asked for an improved index to permit better access to the information accumulated by the MSRB. Part of the funds expended by the MSRB will cover this aspect of the MSIL system. Finally, the Board will incur many of the expenses associated with the MSIL system (*e.g.*, costs of document collection, storage and information indexing) solely as a result of operating the PAF.[57] Therefore, the Commission concludes that the projected costs of developing and operating the MSIL system are reasonable and justified and will not unduly burden any sector of the municipal securities market.

B. Competition With Private Vendors

1. *Comments.* A number of commentators believe that the MSIL system will reduce the costs of entry into the information vendor business. They believe that this will benefit the municipal securities marketplace by encouraging competition among vendors, which should result in improved information products and the development of new products and services.[58] One commentator asserted that some information from private vendors is inaccurate [59] or is withheld from certain subscribers.[60] Several commentators suggested that the Board will offer the longevity necessary to provide an archival service so that changing economic conditions will not affect the level of service provided by the MSIL system.[61]

A number of other commentators believe, however, that it is inappropriate for a quasi-governmental entity to compete in the collection, storage and dissemination of information.[62] Despite the Board's assertion that MSIL will in fact be pro-competitive because it will provide a ready source of OSs to other information vendors who wish to enter this market, several commentators believe that, in fact, the Board will be a direct competitor to them, with the ability to sell subsidized copies of OSs to their customers at the same price at which the Board would sell OSs to the vendors.[63]

2. *Commission Analysis.* Having concluded that MSIL will have a substantial beneficial impact on the market, the Commission must assess its effect on competition. Section 15B(b)(2)(C) of the Act requires that, before approving Board rules, the Commission find that the proposed rules do not "impose any burden on competition not necessary or appropriate in furtherance of the purposes of this title." [64] The

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[56] It is important to point out that the Board is required to file any new or modified fees to the Commission for review under section 19(b)(1) of the Act. This is also true of any system changes to MSIL the Board might wish to implement in the future.

[57] It should be noted that even those commentators critical of MSIL generally were supportive of the PAF. See, *e.g.*, GFOA Letter and letters to Jonathan G. Katz, Secretary, SEC, from J. Kevin Kenny, President and Chief Executive Officer, J.J. Kenny Co., Inc., dated September 24, 1990 ("Kenny Letter"); and Joseph V. Riccobono, Executive Vice President, Securities Group, American Banker-Bond Buyer, dated September 21, 1990 ("AB–BB Letter").

[58] See *e.g.*, PSA, J.W. Perkins and Evans Letters and letters to the Honorable Richard C. Breeden, Chairman, SEC, from the Honorable Harlan E. Boyles, Treasurer, State of North Carolina, dated June 26, 1990; C.M. Perkins, Associate General Manager, Salt River Project, dated July 17, 1990; and Thomas Sexton, Managing Director, First Boston, Dated July 20, 1990; letters to the Honorable Edward H. Fleischman, Commissioner, SEC, from H. Keith Brunnemer, Jr., Chairman, First Charlotte Corporation, dated July 9, 1990; and Walter P. Stern, Chairman of the Board, Capital Group International, Inc., dated July 10, 1990.

[59] Letter from Robert J. Martin, Vice President, Continental Asset Management, to Kathryn Natale, Assistant Director, Market Regulation Division, SEC, dated September 21, 1990.

[60] See Chapdelaine Letter, in which the commentator, a broker's broker and a competitor of a Kenny affiliate, described being denied access to certain Kenny information.

Kenny responded that it terminated several contracts for access to its Kennybase municipal securities database, a service separate from its NRMSIR operation, that is available by subscription. The contracts terminated were with brokers' brokers who, according to Kenny, had been redistributing the information to customers in violation of the subscription contract and terminated prior to Kenny's designation as a NRMSIR. *See* letter from David Francescani, Executive Vice President and General Counsel, J.J. Kenny, Co., Inc., to the Honorable John D. Dingell, dated August 21, 1990.

[61] Evans Letter and letters to the Honorable Richard C. Breeden, Chairman, SEC, from David E. Hartley, Managing Partner, Stone & Youngberg, dated July 11, 1990; John M. Gunyou, City Finance Officer, City of Minneapolis, dated July 13, 1990; David J. Master, dated August 21, 1990; and Elizabeth A. Roistacher, Professor, Queens College of The City University of New York, dated August 10, 1990; and letter from Joan L. Lavell, Senior Vice President and Director of Compliance, Lovett Underwood Neuhaus & Webb, Inc., to Jonathan G. Katz, Secretary, SEC, dated August 29, 1990.

[62] Kenny, GFOA, September NASACT, Mazur, NABL and AB–BB Letters.

[63] See Kenny Letter.

[64] Section 15B(b)(2)(C) of the Act. *Cf.* Bradford Nat'l Clearing Corp., v. SEC, 590 F.2d 1085 (D.C. Cir. 1978); Clement v. SEC, 674 F.2d 641 (7th Cir. 1982).

Commission has examined closely the potential anti-competitive effect of the Board's proposal and has determined that the proposed rule change does not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[65]

The Commission believes that the MSIL system will foster competition in the dissemination of municipal securities information by reducing the cost of entry into the market.[66] Vendors will no longer need to invest in the infrastructure and facilities necessary to collect and store official disclosure documents. Moreover, new entrants will not be confronted with the unwillingness of some underwriters or issuers to supply copies to entities other than the already established NRMSIRs. Thus, all vendors will have equal access to these public documents and will be able to develop whatever information products they believe will be marketable.

Some of the commentators appear to be operating on the basic misassumption that the Commission's action today will require that information be channelled exclusively through the MSIL system. Despite the claims of certain commentators, the Board will not have a monopoly on the information contained in MSIL. The incentives created by Rule 15c2–12 to provide OSs to a NRMSIR should continue to provide a ready source of OSs for vendors.[67] This is borne out by the Board's experience with the PAF to date. From the time the PAF began operation on June 1, 1990, until May 21, 1991, 402 visits were made to the facility, and three major value-added vendors (who operate the three existing NRMSIRs) accounted for all but 25 of the visits. This would appear to indicate that while the PAF provides vendors with an opportunity to acquire missing OSs, on the whole, those vendors have been successful in obtaining OSs voluntarily. Therefore, it would appear that, despite the Board's collection efforts, the vendors' long-established relationships with underwriters and issuers remain in place. MSIL should, therefore, be a source of documents to new entrants to the market without adversely affecting the ability of the existing vendors to acquire those statements directly.

As discussed above, several commentators, particularly vendors, believe that by operating the MSIL system, the MSRB will compete unfairly with established private sector information vendors. In analyzing these contentions it is important to focus on the functions MSIL will, and will not, provide. As part of its agreement with its MSIL system contractor, the MSIL system will provide individual paper copies of system documents, upon request. While certain vendors also currently provide this paper copy service, the Board will be charging an amount higher than current NRMSIRs charge.[68] The Commission, therefore, does not believe that the MSIL system will usurp the opportunity of the current NRMSIRs to market paper documents, but rather will serve as an assurance to the market that a comprehensive collection always will be available. It also will promote the activities of NRMSIRs by assuring that the NRMSIRs can obtain paper copies to complete their collection.[69]

In addition, the daily tape provided by the MSRB will contain every document entered into the system on a specific day. It will not be organized to individual user needs. The imaging technology requires more computer data storage capability for a complete collection of documents than is normally possessed by most end-users. It is unlikely that end users would prefer a daily tape of imaged documents in no particular order to privately offered alternatives that would be designed for end user needs, indexed for maximum efficiency and capable of being used on in-house equipment.

In short, the MSIL system is intended to foster "value-added" information products. Vendors will be able to resell whole documents and/or information from those documents (*e.g.*, extracts, summaries) in any format the vendor chooses (*e.g.*, paper, CD Rom, optical disks). The daily tape can be translated into character-coded form to allow for computerized text searches of documents. The Board believes that demand for new products will occur as market participants seek to ensure that they have full access to the information found in the MSIL system database and will be shaped by availability of documents in electronic format. Thus, rather than monopolizing the field, MSIL will simply provide raw data which will increase the ability of vendors to compete in the provision of value-added services.[70]

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[65] Several commentators also believe that operating the MSIL system could subject the Board to antitrust liability. One stated that the "sale of whole documents apart from any secondary value-added service, constitutes a well-established market served by . . . private vendors." GFOA Letter. See also SMFS Letter and Doty Letter, stating that the MSIL system "will discourage competition in, and will likely constitute a monopoly over, the dissemination of whole documents." Because exemptions from the antitrust laws are available to self-regulatory organizations ("SROs") "Only if necessary to make the . . . Act work, and even then only to the minimum extent necessary," these commentators argued that the broad proposal by the MSRB may not be protected under the exemptive provisions of the Act. See Kenny Letter, citing Silver v. New York Stock Exchange, 373 U.S. 341, 357 (1963).)

The Commission is unpersuaded by this argument. The Commission believes that MSIL falls within the scope and purposes on the Act. (See Section C below.) As such, the MSRB's actions are subject to the antitrust exemption for self-regulatory organizations. See U.S. v. Nat'l Ass'n of Sec. Dealers, 422 U.S. 694, 733 (1975) and Gordon v. New York Stock Exchange, 422 U.S. 659, 691 (1975). Moreover, for the reasons discussed above, the Commission does not believe that the MSRB's entrance into the whole document market will have a significant adverse impact on any private vendors' provision of those services.

[66] This position is supported by comment letters the Commission received from two information vendors, Interactive Data and Disclosure Incorporated, who expressed support for the Board's proposal. *See* Goldspiel Letter and letter from John Poignand, Vice President, Interactive Data, to Jonathan G. Katz, Secretary, SEC, dated August 2, 1990.

[67] Rule 15c2–12 requires underwriters subject to the rule to send any potential customer, upon request, a copy of the final OS, from the time it becomes available until the earlier of: (1) Ninety days from the end of the underwriting period; or (2) the time when the OS is available to any person from a NRMSIR, but in no case less then 25 days following the end of the underwriting period. 15 CFR 240.15c2–12.

[68] One vendor argued that the Board's proposed fee for an annual subscription to a daily tape containing all OSs received each day, which the Board estimates at approximately $2 per OS, is far less, and thus unfair competition with, the current vendor fee of $20 for OSs. Kenny Letter. The Comission believes that this comparison is inapt. The sale of single documents and complete daily tapes are two entirely different types of services. The daily tape is geared toward professional users with a need for a complete collection of OSs. The cost appropriately reflects the economy of scale of duplication of a complete tape rather than the provision of a single document. The vendors' charge for individual copies of OSs hardly can be seen to be aimed at the same need.

[69] One commentator stated that pursuant to Office of Management and Budget ("OMB") Circular No. A–130, the MSRB should have examined whether information needs could have been met by the private sector. GFOA Letter. However, the MSRB is not subject to OMB Circular A–130. The circular applies to federal government agencies and the term "agency" is defined as any "executive department, military department, government corporation, government controlled corporation, or other establishment in the executive branch of the government, or any independent regulatory agency." While the MSRB may be described as exercising "quasi-governmental power," it is not an agency but rather a "self-regulatory organization"; a term that is defined in Section 3(a)(26) of the Act. Thus, OMB Circular A–130 is inapplicable.

[70] One vendor expressed concern that the NRMSIRs will become dependent on the MSIL for information, because "[a]lthough some issuers may still send OSs to Kenny and other NRMSIRs, each issuer need only mail an OS to one of the NRMSIRs * * *" Kenny Letter. The Board, however, has indicated that it does not intend to apply to the Commission for NRMSIR status. Accordingly, underwriters who deliver OSs to the Board will not be assured that they have met their OS delivery requirements under SEC Rule 15c2–12. Furthermore, because these vendors offer value-added products

Continued

C. Authority.

1. General

a. *Comments.* A number of commentators questioned whether the Board has the authority to create the MSIL system.[71] These commentators argued that the act contains statutory restrictions on the MSRB and that the legislative history evidences Congress's intent to create a narrow role for MSRB.

One commentator contends that by creating an electronic library, the MSRB is engaging in operational activities that are beyond its limited function and responsibility to prescribe rules for the municipal securities industry.[72] Furthermore, the language of Section 15B of the Act, which requires that the rules of the Board be designed "to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating * * * transactions in municipal securities and, in general, to protect investors and the public interest"[73] cannot be read as a specific grant of authority to the MSRB to engage in activities that do not themselves constitute rulemaking.[74] Under this analysis, if Congress had intended the MSRB to have the authority create the MSIL system, it would have provided so explicitly in Section 15B.[75] Furthermore, since Section 15B prohibits the MSRB from promulgating rules that burden competition and requires the Board to enact rules that foster cooperation and coordination, MSIL is beyond the scope of the statute, because it would compete with and possibly drive out of business established vendors.[76]

b. *Commission Analysis.* The Commission believes that the Board's plans to create the MSIL are designed to further the purposes of the Act by accomplishing the important objective, which has long been of concern to the Commission, of encouraging greater dissemination of information regarding the terms of municipal securities and the financial position of municipal issuers. In creating the MSRB Congress was explicit that the MSRB "would have primary authority with respect to the activities of municipal securities dealers and transactions in municipal securities."[77] Indeed, Congress emphasized the breadth of this wide grant to authority when it stated that it "did not believe it would be desirable to restrict the Board's authority by a specific enumeration of subject matters."[78] Rather, Congress emphasized "that the Board has ample authority to deal with the problems of the municipal securities industry."[79] Thus Congress stated "[t]he scope of the Board's authority and responsibility would be defined in terms of purposes rather than subject matters."[80]

The Act provides the Board authority to adopt rules that, "as a minimum," effectuate certain purposes; among them,

> to prevent fraud and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and, in general, to protect investors and the public interest.[81]

Enhanced information regarding municipal securities terms and municipal issuers will result in greater efficiency and fairness in the market and will protect investors and the public interest. MSIL will provide a central source for issuer documents for dealers, which will help them comply with MSRB fair practice rules in their transactions with customers and thus should prevent fraudulent and manipulative acts and practices and should enhance investor protection. In addition, readily available information should enhance the pricing efficiency of the markets. Finally, MSIL will also promote just and equitable principles of trade and foster cooperation and coordination with persons engaged in transactions in municipal securities by providing broker-dealers with an easier means to check call provisions and other terms of municipal securities issuances before making recommendations to customers and engaging in transactions. The Commission thus believes that the proposed rule change represents a proper exercise of the Board's statutory authority, pursuant to section 15B(b)(2)(C) of the Act.

Commentators argued that Section 15B of the Act limits the MSRB's function to the adoption of rules for the municipal securities market, and that the creation of MSIL is beyond that statutory authority. These commentators placed great emphasis on language in the legislative history that states that "the sole function and responsibility of the Board would be to prescribe rules for the municipal securities industry and

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derived from the OSs they collect that the market, including underwriters, support, the Commission believes that underwriters should recognize they will continue to benefit by providing OSs to both the MSRB and all three NRMSIRs, rather than only the MSRB. Thus, the Commission believes that the MSIL system should not create a disincentive for underwriters to send OSs to NRMSIRs.

One commentator suggested as an alternative to MSIL that: (1) all NRMSIRs be required to share copies of OSs with each other, upon request, at cost; and (2) access be provided to the MSRB's files accumulated under Rule G–36 for any OS not filed with a NRMSIR. NABL Letter. Another commentator suggested that the Commission consider extending SEC Rule 15c2–12 to a greater array of issues. AB–BB Letter. One commentator believes that the Commission should adopt a mechanism to encourage issuers to disseminate their current reports directly to investors. Doty Letter. This commentator also suggested that the federal securities laws be amended to modify the so-called "Tower Amendment" [Section 15B(d)(1) of the Act] and that the Board be recognized as a federal governmental agency, treated as such for federal budgetary purposes and granted an improved system of enforcement. *Id.*

While the Commission believes that at least some of these proposals merit consideration, the Commission believes that these proposals would be better considered at another time; for example, after MSIL has been in operation and the effects on the market and vendors are clearer.

[71] Kenny, September NASACT, Mazur, NABL, Doty and SMFS Letters, letter from Frieda K. Wallison, Jones, Day, Reavis & Pogue, to the Honorable Richard Breeden, Chairman, SEC, dated October 31, 1990; and letter from Lynn Hampton, C.P.A., Chief Financial Officer, Metropolitan Washington Airport Authority, to Margaret H. McFarland, Deputy Secretary, SEC, dated August 2, 1990.

[72] *See, e.g.*, September NASACT Letter.

[73] Section 15B(b)(2)(C) of the Act.

[74] September NASACT Letter.

[75] AB–BB Letter.

[76] *Id.*

In discussing the Board's authority, one commentator noted that Section 11A of the Act provides for Commission regulation of self-regulatory organizations in their information provision activities but contains an exemption for municipal securities. The commentator argues that this is evidence that the MSRB has no authority to engage in the business of collecting and disseminating issuer documents. Doty Letter. Another commentator stated that if "Congress intended for the MSRB to operate or regulate a 'securities information provider' it could easily have provided for it in the 1975 amendments [to the Act]." Kenny Letter.

The argument regarding Section 11A does not withstand scrutiny for two reasons. First, the Commission believes that this provision defines the Commission's authority, not the SROs'. Second, the Commission believes that the commentators' reference to Section 11A is inapposite because the purpose of that section is to enhance the availability of quotation and transaction information, not official public disclosure documents. While the goals of Section 11A may buttress the SROs' authority to operate facilities for the collection processing and dissemination of market data, the SROs must, and in fact do, find their authority for such operations in Section 15A in the case of the NASD and Section 6 in the case of the exchanges.

[77] S. Rep. No. 75, 94th Cong., 1st Sess. 47, reprinted in 1975 U.S. Code Cong. & Ad. News 225.

[78] *Id.*

[79] *Id.* at 48, reprinted in 1975 U.S. Code Cong. & Ad. News 226.

[80] *Id.* at 47, reprinted in 1975 U.S. Code Cong. & Ad. News 225.

[81] Section 15B(b)(2)(C) of the Act.

with respect to transactions in municipal securities * * *." [82] In addition, commentators pointed to language in the legislative history that states that the MSRB is to be a "limited self-regulatory organization" with authority to "formulate rules regulating the activities of municipal securities dealers." [83]

The Commission believes that, by divorcing these passages from the context of the concerns that they were intended to address, the commentators misconstrue the intent of this language. The creation of the MSRB was characterized by great concern on the part of municipal issuers of federal interference in matters that traditionally had been left to those issuers.[84] As a result, Congress was careful to strike a delicate balance between providing the Board authority to carry out the important investor protection objectives of the Act and the concerns over comity among various levels of government.[85] The language referred to above clarifies that the Board was not to have authority over issuers. It should not be read to limit the Board's authority to propose and adopt rules, including those that would implement a facility, if those rules effectuate the purposes of the Act and do not violate the express prohibitions in the Act.[86]

Another reason for the limiting language described above was to address concerns that the municipal securities industry, composed of diverse entities, already was subject to regulation by an array of regulatory bodies, including the NASD, the SEC and banking regulatory agencies. Rather than require the MSRB to examine and discipline municipal securities dealers, existing entities were required to do so.[87] Again, the Commission believes that the language in the legislative history relied upon by these commentators, when read in context, is not as broad as those commentators would have the Commission believe and does not limit the MSRB's authority to implement MSIL.

With respect to those commentators arguing that the MSIL system is inconsistent with the Section 15B prohibition of rules that burden competition, the Commission emphasizes that the Act prohibits only rules that "impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the federal securities laws]".[88] As discussed above,[89] the Commission concludes that the competitive impact of the MSIL system will be small, and in any event, outweighed by the benefits of the system.

The Commission also disagrees with the argument put forward by some commentators that had Congress intended the MSRB to operate a system such as MSIL, it would have granted express authority to do so. While it is fair to read specific grants of authority to indicate clear Congressional intent that the Board achieve certain objectives,[90] it does not follow that the lack of other specific grants of authority indicate that Congress did not intend the MSRB to perform other functions not necessary or appropriate to further the goals set forth in Section 15B. In fact, the Senate Report indicates that the MSRB was being granted "broad rulemaking authority over all municipal securities dealers and [the legislation would] require it to promulgate rules to effect the purposes of this legislation and the Exchange Act." [91] Furthermore, the express language of the statute provides that Board rules should be designed, "as a minimum," to achieve the purposes discussed above.[92] The limitations on activities such as inspection and enforcement were intended to avoid over-regulation of municipal securities dealers already subject to the regulation of the banking agencies and the NASD.[93] The MSRB was not limited in its rulemaking authority as an SRO, and further, it was granted the authority to collect the information that is proposed to be disseminated through the electronic library.

The Commission believes that an SRO's authority to adopt rules is broad enough to include the authority to build systems such as the National Association of Securities Dealers Automated Quotation system ("NASDAQ") and the proposed MSIL when the systems effectuate the purposes of the rules. There is no particular provision in Section 15A, which is the source of authority for registered securities associations (*i.e.*, the NASD), that explicitly grants authority to the NASD to run a system such as NASDAQ; rather, it is implicit in Section 15A. Congress, in the legislative history accompanying the Securities Act Amendments of 1975, explicitly acknowledged the NASD's authority to adopt rules "for collecting and publishing quotations" without in any way questioning the NASD's authority to develop and implement the NASDAQ system.[94] Similar to the NASD under Section 15A, the MSRB is explicitly authorized under Section 15B to design rules to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing and processing information with respect to transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and to protect investors and the public interest.[95] The proposed rules to implement MSIL are designed simply to accomplish these goals by the electronic storage and dissemination of the information the MSRB is otherwise authorized to collect and disseminate under section 15B.[96]

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[82] September NASACT Letter, citing S. Rep. No. 75, 94th Cong., 1st Sess. 114.

[83] *Id.* at 46.

[84] S. Rep. No. 75, 94th Cong., 1st Sess. 44, reprinted in 1975 U.S. Code Cong. & Ad. News 221, 222.

[85] *Id.* at 44, 45, reprinted in 1975 U.S. Code Cong. & Ad. News 222, 223.

[86] The Commission believes that the authority to promulgate rules includes the authority to create a facility. Rule 19b–4 provides that a stated policy, practice or interpretation of an SRO shall be deemed to be a proposed rule change unless certain limitations apply. The Commission has defined, in Rule 19b–4, "policy, practice or interpretation" to include "any material aspect of the operation of the facilities of the self-regulatory organization." Rule 19b–4(b). Rule 19b–4 is a longstanding Commission interpretation that pre-dates the instant rule filing. The legislative history to section 19 of the Act indicates that rule filings should be "in accordance with such rules as the Commission may prescribe." S. Rep. No. 75, 85th Cong., 1st Sess. 129, reprinted in 1975 U.S. Code Cong. & Ad. News 306. Courts ordinarily defer to an agency's interpretation of its statute and regulations when they are consistent with the intent of Congress and supported by substantial evidence. Oregon Dept. of Human Resources v. Dept. of Health and Human Services, 727 F.2d 1411, 1413 (9th Cir. 1983).

[87] S. Rep. No. 75, 94th Cong., 1st Sess. 46, reprinted in 1975 U.S. Code Cong. & Ad. News 224.

[88] Section 15B(b)(2)(C) of the Act.

[89] See section B. above.

[90] For example, section 15B(b)(2)(D) explicitly grants the MSRB the authority to adopt rules governing the arbitration of disputes over transactions in municipal securities.

[91] S. Rep. No. 75, 94th Cong., 1st Sess. 114, reprinted in 1975 U.S. Code Cong. & Ad. News 291.

[92] Section 15B(b)(2) of the Act.

[93] *Id* at 46, reprinted in 1975 U.S. Code Cong. & Ad. News 224.

[94] *Id* at 27, reprinted in 1975 U.S. Code Cong. & Ad. News 205.

[95] In addition, the NASD finds authority to operate NASDAQ under Section 15A, which grants the NASD the authority to adopt rules governing the form and content of quotations. See section 15A(b)(11).

[96] One commentator argued that "[W]hen the [NASD] wanted authority to conduct business enterprises, it was given explicit authority in its corporate charter to do so" [citation omitted]. Doty Letter. The MSRB, however, is a general purpose corporation organization under the Virginia Nonstock Corporation Act. The Articles of Incorporation of the MSRB authorize it to "discharge its mandate under the Securities Exchange Act, * * * to propose and adopt rules to effect the purposes of the Act with respect to

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As the Commission stated in its release approving Rule G–36, section 15B(b)(2)(C) is a broad grant of authority to the Board. The proposed rule change to implement MSIL is intended to provide an efficient means of storing and disseminating the information that the MSRB is authorized to collect, and thus, for the reasons discussed above, is designed to prevent fraud and manipulation, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing and processing information with respect to transactions in municipal securities and to remove impediments to and perfect the mechanism of a free and open market in municipal securities. Making information available through MSIL is a natural result of being able to collect the information. In this light the Commission concludes that MSIL is reasonably designed to further the purposes of section 15B(b)(2)(C) of the Act.[97]

2. Standardization of Form and Content of Issuer Documents

a. *Comments.* Several commentators expressed concern that by operating MSIL, the MSRB may be in a position to set standards for the form and content of issuer documents.[98] Three commentators cited the voluntary efforts by industry organizations such as the GFOA, the National Federation of Municipal Analysts, the National Council of State Housing Agencies and the American Bankers Association Corporate Trustee Committee to achieve uniformity in reporting.[99] They urged that standardized formats be adopted only after full and open discussion by all interested parties takes place,[100] observing that no single uniform format will suffice, as requirements vary by sector.[101] Furthermore, while acknowledging that the MSRB has publicly stated that it has no authority to dictate the form or content of issuer documents, a number of commentators noted concerns that the MSRB may, in the future, attempt to establish standards for format and content.[102] Several of these commentators requested that the Commission state in its order that the MSRB has no authority in this area.[103]

b. *Commission Analysis.* Section 15B(d)(2) of this Act, the so-called "Tower Amendment," prohibits the Board from requiring municipal issuers, directly or indirectly, through a municipal securities broker or municipal securities dealer or otherwise, to furnish to the MSRB any application, report, document or information with respect to such issuer. The Commission believes that this statutory limitation prevents the MSRB from setting form and content standards for issuer documents notwithstanding its position as the operator of the electronic repository.[104] The Board has repeatedly acknowledged this limitation on its authorty.[105]

The MSRB has indicated that it chose the scanning technology so that the MSIL system could accept documents in any format and store them exactly as provided. The Commission believes that this technology permits adequate flexibility and that the system in no way forces standardized formats on issuers. Furthermore, the Commission's decision is conditioned on the MSRB's representation that it will not attempt to dictate the content of disclosure.

D. Other Issues

1. Timeliness

a. *Comments.* One vendor believes that the customers of the OS/ARD system would encounter "an information bottleneck in terms of at least a three day delay in receiving documents."[106] Another vendor believes that the Board's PAF "already provides a level of service that is clearly superior to the MSIL's best."[107]

b. *Commission Analysis.* The Board has indicated that in many cases, documents will be available prior to the three-day deadline. In addition, all documents submitted to the MSRB, together with an index of those documents, will be available in the PAF on the day they are received. The Board has further committed that if a user wishes to determine if the board had received a document prior to its being listed on the index, the Board would allow such individual to review and photocopy the documents received by the Board and not yet entered into the computer index at the PAF.[108]

The Commission is satisfied that users of the MSIL system will not be significantly disadvantaged by the delay for scanning the documents. The Commission believes that the MSRB has made suitable arrangements for those users needing documents more quickly. Moreover, as discussed above, Rule 15c2–12 will continue to provide

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transactions in municipal securities effected by brokers, dealers and municipal securities dealers and otherwise to engage in any lawful activities permitted under the Virginia Nonstock Corporation Act to the extent those activities are not inconsistent with the Act." Articles of Incorporation of the MSRB, ¶ 2. In the absence of express restrictions, a corporation has discretionary authority to enter into contracts and transactions that may be deemed reasonably incidental to its business purpose. Fletcher Cyc. Corp. § 2486 (Perm. Ed. 1989). The Commission believes that because the MSRB is authorized to collect and disseminate the information, MSIL is "fairly incident" to that authority, because it increases the speed and accuracy of collection and dissemination.

[97] A number of commentators stated that the Board's composition favors the dealer community, and that any entity establishing a system such as MSIL should have a more balanced membership. Mazur and NABL Letters. Two commentators suggested that the Commission create an advisory committee composed of representatives of every segment of the market to provide a forum to discuss disclosure issues, conduct research on selected topics, and make recommendations to the SEC. GFOA and January NASACT Letter. Another commentator believes that, should the SEC approve MSIL, the Commission should create an oversight committee, composed of representatives of all sectors with direct authority over supervision of the MSIL system. NABL Letter.

The Commission believes that it would be inappropriate to delay the implementation of MSIL pending the creation and recommendations of an advisory or oversight committee. All issues related to the creation of the library have been fully aired, as evidenced by 145 thoughtful and thorough comment letters. In addition, the MSRB has formed a MSIL system advisory committee already, representative of all sectors of the municipal industry, that has and will continue to advise the MSRB in the creation and operation of the MSIL. In addition, NASACT sponsored a group, in which Commission staff participated as observers, that was charged with examining the feasibility and advisability of developing a repository for municipal securities disclosure information. Thus, the Commission does not believe that there is much to be gained from establishing yet another group to examine these issues. With respect to an oversight committee with authority over the MSIL, the Commission already has oversight authority over the MSRB and the Commission believes it is not only unnecessary but also would be contrary to its statutory responsibility to cede this authority to any other entity.

Regarding the composition of the MSRB, the Commission disagrees with the view that it favors the dealer community. The balance of the Board was determined by Congress during the creation of the MSRB. The MSRB, composed of fifteen members, must have five individuals not associated with any broker, dealer or municipal securities dealer. Section 15B(b) (1) of the Act. While the majority of the MSRB Board is associated with municipal securities dealers, this composition appears appropriate in light of the continuing restrictions on the MSRB from imposing direct or indirect requirements on issuers. The Commission believes that the Board's composition has not prejudiced its rulemaking process, and for the reasons described herein, concludes that the Board has fairly considered the effect of the proposal upon all sectors of the market.

[98] September NASACT, NABL, Mazur and January NASACT Letters.

[99] NCSHA, GFOA and ABA Letters.

[100] NCSHA Letter.

[101] GFOA Letter.

[102] See *e.g.*, September NASACT, NABL and Mazur Letters.

[103] See NABL and Mazur Letters.

[104] The MSRB may, however, require reports from underwriters to accompany such documents.

[105] See e.g., letter from Diane G. Klinke, General Counsel, MSRB, to Kathryn Natale, Assistant Director, SEC, dated October 12, 1990.

[106] Kenny Letter.

[107] AB–BB Letter. See also Section D(3) below.

[108] Letter from Diane G. Klinke, General Counsel, MSRB, to Elizabeth MacGregor, Attorney, Market Regulation Division, SEC, dated March 15, 1991.

incentives to underwriters to provide copies of documents directly to vendors who are also NRMSIRs.

2. Improvements to the PAF or the NRMSIRs

a. *Comments.* Several commentators suggested that the MSRB can improve disclosure by making improvements to its PAF.[109] Suggestions included creating an index of the documents MSIL receives in its central repository; disseminating that index and preparing a cross-reference to CUSIP numbers for securities listed in the index; [110] filling requests for documents by electronic facsimile transmission, courier delivery, and regular mail service; modeling the PAF after news bureaus in government agencies; using microfiche; [111] improving the copying machines; [112] and relocating the PAF to New York City.[113]

b. *Commission Analysis.* With respect to indexing, the MSIL system will have a more sophisticated index of documents than that of the PAF. Regarding the remaining comments, the Commission believes that the commentators have raised concerns that merit consideration. If the demand exists, the MSRB should consider adding these services. The Commission believes, however, that the dissemination methods proposed are certainly adequate for the start-up period.[114]

VI. Conclusion

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Board and, in particular, section 15B(b)(2)(C), which authorizes the Board to adopt rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in municipal securities and, in general, to protect investors and the public interest. In addition, the proposed rule change is consistent with the objectives of Rule 15c2–12, which requires underwriters to provide, for a specified period of time, copies of final OSs to any potential customer upon request.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change described above be, and hereby is, approved.

By the Commission.
Dated: June 13, 1991.

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[109] GFOA Letter. See also NCSHA Letter. In some cases, this suggestion was made as an alternative to building MSIL and in others, in addition to MSIL.

[110] *Id.*

[111] AB–BB Letter.

[112] *Id.* and NCSHA Letter.

[113] GFOA and Kenny Letters.

[114] Several commentators also recommended centralizing or linking the NRMSIRs towards the goal of improving their services. See e.g., NABL and GFOA Letters. The Commission agrees that a linkage among the NRMSIRs would be a favorable development. Such a linkage could help the NRMSIRs provide better service, without having to rely on MSIL if they chose not to.

[Release No. 34–29299; File No. SR–MSRB–90–3]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change Relating to the Delivery of Advance Refunding Documents, Recordkeeping and Form G–36

I. Introduction

The Municipal Securities Rulemaking Board ("MSRB" or "Board") submitted to the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change [1] on June 22, 1990, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [2] and Rule 19b–4 [3] thereunder. The proposed rule change would amend Rule G–36 to require underwriters to deliver advance refunding documents to the MSRB.[4]

Notice of the filing of the proposal was published in Securities Exchange Act Release No. 28198 (July 12, 1990), 55 FR 29687. The Commission received 63 comment letters in response to this notice. Of those comment letters, 40 express support for the proposal, 22 are in opposition and one comment in neutral. The Commission has determined, for the reasons discussed below, to approve the proposal.

II. Background

The Board has long been concerned about the adequacy of disclosure in light of the increasing complexity of municipal bonds. For example, in 1987 the Board wrote to the Commission about its concern over confusion in the market concerning issuers' authority to exercise optional redemption features of escrowed to maturity municipal securities.[5] Inadequate disclosure of call provisions had resulted in several incidents in which municipal issuers attempted to call bonds that had been traded in the secondary markets as escrowed to maturity. Because these bonds had been sold to investors in the secondary market on the basis of the yields to a fixed maturity, the exercise of early call provisions in the outstanding bonds would have altered significantly the actual yield received by investors. Although the issuers ultimately dropped their attempts to call the bonds, the Board believed that significant issues had been raised concerning the adequacy of disclosure. In response, the Division of Market Regulation noted in a letter to the MSRB that, before a security is sold as "escrowed to maturity" or "pre-refunded to a call," the dealer "should have conducted a reasonable investigation to satisfy itself that the issue, including the official statement and escrow trust agreement, support such characteristization." [6]

As a result of these events, the Board determined that refunding documents should be added to Rule G–36 for inclusion in its public access facility ("PAF") and the planned MSIL system because of the importance of such information to the purchase and sale of the refunded issue.

In August 1989, the Board requested comment on draft Rule G–36 which, among other things, would have required underwriters to deliver to the Board certain refunding documents. The August 1989 version of Rule G–36 defined refunding documents as those documents that "set forth the terms and conditions under which an issue of municipal securities is advance refunded, including the refunding escrow trust agreement, or its equivalent, and the notice of defeasance." The draft rule required the underwriter to deliver such documents

[1] File No. SR–MSRB–90–3.

[2] 15 U.S.C. 78s.

[3] 17 CFR 240.19b–4.

[4] The proposed rule change was filed simultaneously with two other rule changes: File No. SR–MSRB–90–2, Securities Exchange Act Release No. 28197 (July 12, 1990), 55 FR 29436, which would permit the Board to establish and operate a central electronic facility, the Municipal Securities Information Library ("MSIL") system, through which information collected pursuant to Rule G–36 would be made available electronically to market participants and information vendors; and File No. SR–MSRB–90–4, Securities Exchange Act Release No. 29199 (July 12, 1990), 55 FR 29691, which would permit the Board to establish a central facility, the Continuing Disclosure Information/Electronic Submission ("CDI/ES") System, to accept voluntary submission of continuing disclosure information electronically. See Securities Exchange Act Release No. 29298 (June 13, 1991), approving File No. SR–MSRB–90–2.

[5] See letter from H. Keith Brunnemer, Jr., Chairman, MSRB, to the Honorable David S. Ruder, Chairman, SEC, dated September 18, 1987.

[6] Letter from Richard Ketchum, Director, Division of Market Regulation, SEC, to H. Keith Brunnemer, Jr., Chairman, MSRB, dated June 24, 1988. The letter also notes that "an issuer that wishes to reserve its contractual right to exercise optional redemption provisions in the prior bonds should clearly and conspicuously disclose its intention in the defeasance notices and official statement for the refunding bonds."

within one business day of receipt from the issuer or its agent but no later than eight business days after the date of the final agreement to purchase, offer or sell the municipal securities.

Prior to adopting a delivery requirement for refunding documents, the Board decided to solicit further comment on a revised definition of refunding documents and the timing of delivery of these documents. In November 1989, the Board proposed revised draft amendments to Rule G–36, which would define refunding documents to include the refunding escrow trust agreement, notice of defeasance, and trust indenture for the refunded issue (or their equivalents).[7]

III. Description

The proposed rule change would require underwriters of refunding issues to send two copies of the refunding escrow trust agreement, or its equivalent, if prepared by or on behalf of the issuer, and, if the escrow agreement is prepared, two copies of completed Form G–36 (ARD) to the Board within five business days of the closing of the issue.[8] For issues not subject to Rule 15c2–12,[9] the requirement to send advance refunding documents only applies if an OS is prepared for the refunding issue. In addition, within 60 days of the effective date of the proposed rule change, underwriters must provide two copies of advance refunding documents and Forms G–36 (ARD) for refunding issues underwritten since January 1, 1990. This "look-back" provision is identical to that currently included in Rule G–36 regarding sending OSs to the Board.

Finally, the proposed rule change revises Form G–36 and provides for two forms—Form G–36(OS) to be sent with OSs and Form G–36(ARD) to be sent with advance refunding documents. Technical amendments to Rule G–8 also have been proposed to correspond with the two new forms.

IV. Summary of Comments

The Commission received a total of 63 comment letters on the proposed rule changes. Of those comment letters, 40 express support for the proposal, 22 are in opposition and one comment is neutral.[10] With a few exceptions, the commentators expressed only general support or opposition for the rule filing in the context of commenting jointly on this filing and the two MSIL filings.[11]

As a general matter, municipal securities analysts commenting supported the filing. They argued that maintenance of advance refunding documents by the Board "is needed today because equal access to all market participants to such information often is lacking, and this results in problems in pricing municipal securities."[12] Dealers also provided support for the proposal. One dealer described a situation in which a particular security that had been traded with the understanding that it was escrowed to maturity, was in fact not escrowed as believed. As a result, the securities were misvalued by numerous parties. Subsequently, the bonds were pre-refunded to an early call date, resulting in a perceived drop in the value of the securities of several points. The dealer maintained that the misunderstanding continued for more than a year after the pre-refunding, stating that "[t]he example . . . demonstrates that there is a bona fide need among the dealer community for better information on the securities being traded in the market every day."[13]

The Commission also received 36 generally supportive comments,[14] which

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[7] In its notice, the Board requested comment on whether additional information should be required (*e.g.*, the accountant's report on the adequacy of the escrow account and the official statement for the refunded issue). In addition, the Board asked for comment on whether it should consider requiring trust indentures for all issues, not just refunded issues, to be sent to the Board.

[8] The requirement that two copies of the advance refunding documents be provided was included because of the Board's PAF. The Board is concerned that excessive handling of the documents in the PAF would affect adversely their quality and thus impair the Board's ability to store electronically the documents in the planned MSIL system. Thus, one copy will be provided in the PAF and one will be used in the MSIL system.

[9] Rule 15c2–12 encourages the procurement and dissemination of disclosure documents by underwriters as a means of enhancing the accuracy and timeliness of disclosure to investors in municipal securities. The Rule requires underwriters to provide, for a specified period of time, copies of final official statements ("OS") to any potential customer upon request.

[10] The Commission received comments from six broker-dealers; three issuer associations (See letters to Jonathan G. Katz, Secretary, SEC, from D. Kathryn Fern, President, National Council of Health Facilities Finance Authorities, dated September 24, 1990 ("NCHFFA Letter"); and Jeffrey L. Esser, Executive Director, Government Finance Officers Association, dated September 24, 1990 ("GFOA Letter"); and letter from Edward Renfrow, President, National Association of State Auditors, Comptrollers and Treasurers, to the Honorable Richard C. Breeden, Chairman, SEC, dated January 17, 1991 ("NASACT Letter")); 15 issuers; two municipal securities information vendors, both of whom are potential competitors of the Board; four arbitrators; seven investors; three trustees; seven municipal securities analysts; the Public Securities Association (See letter from William W. Moore, Chairman, Municipal Securities Division, Public Securities Association, to Jonathan G. Katz, dated September 20, 1990 ("PSA Letter")); the Southern Municipal Finance Society (See letter from Robert W. Doty, Chairman, Southern Municipal Finance Society, to Jonathan G. Katz, dated September 20, 1990 ("SMFS Latter")); Doty Research and Development Company (*See* letter from Robert W. Doty, President, Doty Research and Development Company, to the Honorable Richard C. Breeden, Chairman, SEC, dated September 20, 1990 ("Doty Letter")); the North American Securities Administrators Association (See letter from Sherwood N. Cook, Chairman, North American Securities Admininstrators Association Municipal Securities Committee, to Jonathan G. Katz, dated September 7, 1990 ("NASAA Letter")); and one member of Congress (See letter from the Honorable John D. Dingell, Chairman, Committee on Energy and Commerce, U.S. House of Representatives, to the Honorable Richard C. Breeden, dated August 17, 1990 ("Dingell Letter")).

In addition, the Board received five comment letters in response to its Request for Comments on the proposal. The Board described those comments and responded to them in its submission to the Commission, which was described in the notice of the proposed rule change published by the Commission. See Securities Exchange Act Release No. 28198 (July 12, 1990) 55 FR 29687.

[11] The general comments are summarized in the separate summary of comments available in the public file and analyzed in Securities Exchange Act Release No. 29298.

[12] Letter from F.E. James, James Investment Research, Inc., to Jonathan G. Katz, Secretary, SEC, dated July 24, 1990.

[13] Letter from John W. Waechter, Executive Vice President, William R. Hough & Co., to Jonathan G. Katz, Secretary, SEC, dated July 30, 1990.

[14] NCHFFA, NASAA, PSA, GFOA and Dingell Letters, letters to Jonathan G. Katz, Secretary, SEC, from Robert L. Adler, dated August 1, 1990; R. Duke McElroy, Duke McElroy & Company, dated September 19, 1990; Gerald T. Grady, Jr., Branch Manager and Vice President, A.G. Edwards & Sons, updated; Mark S. Borowy, Municipal Bond Analyst, Erie Insurance Group, dated August 28, 1990; Stuart Bromberg, Director—Municipal Securities, First Boston, dated July 24, 1990; William J. McCarthy, Vice President, Fitch Investors Services, Inc., dated July 25, 1990; Steven Permut, and Casey Colton, C.P.A., Municipal Credit Analysts, Benham Capital Management Group, dated August 13, 1990; John Poignand, Vice President, Interactive Data, dated August 2, 1990; Thomas B. Martin, Esq., Circle Consulting Group, Inc., dated July 24, 1990; Robert D. Cathcart, dated August 13, 1990; O. Delton Bennett, dated August 12, 1990; William N. Appel, Appel & Glueck, dated July 30, 1990; Robert L. Foersterling, First Vice President, Blunt, Ellis & Loewi, dated July 16, 1990; Jeffrey J. Powell, Vice President, The First National Bank of Chicago, dated July 31, 1990; A. Rodney Boren, Jr., Executive Vice President, Norwest Bank Minnesota, N.A., dated September 28, 1990; Karen W. Brabham, Assistant Vice President and Trust Officer, South Carolina National Bank, dated August 15, 1990; Jane M. Thompson, Reiger, Robinson & Harrington, dated August 6, 1990; Ralph Weickel, Manager—Investments, First Interstate Bank, dated July 30, 1990; Staats M. Pellett, Jr.,, Senior Vice President, Bessemer Trust Company, N.A., dated August 2, 1990; Douglas J. White, Vice President, Piper Capital Management Group, dated September 13, 1990; and Rachel Dennis, Vice President and Portfolio Manager, Aegon Insurance Group, dated July 31, 1990; letters to the Honorable Richard C. Breeden, Chairman, SEC, from David J. Master, dated August 21, 1990; H. Keith Brunnemer, Jr., Chairman, First Charlotte Corporation, dated July 9, 1990; Samuel A. Ramirez, President, Samuel A. Ramirez & Co., Inc., dated July 11, 1990; Robert W. Chamberlin, Senior Vice President, Dean Witter Reynolds, Inc., dated July 17, 1990; and C.M. Perkins, Associate General Manager, Salt River Project, dated July 17, 1990; letter from Robert J. Martin, Vice President,

Continued

provided no detailed discussion of the issue.

The issuer community provided the bulk of the adverse reaction to the filing. On the whole, issuers appeared to be concerned about encroachment on their role in the disclosure process. One issuer argued that "although the guidelines established in this proposal are directed at dealers and underwriters, the issuer should be considered. The state and local governments should be adequately represented in any policy decisions regarding the content or timing of municipal securities documentation to be delivered to the dealers and underwriters." [15] Another issuer maintained that "[i]t is the responsibility of bond counsel and the issuer to determine the status of the bonds to be refunded. The filing of documents that are not used in the marketing of municipal bonds should not be the responsibility of the underwriter, but should be held by the issuer and bond counsel." [16]

The Commission also received 17 critical comments [17] and one neutral comment [18] which provided no detailed discussion of the issue.[19]

V. Discussion

The Commission believes the Board's proposal is consistent with the Act, and in particular, section 15B(b)(2)(C), which authorizes the Board to adopt rules designed to prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating transactions in municipal securities and, in general, to protect investors and the public interest. The Commission believes that it will make municipal securities information more readily available, resulting in increased market efficiency and investor protection.[20]

The supportive commentators cited a lack of information about advance refundings in the municipal securities markets. The Commission agrees that such information is essential to the market and that currently access to such documents is limited. Including advance refunding documents in the MSIL system will significantly increase the scope of information concerning refunded securities made available to the general public and market participants. In addition, the proposed rule change would allow dealers to comply with the Commission's statement that, prior to the sale of municipal securities as escrowed to maturity or pre-refunded to a call, a dealer should conduct a reasonable investigation to satisfy itself that the documents relating to the prior bond issue and the refunding bond issue, including the official statement and escrow trust agreement, support such characterization. The amendment to Rule G–36 would permit the collection and storage of these critical documents to the benefit of the municipal securities market.

With respect to the argument that the issuer and bond counsel, rather than the underwriter, should be responsible for the dissemination of documents associated with refundings, the Commission emphasizes that section 15B(d)(2) of the Act permits the MSRB to require that OSs or other documents that are available from sources other than the issuer, such as the underwriter, be provided to investors. This is, in fact, the basis for Rule G–36.[21]

VI. Conclusion

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Board and, in particular, section 15B(b)(2)(C), which authorizes the Board to adopt rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in municipal securities and, in general, to protect investors and the public interest. In addition, the proposed rule change is consistent with the objectives of Rule 15c2–12, which requires underwriters to provide, for a specified period of time, copies of final OSs to any potential customer upon request.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change described above be, and hereby is, approved.

Dated: June 13, 1991.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–14605 Filed 6–18–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–29290; File No. SR–MSRB–91–02]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Municipal Securities Rulemaking Board; Relating to the Activities of Financial Advisors

On March 14, 1991, the Municipal Securities Rulemaking Board ("Board") filed with Securities and Exchange Commission ("Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] amending the Board's rule G–23 on activities of financial advisors. The proposed rule change requires disclosure by an underwriter to the issuer of any corporate affiliation with the issuer's non-dealer financial advisor and places recordkeeping requirements on dealers subject to this provision. The Commission published notice of the

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Continental Asset Management Corporation, to Kathryn Natale, Assistant Director, SEC, dated September 21, 1990; letter from Leon J. Karvelis, Jr., Executive Vice President, Municipal Bond Investors Assurance Corporation, to the SEC, dated July 17, 1990; and letters to the Honorable Philip R. Lochner, Jr., the Honorable Mary L. Schapiro, and the Honorable Edward H. Fleischman, Commissioners, and the Honorable Richard C. Breeden, from Walter P. Stern, Chairman, Capital Group International, dated July 10, 1990.

[15] Letter from Edward J. Mazur, C.P.A., Comptroller, Commonwealth of Virginia, to Jonathan G. Katz, Secretary, SEC, dated September 24, 1990.

[16] Letter from Lynn Hampton, C.P.A., Chief Financial Officer, Washington Metropolitan Airports Authority, to Jonathan G. Katz, Secretary, SEC, dated August 2, 1990.

[17] SMFS, NASACT and Doty Letters, letters to Jonathan G. Katz, Secretary, SEC, from Lynn Hampton, C.P.A., Chief Financial Officer, Metropolitan Washington Airports Authority, dated September 24, 1990; William J. Cochran, Director of Finance, City of Hartford, Connecticut, dated September 19, 1990; Ronald A. Morris, Budget and Accounting Manager, New Castle County, Delaware, dated September 20, 1990; Paul E. Haney, Director of Finance, Monroe County, New York, dated September 18, 1990; Arthur D. Heilman, Director, Bureau of Revenue, Cash Flow and Debt, Commonwealth of Pennsylvania, dated September 24, 1990; Arthur R. Lynch, Director of Finance, Glendale, Arizona, dated September 21, 1990; M.E. Poole, Director, Loudoun County, Virginia, dated September 27, 1990; Eugene VanOverbeke, City Clerk, City of Eagan, Minnesota, dated September 28, 1990; James D. Forte, Director of Finance, City of Plano, Texas, dated September 27, 1990; Lucille Maurer, Treasurer, State of Maryland, dated October 1, 1990; George Greanias, Controller, City of Houston, Texas, dated September 24, 1990; Ruth M. Levine, Director of Finance, City of Milford, Connecticut, dated September 18, 1990; and Richard G. Hilde, Treasurer, City of Long Beach, California, dated September 24, 1990.

[18] Letter from Charles O. Trotter, Vice President and Senior Trust Officer, Central Bank of the South, to Jonathan G. Katz, Secretary, SEC, dated August 7, 1990.

[19] Finally, J.J. Kenny Co., Inc. does not object to the proposed amendments to Rules G–36 and G–8, so long as the documents are to be collected by and maintained in the MSRB's PAF. Letter from J. Kevin Kenny, *et al.*, J.J. Kenny Co., Inc., to Jonathan G. Katz, Secretary, SEC, dated September 24, 1990.

[20] The issues raised by commentators to this proposal were also raised in the two related filings, SR–MSRB–90–2 (MSIL) and SR–MSRB–90–4 (CDI/ES System) and are discussed in the Commission's order issued today on SR–MSRB–90–2. See Securities Exchange Act Release No. 29298.

[21] See Securities Exchange Act Release No. 28081 (May 31, 1990), 55 FR 23333.

[1] 15 U.S.C. 78s(b)(1).

proposed rule change on April 5, 1991.[2] No comments were received on the proposal.

Rule G–23 establishes disclosure and other requirements for dealers that act as financial advisors to issuers of municipal securities.[3] The rule is designed principally to minimize the *prima facie* conflict of interest that exists when a municipal securities dealer acts as financial advisor and underwriter with respect to the same issue. Specifically, it requires a finanical advisor to alert the issuer to the potential conflict of interest that might lead the dealer to act on its own best interest as underwriter rather than the issuer's best interest.

The Board has been asked whether Rule G–23 applies in two situations: (1) When a non-dealer bank acts as financial advisor and a broker/dealer affiliate of the bank wishes to underwrite the issue; and (2) when a non-dealer subsidiary of a dealer bank acts as a financial advisor and the dealer bank wishes to underwrite the issue. Since the bank and the non-dealer affiliate are not dealers in these instances, they are not subject to the requirements of the Rules. The Board has stated, however, that disclosure by the dealer to the issuer of its affiliation with the financial advisor would be advisable under these circumstances.

With this proposal, the Board has determined to codify this recommendation into the requirements of Rule G–23. The Board believes that the issuer should be aware of any corporate affiliation between the financial advisor and the dealer, even if the financial advisor is not a dealer. The Board, however, does not believe that it is necessary for the underwriter to comply with all the disclosure requirements of Rule G–23 in this instance. In addition, the proposed rule change places recordkeeping requirements on dealers subject to this provision.

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Board and, in particular, section 15B(b)(2)(c), which authorizes the Board to adopt rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in municipal securites and, in general, to protect investors and the public interest.

It is therefore ordered, pursuant to section 19(b)(2) of the Act that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: June 11, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–14520 Filed 6–18–91; 8:45 am]

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[2] *See* Securities Exchange Act Release No. 29051 (April 5, 1991), 56 FR 15118.

[3] Rule G–23 does not apply when, in the course of acting as an underwriter, a municipal securities dealer renders financial advice to an issuer, including advice with respect to the structure timing, terms and other similar matters concerning a new issue of municipal securities.

[Release No. 34–29304; File No. SR–NASD–91–25]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Interim Ban on Autoquoting in the NASDAQ System

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 May 31, 1991, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") 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 a six month extension to the interim ban on autoquoting currently in place in the NASDAQ system.

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 Association is proposing to extend for six months its interim ban on automated update of quotations by market makers in the NASDAQ system. In effect this policy, approved by the Commission for one year ending June 15, 1991,[1] prohibits systems known as "autoquote" systems from effecting automated quote updates or tracking of inside quotations in the NASDAQ system, with two exceptions. Automated updating of quotations is permitted when the update is in response to an execution in the security (such as execution of an order that partially fills a market maker's quotation size) or when it requires a physical entry (such as a manual entry to the market maker's internal system which then automatically forwards the update to the NASDAQ system). This interim ban was necessary in order to study the impact on the NASDAQ system of certain autoquote systems that track changes to the inside quotation in NASDAQ and automatically react by generating another quote to keep the market maker's quote away from the best market.

The NASD completed a study of the impact of autoquoting on the NASDAQ system and submitted a copy to the Commission on March 15 1991.[2] The study revealed that all members surveyed indicated strong objections to any kind of capability that would allow NASDAQ market makers to automatically track the NASDAQ inside quotation or another market maker's quotation. In the members' view, allowing automatic tracking could create a "fair-weather" market making environment that would not contribute to the depth or liquidity for trading the security.

The NASD believes, however, that automation in the securities markets should be encouraged, and is therefore proposing to extend the interim moratorium on autoquoting for six months in order to study further the question of eventually allowing autoquoting in certain additional prescribed circumstances. For example, several members believed that an

[1] See Securities Exchange Act Release No. 28338 (August 13, 1990), 55 FR 34636 (August 23, 1990), approving a one-year ban on autoquoting proposed in SR–NASD–90–5.

[2] The NASD requested confidential treatment for the results of the study because of the proprietary nature of the information regarding the NASDAQ system contained in the study.

autoquoting capability that would keep a market maker's quotation at the inside NASDAQ quote, thus reducing the need for manual quote updates and ensuring depth and liquidity in the securities traded should be permitted as soon as the system is capable of processing the additional traffic. Another suggestion was to allow an autoquoting function that would permit a market maker to update quotations of a predefined group of related securities with a single quotation update, similar to what options market makers accomplish with autoquoting for selected options series. The extension of the ban on autoquote for an additional six months will provide the opportunity for additional consideration of autoquote functions that will facilitate member trading at the best market and for study of the technology required to process the additional traffic generated.

The NASD believes the proposed rule change is consistent with section 15A(b)(6) of the Act.[3] Section 15A(b)(6) requires that the rules of a national securities association be designed to "foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market."

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD has requested that the Commission find good cause, pursuant to section 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after publication in the **Federal Register**, and in any event, on or before June 15, 1991, the date on which the current approval for the ban on autoquoting expires. The NASD believes that extendning the ban on autoquoting for six months to conduct further review of the feasibility of permitting types of autoquoting and of the capacity constraints on the NASDAQ system benefits members and the public by assuring that the NASDAQ system is capable of processing additional quotation traffic. In light of these factors, the NASD has requested that the Commission approve the rule change on an accelerated basis on or before June 15, 1991.

Although the Commission does not favor limitations on the use of technological advances in the securities markets, the approach sought by the NASD herein is reasonable. A six month extension of the ban on the use of autoquote functions will enable the NASD to determine which functions would benefit NASDAQ. The six month extension also will allow the NASD to investigate ways to enhance the NASDAQ system to handle the additional volume of computer messages that would be generated by autoquote functions. Accordingly, the Commission believes that the ban on autoquoting should not be terminated while these efforts are ongoing.

The Commission finds that, for the reasons stated herein, the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, with section 15A(b)(6) of the Act. Further, the Commission finds good cause for approving the proposed rule change prior to the 30th day after the publication of notice of filing thereof. The current ban on the use of autoquote functions expires on June 15, 1991. The Commission believes that accelerated approval will avoid an unnecessary and potentially problematic interruption in the ban. Both the NASD membership and the public will benefit if there is no interruption in the ban at this time.

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 other 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 July 11, 1991.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change, SR–NASD–91–25 be, and hereby is, approved for a six-month period expiring December 15, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: June 13, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–14609 Filed 6–18–91; 8:45 am]

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[3] 15 U.S.C. section 78*o*–3 (1982).

[Release No. 34–29305; File No. SR–PSE–91–21]

Self-Regulatory Organizations; Filing and Order Granting Partial Temporary Accelerated Approval of Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to Price Protection of Limit Orders

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 June 5, 1991, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II 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 parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to amend several rules of the Exchange's Rules of the Board of Governors in order to allow the Exchange to provide primary market protection to orders that have been entered with the PSE but are designated to receive the execution price that will be established in the primary market's after-hours session. The PSE also proposes to extend the PSE's auction market trading session to 1:50 p.m. (P.t.) and to allow the entry of a new type of order, one-sided ("OS") closing price orders. The PSE has requested accelerated approval of the proposed

rule change.[1] This order grants temporary approval to a portion of the filing.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

The PSE proposes the instant rule change as a competitive response to the New York Stock Exchange's ("NYSE") Off-Hours Trading ("OHT") facility that was recently approved by the Commission.[3]

The NYSE's OHT facility permits the NYSE to conduct an after-hours closing-price trading session known as Crossing Session I ("CSI"). The NYSE's OHT facility also creates a new order type, known as a "GTX" order ("good 'til cancelled, executable through crossing session"), which will be eligible for execution in Crossing Session I of the OHT facility. The GTX order is specifically designed to participate in CSI and will "migrate" from the regular day trading session into CSI if the GTX order is priced at or better than the 4 p.m., e.t., NYSE closing price. The NYSE's OHT facility also permits the entry of single-sided closing-price orders in CSI by NYSE members.

The PSE proposes to amend its rules so that it can offer primary market protection to designated orders.[4] The PSE proposes to establish a separate designator, "GTX" ("good 'til cancelled, eligible for execution in the post-1 p.m. (P.t.) auction market trading session and closing price protection sessions") for those limit orders that customers want to have filled based on executions in the primary market's after-hours session. As described more fully below, GTX orders will migrate to the PSE's current post-1 p.m. extended hours trading session and, if eligible, may be executed as ordinary good till cancelled orders during this session or in the closing price protection session. If not filled, the orders will remain on the PSE specialists' limit order books and will retain their priority.

The PSE extended hours trading session will consist of two separate sessions. The PSE proposes to extend its current auction market by 20 minutes to 1:50 p.m. (P.t.). At 1:50 p.m. the auction market will cease and the PSE will establish a new session between 1:50 to 2 p.m. (P.t.) which will serve as an order protection environment against NYSE Crossing Session I.

In the auction market between 1 and 1:50 p.m. (P.t.), the PSE will respond to the NYSE filing by providing that the following orders will be eligible for execution:

- "GTX" orders that are priced equal to or better than the NYSE closing price.
- One-sided orders if they can be executed at the NYSE closing price or better.
- Regular market and limit orders entered during this time period or that have been authorized by a SCOREX [5] user as eligible for this time period.

(Note: Execution reports will be sent to firms as executions occur.)

In the new session that will be created between 1:50 p.m. and 2 p.m. (P.t.), the following orders will be provided professional protection vis-a-vis NYSE Crossing Session I:

- Unexecuted "GTX" orders priced at the NYSE closing price or better
- Unexecuted one-sided orders entered during the auction market period
- One-sided orders entered after 1:50 p.m.

(Note: Execution reports will be sent following the NYSE Crossing Session I print.)

In addition to establishing this new session between 1:50 and 2 p.m., the PSE will be adjusting the parameters of its SCOREX system. This will involve extending the SCOREX operation hours to 2 p.m.

SCOREX will be structured so that up to 1 p.m., SCOREX will accept limit orders containing a "GTX" designation, but SCOREX will not accept the "GTX" designation for any market, stop, stop limit, or odd-lot order.

Between 1 and 1:50 p.m., SCOREX will accept the following:

One-sided orders

- Regular market and limit orders (Day and GTC)
- "CXLs" for "GTX" and one-sided orders
- "CFOs" and "CXLs" for SCOREX limit orders that have been authorized as eligible by a SCOREX user [6]

During this period (1 and 1:50 p.m.), SCOREX will act as an order routing mechanism. There will be no automatic executions based upon PSE quotations.

From 1:50 to 2 p.m., SCOREX will accept one-sided orders and cancellations for "GTX" and one-sided orders.

This proposal will mean that SCOREX will be operable for an additional hour (from the current 1 p.m. to the proposed 2 p.m.), but the PSE represents that this will have no impact on existing SCOREX capabilities and trade proceeding capabilities.[7]

Under the PSE proposal, the specialist will know which orders have been designated as GTX orders.

In addition to these changes, the PSE also requests that the Commission extend the same exemptive relief that it has granted to the NYSE in connection with the operation of the NYSE's OHT facility for the requirements of Rule 11Aa3–1 (Trade Reporting), Rule 10a–1 (Short Sales),[8] and section 31 (Transaction Fees) to the PSE.

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[1] See File No. SR–PSE–91–21 and letter from David P. Semak, Vice President, Regulation, PSE, to Mary Revell, Branch Chief, Division of Market Regulation, SEC, dated June 11, 1991.

[2] See letter from David P. Semak, Vice President, Regulation, PSE, to Mary Revell, Branch Chief, Division of Market Regulation, SEC, dated June 11, 1991.

[3] The NYSE's OHT facility extends the NYSE's trading hours beyond the 9:30 a.m. to 4:00 p.m. trading session to establish two trading sessions: Crossing Session I and Crossing Session II. Crossing Session I permits the execution of single-stock single-sided closing-price orders and crosses of single-stock closing-price buy and sell orders. Crossing Session II allows the execution of crosses of multiple-stock aggregate-price buy and sell orders. *See* Securities Exchange Act Release No. 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) ("NYSE OHT Release") (approving Files No. SR–NYSE–90–52 and NYSE–90–53). The Commission approved the NYSE's OHT facility (Files No. SR–NYSE–90–52 and NYSE–90–53) on May 20, 1991. The NYSE has indicated to the Commission that it is prepared to begin the operation of its OHT facility on June 13, 1991.

[4] The Commission notes that this aspect of the PSE proposal is substantially similar to proposals by the Boston ("BSE"), Philadelphia ("Phlx"), and Midwest ("MSE") Stock Exchanges which are also being approved on an accelerated basis by the Commission today. See Files No. SR–BSE–91–4; SR–Phlx–91–26; SR–MSE–91–11.

[5] SCOREX is the PSE's automated order routing and execution system.

[6] "CXLs" and "CFOs" are cancellation orders.

[7] The PSE states that it will use its existing systems to implement the proposed rule change and execute GTX orders. The PSE represents that it has no systems capacity concerns regarding the execution of GTX orders, and that modifications to its systems to permit the execution of those orders were tested successfully prior to this order.

[8] The Commission will issue a letter that addresses the Exchange's request for an exemption from Rule 10a–1.

The proposed rule change is consistent with section 6(b) (5) of the Act in that it is designed to promote just and equitable principles of trade, to facilitate transactions in securities, to foster a free and open market and, in general, to protect investors and the public interest by encouraging the competitive market place.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. 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 will respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–91–21 and should be submitted by July 10, 1991.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission has determined to approve the portion of the PSE proposal that would require PSE specialists to provide primary market protection for certain designated GTX orders. Specifically, this order approves only that part of the filling which allows good til cancelled orders on the limit order books of PSE specialists to be designated as GTX orders, and therefore eligible for migration to the PSE's 1 to 1:30 p.m. (P.t.) auction market trading session and to the PSE's new closing price protection session for possible execution at the NYSE closing price. This order does not approve that portion of the filing which proposes to extend the PSE's auction market session until 1:50 p.m. (P.t.), nor does it approve that portion of the filing which allows OS orders to be accepted after 1:00 p.m. (P.t.). These latter portions of the proposed rule change will be addressed by the Commission at a future date.

The Commission believes that the portions of the PSE proposal regarding GTX orders are reasonably designed to promote just and equitable principles of trade, perfect the mechanism of a free and open national market system, and, in general, further investor protection and the public interest in fair and orderly markets on national securities exchanges, as well as facilitate the linking or qualified markets through appropriate communication systems and the practicability of brokers executing investors' orders in the best market. For these reasons and for the additional reasons set forth below, the Commission finds that approval, for a temporary period ending on May 24, 1993, of that portion of the Exchange's proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of sections 6 and 11A of the Act.[9]

In the recent Commission release approving the NYSE's OHT facility, the Commission noted the benefits that would accrue to investors through development of an after-hours trading session. The Commission in that order also stated that the NYSE OHT sessions should enhance competition by providing a service to customers that other exchanges currently are not providing.[10] In that release, the Commission noted that innovation that provides marketplace benefits to attract order flow to one marketplace does not result in unfair competition if the other markets are free to compete in the same manner.[11] In this regard, the Commission noted that, if other U.S. securities marketplaces desire to compete with the NYSE's OHT facility, they could provide a similar service.[12] Although the PSE proposal does not copy the NYSE's OHT facility, it nonetheless presents a reasonable competitive response. By allowing GTX orders that could be executed on the NYSE to receive a similar fill on the PSE, the Exchange is providing a mechanism for maintaining its own individual marketplace on a competitive level with the primary market. Accordingly, the Commission believes that the PSE proposal should be approved for many of the same reasons that the Commission approved the NYSE OHT facility.[13]

The Commission believes that both the instant PSE proposal and the NYSE's OHT facility, as well as several proposals recently received by the Commission from other U.S. marketplaces, demonstrate the competitiveness of the U.S. securities markets. As a result of these marketplace initiatives, U.S. investors soon will have new opportunities for trading, including the ability to have their orders executed on both the NYSE and the PSE after the close of the regular 9:30 a.m. to 4 p.m. trading session at the closing price established on the primary market. Moreover, the Commission believes that the increased competition that results from permitting PSE specialists to attract GTX orders should enhance the quality of customer order executions.

The Commission believes that allowing GTX orders to migrate to the PSE's post-1:00 p.m. (P.t.) extended hours trading session and, if eligible, to be executed in either the 1 to 1:30 p.m. (P.t.) auction market session or the closing price protection session is consistent with the Act. First, allowing GTX orders to participate as market and limit orders in the PSE's extended auction market session will improve the execution opportunities for GTX orders. Instead of having to wait for NYSE Crossing Session I to finish, these orders may have the opportunity for an earlier execution. In addition, the Commission believes that, because any GTX orders executed during the PSE's post-1:00 p.m. (P.t.) extended hours trading session will occur at a preset price (the NYSE closing price or better), the potential for abuse of these orders by market participants during this session is small. Accordingly, this part of the PSE proposal is consistent with the maintenance of fair and orderly markets and should contribute to the practicability of brokers achieving a best execution for customer orders. The Commission also believes that allowing GTX orders to migrate to a 2 p.m. price protection system is consistent with the maintenance of fair and orderly markets and should contribute to the practicability of brokers achieving a

[9] 15 U.S.C. 78f and 78k–1 (1988).

[10] See NYSE OHT Release, *supra*, note 3.

[11] *Id.*

[12] *Id.*

[13] See NYSE OHT Release, *supra*, note 3.

best execution for customer orders. The new PSE rule would achieve this by imposing additional obligations on Exchange specialists to provide their customers with primary market price protection. The parameters of the new rule are expressed clearly in the text of the rule and do not leave any discretion to specialists in deciding which orders to fill and what priority to give these orders. The new rule makes clear that if customer limit orders are designated as GTX and are priced at the NYSE closing price, then the specialist is obligated to fill those orders up to the volume that prints at the end of NYSE Crossing Session I.[14] The specialist is relieved of this obligation only if he or she can demonstrate that a particular order would not have been executed if it had been transmitted to the primary market. As discussed above, the Commission believes that the only way in which this can be demonstrated is by showing that an order was sent to the primary market and it was not filled or if a customer cancels a GTX order prior to its execution.

In addition, the PSE proposal does not disturb the priority rules currently in force at the Exchange. During the regular trading hours, orders on the specialist's book would maintain the same priority as existed before adoption of this proposal. Among GTX orders that are eligible after 1 p.m. (P.t.) for possible execution, priority is maintained as it was during the regular trading day. If a GTX order is not executed, it will remain on the specialist's book and will maintain its priority.

Furthermore, the Commission believes that, although PSE specialists will know which limit orders are designated "GTX" and will manually execute GTX orders, they should not be able to use this information to their own advantage. During the 1 to 1:30 session, these orders will operate as limit orders in the same manner as they would operate during the regular trading session. To the extent they migrate to the closing price protection session, specialists' participation is strictly circumscribed. Specialist participation would be limited to filling the contra side of a customer limit order that is eligible, pursuant to the new rule, for a fill. The specialist would have no discretion in choosing which orders to fill and which priority to give orders. Orders would be eligible for a fill based on a strict criteria (*e.g.*, orders that are priced at the NYSE closing price and have been designated GTX are eligible to be filled based on volume that prints in the primary market's after-hours session). In addition, orders would be eligible to be filled according to the priority that already exists on the specialists' books. Thus, the Commission is satisfied that, although PSE specialists will have knowledge of which limit orders have been designated GTX, they would not be able to use this knowledge to the detriment of investors because their participation in the execution of GTX orders will be limited. The Commission expects, however, that the PSE will monitor carefully the execution of GTX orders to ensure that PSE specialists are not taking unfair advantage of this information. In this regard, the Commission expecs the PSE to report, within 18 months of the date of the approval of this order, on this issue. The Commission may, at that time, wish to revisit this issue.

The Commission notes that the NYSE's OHT facility was approved by a two year temporary period, commencing on May 24, 1991. In approving the NYSE proposal for a temporary period, the Commission noted that the NYSE OHT facility raised several "intermarket" issues, such as: (i) Whether the Intermarket Trading System ("ITS") should be operational during any time period when both the NYSE Crossing Sessions and another ITS market are accepting orders; (ii) whether the NYSE should be required to permit orders entered "GTX" on the books of regional specialists to "migrate" automatically at the close(s) of such regional exchanges to the NYSE Crossing Session I order book; (iii) if so, with what priority, if any; and (iv) who should bear the cost of developing a working mechanism for such transmittal.

In the release approving the NYSE OHT facility, the Commission also noted that, because at least one other exchange had proposed a trading session similar or identical to the NYSE's OHT facility, significant national market system issues would have to be resolved by the NYSE and the competing market, in conjunction with the SEC. Although the PSE proposal does not present an after-hours crossing session like the NYSE's OHT facility, it would establish an after-hours trading system that will compete directly with NYSE Crossing Session I. Accordingly, the Commission believes that a temporary approval period ending on May 24, 1993 is also appropriate for the PSE proposal.[15]

The Commission believes that this time period will provide an opportunity for the Commission and market participants to observe the actual operation of the NYSE's OHT facility and the PSE's after-hours proposal. Based on these observations the Commission and market participants will be in a better position to evaluate whether further steps to link the NYSE's OHT facility with comparable systems operating at the same time are necessary or appropriate to protect investors or promote fair competition and whether any other linkage issues arise. In this regard, 18 months from the date of approval of the instant proposal, the PSE should submit a new filing pursuant to Rule 19b–4 under the Act requesting permanent approval of its proposed rule change, as well as a report describing the PSE's experience with the new rule during that 18-month period. The report should include, but not be limited to, the following information (broken down by month) for the 18-month period:

- Whether customers who have entered GTX orders experienced any problems when they attempted to cancel such orders
- Whether the Exchange has experienced any difficulties in monitoring the activities of specialists with regard to determining their particular obligations to fill GTX orders
- The number, if any, of GTX orders executed after the close of the PSE's regular auction trading session pursuant to the new rule
- The number, if any, of GTX orders that remain unexecuted after the 1:00 to 1:30 p.m. (PT) trading session and after 2:00 p.m. (PT)
- The number and percentage of GTC orders on the book that were designated "GTX" and thus eligible to be filled
- Whether the PSE marketplace has experienced any increased volatility during the last hour of the 6:30 a.m. to 1:00 p.m. (PT) trading sessions after the initiation of the new rule
- Whether there were greater (wider) quote spreads during the last hour of the 6:30 a.m. to 1:00 p.m. (PT) trading session after the initiation of the new rule
- Whether the Exchange or any specialist has given any special guarantees to execute GTX orders over

[14] Under the PSE proposal, a broker and PSE specialist may agree upon a specific volume related or other criteria for requiring a fill. This means, however, that they may agree to have the specialist fill more than the amount of the NYSE Crossing Session I print, not less than the amount of the NYSE Crossing Session I print. Of course, if no volume prints in NYSE Crossing Session I in a particular stock, then the PSE specialist cannot execute any GTX orders after regular trading hours that day.

[15] To achieve uniformity, the temporary approval period would run until May 24, 1993, the sunset of the NYSE's OHT facility.

and above the requirements of the new rule

In addition, the Commission expects that the PSE, through use of its surveillance procedures, will monitor for, and report to the Commission, any patterns of manipulation or trading abuses or unusual trading activity resulting from the new rule. Finally, the Commission expects the PSE to keep the Commission apprised of any technical problems which may arise regarding the operation of the new rule, such as difficulties in order execution or order cancellation.

Finally, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. The PSE's proposal merely extends the Exchange's execution guarantee procedures to incorporate GTX orders and the possibility of a 2 p.m. (p.t.) execution. It does not substantially alter current PSE procedures, nor does it raise issues not already addressed in the order approving the NYSE's OHT system. Moreover, to the extent that GTX orders can participate in the 1 to 1:30 p.m. trading session, this would permit these orders to receive a possible fill without having to wait for the 2 p.m. trade, and at a price at or better than the NYSE closing price. Accordingly, the Commission believes it is appropriate to approve the proposed rule change on an accelerated basis so that it can be in effect on the date that the NYSE's OHT facility commences operation. This will permit the PSE to compete with Crossing Session I of the NYSE's OHT facility, which in turn should benefit investors and promote competition among markets.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[16] that the portion of the proposed rule change that would require PSE specialists to provide primary market protection for certain designated GTX orders is approved for a temporary period ending on May 24, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Dated: June 13, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-14606 Filed 6-18-91; 8:45 am]

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[16] 15 U.S.C. 78s(b)(2) (1988).

[17] 17 CFR 200.30-3(a)(12) (1990).

[Release No. 34-29300; File No. SR-PHLX-91-26]

Self-Regulatory Organizations; Filing and Order Granting Temporary Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Price Protection of Limit Orders

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 June 11, 1991, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II 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 parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to adopt new Rule 232 to require Phlx specialists to provide primary market protection for limit orders, entered during the Phlx's regular 9:30 a.m. to 4:00 p.m. trading session, that are designated as executable after the Phlx close ("GTX orders").[1] The execution of these orders will be based on volume that prints in the primary market's after-hours trading session.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On May 10, 1991, the Phlx submitted File No. SR-Phlx-91-25 to the Commission regarding a proposal substantially similar to Files No. SR-NYSE-90-52 and SR-NYSE-90-53, which proposed the New York Stock Exchange's ("NYSE") Off-Hours Trading ("OHT") facility.[2] The Phlx's filing stated specifically that SR-PHLX-91-25 was solely in competitive response to the NYSE's proposals. The Phlx filing requested that, if the Commission approves the NYSE's proposals, the Commission should approve SR-PHLX-91-25 simultaneously. On May 20, 1991, the Commission approved the NYSE's OHT facility (Files No. SR-NYSE-90-25 and SR-NYSE-90-53). Because the Phlx's filing is still in the public comment period,[3] the Phlx hereby files the instant rule change proposing to adopt new Rule 232 as a competitive response to the NYSE and to clarify in the near term how the Phlx will handle its customers' GTX orders.

New Rule 232 will provide a guarantee to Phlx GTX orders [4] similar to the guarantees proposed by the MSE and BSE filings.[5] In short, the Phlx will authorize member firms on behalf of customers to designate limit orders as GTX orders. GTX orders will be executed as ordinary good til cancelled orders during regular Phlx trading hours. If they are not executed during regular trading hours and are priced at the closing NYSE price, Phlx GTX orders will be eligible for an execution after the Phlx close based on volume executed in the NYSE's after-hours trading session. Such Phlx GTX orders will be executed on a priority and precedence basis depending upon their order of entry during regular trading hours. Unexecuted GTX orders will retain their

[1] The Commission notes that the Phlx proposal is substantially similar to proposals by the Boston ("BSE"), Pacific ("PSE"), and Midwest ("MSE") Stock Exchanges which are also being approved on an accelerated basis by the Commission. See Files No. SR-BSE-91-4; SR-PSE-91-21; SR-MSE-91-11.

[2] The NYSE's OHT facility extends the NYSE's trading hours beyond the 9:30 a.m. to 4 p.m. trading session to establish two trading sessions: Crossing Session I and Crossing Session II. Crossing Session I permits the execution of single-stock single-sided closing-price orders and crosses of single-stock closing-price buy and sell orders. Crossing Session II allows the execution of crosses of multiple-stock aggregate-price buy and sell orders. See Securities Exchange Act Release No. 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) ("NYSE OHT Release") (approving Files No. SR-NYSE-90-52 and NYSE-90-53). The Commission approved the NYSE's OHT facility (Files No. SR-NYSE-90-52 and NYSE-90-53) on May 20, 1991. The NYSE has indicated to the Commission that it is prepared to begin the operation of its OHT facility on June 13, 1991.

[3] That filing (SR-Phlx-91-25) differed from the NYSE's OHT facility in that the Phlx specialist would be able to discern which orders in his or her book were GTX or regular good until cancelled, whereas, in NYSE's Crossing Session I, that differentiation would not be revealed to the specialist.

[4] The new rule defines a GTX order as an order that is "good til cancelled, eligible for the primary market protection based on volume that prints on the NYSE after-hours trading session."

[5] See supra note 1.

priority on the specialists' limit order book. No GTX orders can be entered on the Phlx after the close, but the Phlx will permit GTX orders to be cancelled until the NYSE reports its after-hours trading session volume to the consolidated tape. The Phlx is seeking relief from Rule 10a–1 under the Act ("short sale rule") for any GTX order executed by the specialist pursuant to Rule 232's execution guarantee.[6]

Once the NYSE's after-hours volume is published, the Phlx specialist will execute GTX orders constituting, at a minimum, the same number of shares executed by NYSE in Crossing Session I.[7] A Phlx specialist may not be required to execute the same number of shares that were executed during NYSE's Crossing Session I only if the Phlx specialist can demonstrate that his or her customer's GTX order would not have received an execution if it had been originally routed to the NYSE. This can be demonstrated if, for instance, the Phlx specialist routes a comparable GTX order to the NYSE immediately after receiving a similar order for placement on the Phlx specialist's book. If the former order is not executed in the NYSE's after-hours trading session, a presumption can be asserted that the Phlx customer order also would not have been entitled to an execution on the NYSE.[8]

Should the Phlx specialist not engage in a hedge strategy of this nature, he or she would be expected to undertake the risk of executing a Phlx GTX order based strictly on what volume prints on the NYSE and whether the PHLX GTX order is within the group of Phlx GTX orders that are entitled to priority in relationship to the Phlx specialists' commitment to match for share the number of shares executed on the primary exchange.

Under the Phix proposal, GTX orders executed after the close of the regular 9:30 a.m. to 4:00 p.m. trading session will be reported as one print per stock to the consolidated tape shortly after 5:00 p.m. (ET).

The proposed rule change is consistent with section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–91–26 and should be submitted by July 11, 1991.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission believes that the Phlx proposal is reasonably designed to promote just and equitable principles of trade, perfect the mechanism of a free and open national market system, and, in general, further investor protection and the public interest in fair and orderly markets on national securities exchanges, as well as facilitate the linking of qualified markets through appropriate communication systems and the practicability of brokers executing investors' orders in the best market. For these reasons and for the additional reasons set forth below, the Commission finds that approval, for a temporary period ending on May 24, 1993, of the Exchange's proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular with the requirements of section 6 and 11A of the Act.[9]

In the recent Commission release approving the NYSE's OHT facility, the Commission noted the benefits that would accrue to investors through development of an after-hours trading session. The Commission in that order also stated that the NYSE OHT sessions should enhance competition by providing a service to customers that other exchanges currently are not providing.[10] In that release, the Commission noted that innovation that provides marketplace benefits to attract order flow to one marketplace does not result in unfair competition if the other markets are free to compete in the same manner.[11] In this regard, the Commission noted that, if other U.S. securities marketplaces desire to compete with the NYSE's OHT facility, they could provide a similar service.[12] Although the Phlx proposal does not copy the NYSE's OHT facility, it nonetheless presents a reasonable competitive response. By allowing GTX orders that could be executed on the NYSE to receive a similar fill on the Phlx, the Exchange is providing a mechanism for maintaining its own individual marketplace on a competitive level with the primary market. Accordingly, the Commission believes that the Phlx proposal should be approved for many of the same reasons that the Commission approved the NYSE OHT facility.[13]

The Commissioon believes that both the instant Phlx proposal and the NYSE's OHT facility, as well as several propoals recently received by the Commission from other U.S. marketplaces, demonstrate the competitiveness of the U.S. securities markets. As a result of these marketplace initiatives, U.S. investors soon will have new opportunities for trading, including the ability to have their orders executed on both the NYSE and the Phlx after the close of the regular 9:30 a.m. to 4 p.m. trading session at the closing price established

[6] The Commission will issue a letter that addresses the Exchange's request for an exemption from Rule 10a–1.

[7] The Phlx states that it will use its existing systems to implement the proposed rule change and execute GTX orders. The Phlx represents that it has no systems capacity concerns regarding the execution of GTX orders, and that modifications to its systems to permit the execution of those orders were tested successfully prior to this order.

[8] The new Phlx rule also allows a broker and a Phlx specialist to agree upon a specific volume related or other criteria for requiring a fill. This means, however, that they may agree to have the specialist fill more than the amount of the NYSE Crossing Session I print, not less than the amount of the NYSE Crossing Session I print. Of course, if no volume prints in NYSE Crossing Session I in a particular stock, then the Phlx specialist cannot execute any GTX orders after regular trading hours that day.

[9] 14 U.S.C. 78f and 78k–1 (1988).

[10] See NYSE OHT Release, *supra*, note 2.

[11] Id.

[12] Id.

[13] See NYSE OHT Release, *supra*, note 2.

on the primary market. Moreover, the Commission believes that the increased competition that results from permitting Phlx specialists to attract GTX orders should enhance the quality of customer order executions.

In addition, the Commission believes that the Phlx proposal is consistent with the maintenance of fair and orderly markets and should contribute to the practicability of brokers achieving a best execution for customer orders. The new Phlx rule would achieve this by imposing additional obligations on Exchange specialists to provide their customers with primary market price protection. The parameters of the new rule are expressed clearly in the text of the rule and do not leave any discretion to specialists in deciding which orders to fill and what priority to give these orders. The new rule makes clear that if customer limit orders are designated as GTX and are priced at the NYSE closing price, then the specialist is obligated to fill those orders up to the volume that prints at the end of NYSE Crossing Session I. The specialist is relieved of this obligation only if he or she can demonstrate that a particular order would not have been executed if it had been transmitted to the primary market.As discussed above, the Commission believes that the only way in which this can be demonstrated is by showing that an order was sent to the primary market and it was not filled or if a customer cancels a GTX order prior to its execution.

In addition, the Phlx proposal does not disturb the priority rules currently in force at the Exchange. During the regular trading hours, orders on the specialist's book would maintain the same priority as existed before adoption of this proposal. Among GTX orders that are eligible after 4 p.m. for possible execution, priority is maintained as it was during the regular trading day. If a GTX order is not executed, it will remain on the specialist's book and will maintain its priority.

Furthermore, the Commission believes that, although Phlx specialists will know which limit orders are designated "GTX" and will manually execute GTX orders, they should not be able to use this information to their own advantage. As discussed above, the Phlx proposal consists of an execution guarantee system. It does not create an additional session where specialists can participate. Specialists participation would be limited to filling the contra side of a customer limit order that is eligible, pursuant to the new rule, for a fill. The specialist would have no discretion in choosing which orders to fill and which priority to give orders. Orders would be eligible for a fill based on strict criteria (e.g., orders that are priced at the NYSE closing price and have been designated GTX are eligible to be filled based on volume that prints in the primary market's after-hours session). In addition, orders would be eligible to be filled according to the priority that already exists on the specialists' books. Thus, the Commissioin is satisfied that, although Phlx specialists will have knowledge of which limit orders have been designated GTX, they would not be able to use this knowledge to the detriment of investors because their participation in the execution of GTX orders will be limited. the Commission expects, however, that the Phlx will monitor carefully the execution of GTX orders to ensure that Phlx specialists are not taking unfair advantage of this information. In this regard, the Commission expects the Phlx to report, within 18 months of the date of the approval of this order, on this issue. The Commission may, at that time, wish to revisit this issue.

The Commission notes that the NYSE's OHT facility was approved for a two year temporary period, commencing on May 24, 1991. In approving the NYSE proposal for a temporary period, the Commission noted that the NYSE OHT facility raised several "intermarket" issues, such as: (i) Whether the Intermarket Trading System ("ITS") should be operational during any time period when both the NYSE Crossing Sessions and another ITS market are accepting orders; (ii) whether the NYSE should be required to permit orders entered "GTX" on the books of regional specialists to "migrate" automatically at the close(s) of such regional exchanges to the NYSE Crossing Session I order book; (iii) if so, with what priority, if any; and (iv) who should bear the cost of developing a working mechanism for such transmittal.

In the release approving the NYSE OHT facility, the Commission also noted that, because at least one other exchange had proposed a trading session similar or identical to the NYSE's OHT facility, significant national market system issues would have to be resolved by the NYSE and the competing market, in conjunction with the SEC. Although the Phlx proposal does not present an after-hours crossing session like the NYSE's OHT facility, it would establish an after-hours trading system that will compete directly with NYSE Crossing Session I. Accordingly, the Commission believes that a temporary approval period ending on May 24, 1993 is also appropriate for the Phlx proposal.[14]

The Commission believes that this time period will provide an opportunity for the Commission and market participants to observe the actual operation of the NYSE's OHT facility and the Phlx's after-hours proposal. Based on these observations the Commission and market participants will be in a better position to evaluate whether further steps to link the NYSE's OHT facility with comparable systems operating at the same time are necessary or appropriate to protect investors to promote fair competition and whether any other linkage issues arise. In this regard, 18 months from the date of approval of the instant proposal, the Phlx should submit a new filing pursuant to Rule 19b–4 under the Act requesting permanent approval of its proposed rule change, as well as a report describing the Phlx's experience with the new rule during that 18-month period. The report should include, that not be limited to, the following information (broken down by month) for the 18-month period:

- Whether customers who have entered GTX orders experienced any problems when they attempted to cancel such orders
- Whether the Exchange has experienced any difficulties in monitoring the activities of specialists with regard to determining their particular obligations to fill GTX orders
- The number, if any, of GTX orders executed after the close of the Phlx's regular auction trading session pursuant to the new rule
- The number, if any, of GTX orders that remain unexecuted after the Phlx specialist has fulfilled his or her obligations in connection with the new rule
- The number and percentage of GTC orders on the book that were designated "GTX" and thus eligible to be filled
- Whether the Phlx marketplace has experienced any increased volatility during the last hour of the 9:30 a.m. to 4 p.m. trading sessions after the initiation of the new rule
- Whether there were greater (wider) quote spreads during the last hour of the 9:30 a.m. to 4 p.m. trading session after the initiation of the new rule
- Whether the Exchange or any specialists has given any special guarantees to execute GTX orders over and above the requirements of the new rule

[14] To achieve uniformity, the temporary approval period would run until May 24, 1993, the sunset of the NYSE's OHT facility.

In addition, the Commission expects that the Phlx, through use of its surveillance procedures, will monitor for, and report to the Commission, any patterns of manipulation of trading abuses or unusual trading activity resulting from the new rule. Finally, the Commission expects the Phlx to keep the Commission apprised of any technical problems which may arise regarding the operation of the new rule, such as difficulties in order execution or order cancellation.

Finally, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. The Phlx's proposal merely extending the Exchange's execution guarantee procedures to incorporate GTX orders and the possibility of a 4 p.m. execution. It does not substantially alter current Phlx procedures, nor does it raise issues not already addressed in the order approving the NYSE's OHT system. Accordingly, the Commission believes it is appropriate to approve the proposed rule change on an accelerated basis so that it can be in effect on the date that the NYSE's OHT facility commences operation. This will permit the Phlx to compete the Crossing Session I of the NYSE's OHT facility, which in turn should benefit investors and promote competition among markets.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[15] that the proposed rule change is approved for a temporary period ending on May 24, 1993.

For the Commission, by the Division of Market Regulation, Pursuant to delegated authority.[16]

Dated: June 13, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–14610 Filed 6–18–91; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–18189; 811–1493]

Putnam Capital Fund; Notice of Application

June 11, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Putnam Capital Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on January 16, 1991 and amendments were filed on May 13, 1991 and May 28, 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 July 8, 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 Fifth Street, NW., Washington, DC 20549. Applicant, One Post Office Square, Boston, MA 02109.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Staff Attorney, (202) 272–2190, or Jeremy N. Rubenstein, Branch Chief, (202) 272–300 (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 Representatives

1. On April 24, 1967, applicant's predecessor, Putnam Duofund, filed a registration statement pursuant to the Securities Act of 1933, which became effective on June 29, 1967. Putnam Duofund operated as a closed-end investment company until January 3, 1983, when it converted to an open-end investment company and changed its name to Putnam Capital Fund, Inc. Applicant, organized as a Massachusetts business trust, became the successor to Putnam Capital Fund, Inc. on April 27, 1984.

2. On June 3, 1988, applicant's board of trustees approved a plan of reorganization. On June 30, 1988, applicant filed proxy materials relating to the proposed reorganization with the Commission. Applicant's shareholders approved the reorganization at a special meeting held on September 8, 1988.

3. The plan of reorganization provided for the transfer of applicant's assets to Depositors Investment Trust ("DIT") in exchange for shares of OTC Emerging Growth Fund ("OTC"), a series of DIT. On September 12, 1988, applicant exchanged 1,728,432 of its shares valued at $5.31 per share for 370,378 OTC shares valued at $24.78 per share. The exchange occurred at relative net asset value.

4. Pursuant to the merger, applicant's shareholders received OTC shares equal in value to their *pro rata* share of the assets of applicant.

5. The total expenditures incurred in connection with the merger was $85,525. The expenses were allocated as follows: $32,525 to applicant, $35,000 to OTC, and $18,000 to applicant's investment adviser.[1]

6. Applicant has filed an instrument of termination with the Secretary of State of the Commonwealth of Massachusetts and has been terminated.

7. As of the date of the application, applicant had no assets, debts, liabilities, or securityholders. Applicant is not a party to any litigation or administrative proceeding.

8. Applicant is not now engaged, and does not propose to engage, in any business activity other than that needed to wind-up its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–14516 Filed 6–18–91; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–18188; 811–3899]

Putnam Corporate Cash Trust—Adjustable Rate Preferred Portfolio; Application

June 11, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Putnam Corporate Cash Trust—Adjustable Rate Preferred Portfolio.

RELEVANT ACT SECTION: Section 8(f).

[15] 15 U.S.C. 78s(b)(2) (1988).

[16] 17 CFR 200.30–3(a)(12) (1990).

[1] By letter dated June 10, 1991, Counsel for applicant stated that the expenses incurred with the merger were accrued for and reflected in the applicant's and OTC's net asset value prior to the actual reorganization to ensure an equitable distribution of these expenses among the shareholders of applicant and OTC.

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on January 14, 1991 and amendments were filed on May 13, 1991 and May 28, 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 July 8, 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 Fifth Street, NW., Washington, DC 20549. Applicant, One Post Office Square, Boston, MA 02109.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Staff Attorney, (202) 272–2190, 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 organized as a Massachusetts business trust. On November 8, 1983, applicant registered under the 1940 Act and filed a registration statement pursuant to the Securities Act of 1933. The registration statement became effective on December 21, 1983.

2. On April 12, 1990, after applicant's board of trustees had approved a plan of reorganization, applicant filed proxy materials relating to the proposed reorganization with the Commission. Applicant's shareholders approved the reorganization at a special meeting held on July 12, 1990.

3. The plan of reorganization provided for the transfer of applicant's assets to Putnam Corporate Cash Trust—Diversified Strategies Portfolio ("DSP") in exchange for shares of DSP. On July 16, 1990, applicant exchanged 2,305,594 of its shares valued at $32.52 per share for 1,965,451 DSP shares valued at $38.15 per share. The exchange occurred at relative net asset value. Upon completion of the reorganization, DSP changed its name to Putnam Corporate Cash Trust.

4. Pursuant to the merger, applicant's shareholders received DSP shares equal in value to their *pro rata* share of the assets of applicant.

5. Applicant and DSP shared equally the expenses, totalling $90,000, that were incurred in connection with the merger.[1]

6. Applicant has filed an instrument of termination with the Secretary of State of the Commonwealth of Massachusetts and has been terminated.

7. As of the date of the application, applicant had no assets, debts, liabilities or securityholders. Applicant is not a party to any litigation or administrative proceeding.

8. Applicant is not now engaged, and does not propose to engage, in any business activity other than that needed to windup its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–14518 Filed 6–18–91; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–18190; 811–2777]

Unified Municipal Fund, Inc.; Notice of Application

June 11, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Deregulation under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Unified Municipal 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 January 31, 1991 and amendments were filed on May 6, 1991 and May 28, 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 July 8, 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, 429 N. Pennsylvania Street, Indianapolis, IN 46204.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Staff Attorney, (202) 272–2190, 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 Indiana. On October 3, 1977, applicant, previously named Unified Accumulation Fund, Inc., filed a notification of registration and registration statement pursuant to section 8 of the 1940 Act. On that date, applicant also field a registration statement pursuant to the Securities Act of 1933, which was declared effective on November 11, 1977.

2. At a meeting held on July 27, 1990, applicant's board of directors adopted a plan of reorganization. On October 18, 1990, applicant filed proxy materials with the Commission relating to the proposed reorganization. Applicant's shareholders approved the reorganization at a special meeting held on October 31, 1990.

3. The plan of reorganization permitted applicant to merge with Unified Funds, an Indiana business trust (the "Trust"). Other Unified managed investment companies also merged into the Trust, each of which will operate as a separate series of the Trust.

4. As of October 31, 1990, applicant had two portfolio series called the General Series and the Indiana Series. Pursuant to the merger, the shareholders of both series received shares in the Trust's Indiana Municipal Bond Fund

[1] By letter dated June 10, 1991, Counsel for applicant stated that these expenses were accrued for and reflected in applicant's and DSP's net asset value prior to the actual merger to ensure an equitable distribution of these expenses between the shareholders of applicant and DSP.

series equal in value to their shares in applicant.

5. Pursuant to applicant's plan of reorganization, applicant distributed 519,106 shares with a net asset value of $8.43 per share to the General Series' shareholders and 1,146,534 shares with a net asset value of $8.79 per share to the Indiana Series. The shares were valued and distributed on October 31, 1990.

6. After the reorganization, Unified Funds liquidated some of the portfolio securities previously held in the General Series and reinvested the proceeds by November 1, 1990. No commissions were paid in connection with the sale of such securities.

7. The total expenditures incurred in connection with the merger were $28,000. This amount will be paid by applicant under its new existence as the Trust's Indiana Municipal Bond Fund series over a period of five years.

8. Applicant has filed a certificate of dissolution with the Secretary of State of Indiana.

9. As of the date of the application, applicant had no debts or liabilities, and was not a party to any litigation or administrative proceeding.

10. Applicant is neither engaged in nor proposes to engage in any business activities other than those necessry for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-14517 Filed 6-18-91; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended June 7, 1991

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 47565.
Date filed: June 3, 1991.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 492 (TC3 Normal Fares between USSR and China).
Proposed Effective Date: July 2, 1991.

Docket Number: 47567.
Date filed: June 5, 1991.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 485 (Tariffs from Kenya in U.S. Dollars—PAX); Mail Vote 486 (Tariffs from Kenya in U.S. Dollars—Cargo).
Proposed Effective Date: May 15, 1991.

Docket Number: 47568.
Date filed: June 5, 1991.
Parties: Members of the International Air Transport Association.
Subject: TC2 Reso/C0333 Dated May 21, 1991, TC2 Expedited Reso 003bb (R-1); TC2 Reso/C0334 dated May 21, 1991, TC2 Expedited Reso (R-2 to R-7); TC2 Reso/C0335 dated May 21, 1991, TC2 Expedited Resos (R-8 to R-10).
Proposed Effective Date: July 1 & August 1, 1991.

Docket Number: 47569.
Date filed: June 5, 1991.
Parties: Members of the International Air Transport Association.
Subject: TC12 Reso/C0897 dated May 1, 1991, North Atlantic (USA/US Territories—Africa R-1 to R-4, TC12 Rates 0466 dated May 22, 1991—Rates Tables.
Proposed Effective Date: October 1, 1991.

Docket Number: 47576.
Date filed: June 7, 1991.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 495 (Currency Amendments).
Proposed Effective Date: July 1, 1991.

Docket Number: 47577.
Date filed: June 7, 1991.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 496 (Brazilian currency); R-1—Reso 021e
Proposed Effective Date: July 1, 1991.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 91-14513 Filed 6-18-91; 8:45 am]

BILLING CODE 4910-62-M

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended June 7, 1991

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 47563.
Date filed: June 3, 1991.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 1, 1991.
Description: Application of Servicios Aereos Litoral, S.A. DE C.V., pursuant to section 402 of the Act and subpart Q of the Regulations, requests a foreign air carrier permit to provide scheduled transportation between the United States and Mexico.

Docket Number: 47571.
Date filed: June 5, 1991.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 3, 1991.
Description: Application of Air Micronesia, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations applies for an amendment to its certificate of public convenience and necessity for route 170 so as to be authorized to engage in foreign air transportation of persons, property, and mail between the coterminal points Guam and Saipan, Northern Mariana Islands, on the one hand, and coterminal point or points in Korea and Taiwan, on the other.

Docket Number: 47572.
Date filed: June 6, 1991.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 5, 1991.
Description: Application of Amerijet International, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations, requests a new or amended certificate of public convenience and necessity authorizing it to provide scheduled foreign air transportation of property and mail between Miami, Florida and St. Lucia, West Indies.

Docket Number: 47574.
Date filed: June 6, 1991.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 5, 1991.
Description: Application of Zuliana De Aviacion C.A., pursuant to section 402 of the Act and subpart Q of the Regulations, for a foreign air carrier permit authorizing the carriage of persons, property and mail on a scheduled basis between Venezuela via the Netherlands West Indies and Jamiaica to Miami and Houston. Zuliana also requests that it be granted authority to operate charters subject to the Department's Rules and Regulations.

Docket Number: 46766.
Date filed: June 7, 1991.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 5, 1991.
Description: Application of Loken Aviation, pursuant to section 401(h) of

the Act and subpart Q of the Regulations, requests transfer of its certificate to Loken Aviation, Inc., and files all necessary continuing fitness data to support this transfer and activate its 401 authority in accordance with Order 90–21–1.

Phyllis T. Kaylor,

Chief, Documentary Services Divisions.

[FR Doc. 91–14514 Filed 6–18–91; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

Approval of Noise Compatibility Program for San Diego International Airport-Lindbergh Field, San Diego, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the San Diego Unified Port District under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On January 30, 1989 the FAA determined that the noise exposure maps submitted by San Diego Unified Port District under part 150 were in compliance with applicable requirements. On June 5, 1991 the Assistant Administrator for Airports approved the San Diego International Airport-Lindbergh Field noise compatibility program. Nineteen of the twenty-four recommendations of the program were approved. Five noise abatements measures were disapproved.

EFFECTIVE DATE: The effective date of the FAA's approval of the San Diego International Airport-Lindbergh Field noise compatibility program is June 5, 1991.

FOR FURTHER INFORMATION CONTACT: David B. Kessler, Airport Planner, Planning Section, AWP–611.2 telephone 213/297–1534, Mailing Address: P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009–2007, Telephone 213/297–1250. Street Address: 15000 Aviation Boulevard, Hawthorne, California 90261. Documents reflecting this FAA action may be reviewed at this same location .

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for San Diego International Airport-Lindbergh Field, effective June 5, 1991.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel. Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Assistant Administrator for Airports prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, State, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA Airports Division Office in Hawthorne, California.

The San Diego Unified Port District submitted to the FAA on November 7, 1986 and December 11, 1987 the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from September 1985 through September 1989. The San Diego International Airport-Lindbergh Field noise exposure maps were determined by FAA to be in compliance with applicable requirements on January 30, 1989. Notice of this determination was published in the **Federal Register** on March 30, 1989.

The San Diego International Airport-Lindbergh Field study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 1990. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on December 5, 1990 and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained twenty-four proposed actions for noise mitigation both on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The overall program, therefore, was approved by the Assistant Administrator for Airports effective June 5, 1991.

Outright approval was granted for nineteen of the specific program elements. Five elements were

disapproved. The approved elements included expansion of nighttime restrictions, existing nighttime restrictions, prohibitions of nighttime engine tests or engine runups, pilot program of sound attenuation of one public public school, urge city of San Diego to prohibit incompatible land uses, encourage the city to review land use policies, study and upgrade the noise monitoring system, develop a data base on general aviation and commuter, maintain noise advisory committee, maintain noise information center, and its public records, continue to employ a noise information officer, regular meeting with commercial airline representatives, issue "best efforts on noise letter", continue to provide noise and aircraft operations related information, expand the quarterly reports, cooperate with city or county of San Diego public recognition program to airport users, cooperate with studies concerning air carrier service for the San Diego Region and program revisions.

These determinations are set forth in detail in a Record of Approval endorsed by the Assistant Administrator for Airports on June 5, 1991. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the San Diego Unified Port District.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 91-14617 Filed 6-18-91; 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 July 12, 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 May 24, 1991, Executive Committee Meeting Minutes; (3) Executive Director's report; (4) RTCA Special Committee activities report for May-June 1991; (5) Fiscal and Management subcommittee report; (6) Facilities Working Group report; (7) consideration of proposals to establish new special committees; (8) consideration of approval of special committee reports; (a) Special Committee 159 report: "Minimum Operational Performance Standards for Airborne Supplemental Navigation Equipment Using Global Positioning System (GPS)"; (b) Special Committee 142 report: Proposed DO-181A, "Minimum Operational Performance Standards for Air Traffic Control Radar Beach System/Mode Select (ATCRBS/Mode S) Airborne Equipment," incorporating changes no. 1, no. 2, and no. 3.; (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 June 12, 1991.

Clyde Miller,

Designated Officer.

[FR Doc. 91-14618 Filed 6-18-91; 8:45 am]

BILLING CODE 4910-13-M

Research and Special Programs Administration

International Standards on the Transport of Dangerous Goods; Public Meeting

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that RSPA will conduct a public meeting to report the results of the fourth session of the United Nations' Sub-Committee of Experts on the Transport of Dangerous Goods.

DATES: July 18, 1991 at 9:30 a.m.

ADDRESSES: Room 4234, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Frits Wybenga, International Standards Coordinator, Office of Hazardous Materials Transportation, Department of Transportation, Washington, DC 20590; (202) 366-0656.

SUPPLEMENTARY INFORMATION: This meeting will be held to describe the outcome of the fourth session of the Sub-Committee of Experts on the Transport of Dangerous Goods to be held July 1 to 12, 1991, in Geneva and to discuss the U.S. delegation's plans for participating in the Sub-Committee's fifth session to be held December 2 to 13, 1991. Topics to be covered include packaging and classification issues relating to explosives; performance packaging test requirements for non-bulk packagings; classification of specific dangerous goods; and other proposed amendments to the United Nations Recommendations on the Transport of Dangerous Goods.

The public is invited to attend without prior notification.

Documents

Copies of documents submitted to the fourth session of the UN Sub-Committee meeting and, when available, a copy of the report of the Sub-Committee may be obtained from RSPA for a nominal fee. A listing of these documents is available on the Hazardous Materials Information Exchange (HMIX), RSPA's computer bulletin board. Documents may be ordered by filling out an on-line request form on the HMIX or by contacting RSPA's Dockets Unit (202-366-4453). For more information on the use of the HMIX system, contact the HMIX information center; 1-800-PLANFOR (782-6367); in Illinois, 1-800-367-9592; Monday through Friday, 8:30 a.m. to 5 p.m. Central time.

After the meeting, a summary of the public meeting will also be available from the Hazardous Materials Advisory Council (HMAC), suite 250, 1110 Vermont Ave., NW., Washington, DC 20005; telephone number (202) 728-1460.

Issued in Washington, DC, on June 13, 1991.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 91-14512 Filed 6-18-91; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: June 13, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department

Clearance Officer, Department of the Treasury, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0173.
Form Number: 4563.
Type of Review: Extension.
Title: Exclusion of Income for Bona Fide Residents of American Samoa.
Description: Used by bona fide residents of American Samoa whose income is from sources within American Samoa, Guam, and the Northern Mariana Islands to the extent specified in Internal Revenue Code section 931. This information is used by the Service to determine if an individual is eligible to exclude possession source income.
Respondents: Individuals or households.
Estimated Number of Respondents: 100.
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping, 33 minutes
Learning about the law or the form, 5 minutes
Preparing the form, 25 minutes
Copying, assembling, and sending the form to IRS, 17 minutes
Frequency of Response: Annually.
Estimated Total Recordkeeping/ Reporting Burden: 135 hours.
OMB Number: 1545–0238.
Form Number: W–2G.
Type of Review: Extension.
Title: Certain Gambling Winnings.
Description: Internal Revenue Code section 6041 requires payers of certain gambling winnings to report them to the IRS. If applicable, section 3402(q) and section 3406 require tax withholding on these winnings. We use the information to ensure taxpayer income reporting compliance.
Respondents: Businesses or other-profit, Small businesses or organizations.
Estimated Number of Respondents: 3,283.
Estimated Burden Hours Per Response: 19 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 449, 223 hours.
OMB Number: 1545–1065.
Form Number: 9003.
Type of Review: Extension.
Title: Additional Questions to be Completed by All Applicants for Permanent Residence in the United States.
Description: Form to be used by the State Department and the Immigration and Naturalization Service to gather certain additional information on "green card" applicants for the IRS as required by section 6039E(b) of the Tax Reform Act. The answers will be transcribed into a data base for IRS computer processing.
Respondents: Individuals or households.
Estimated Number of Respondents: 650,000.
Estimated Burden Hours Per Response: 5 minutes.
Frequency of Response: When applying for green card.
Estimated Total Reporting Burden: 54,166 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,
Departmental Reports Management Officer.
[FR Doc. 91–14586 Filed 6–18–91; 8:45 am]
BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review.

Dated: June 13, 1991.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: None.
Type of Review: New Collection.
Title: Focus Groups on Unnecessary Filings.
Description: These focus groups will be conducted as part of IRS' implementation responsibility under OMB Circular A–132. IRS needs to explore public perceptions on why they file tax returns when not legally required to do so, and to develop methods to stop preparation of these returns.
Respondents: Individuals or households.
Estimated Number of Respondents: 500.
Estimated Burden Hours Per Response: 3 hours.
Frequency of Response: One-time.
Estimated Total Reporting Burden: 222 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitutional Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,
Departmental Reports Management Officer.
[FR Doc. 91–14587 Filed 6–18–91; 8:45 am]
BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

Dated: June 13, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Financial Management Service

OMB Number: 1510–0019
Form Number: 1133.
Type of Review: Extension.
Title: Claim Against the United States for the Proceeds of a Government Check.
Description: If a payee claims non-receipt of a Treasury check, the FMS–1133 claim form and a copy of the negotiated check are sent to the payee. If the payee wishes to claim forgery, he or she answers questions on the form, and signs and returns it to the Adjudication Division. Claims Examiners review the claim to determine final action on the case.
Respondents: Individuals or households.
Estimated Number of Respondents: 127,677.
Estimated Burden Hours Per Response: 10 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 21,323 hours

Clearance Officer: Jacqueline R. Perry (301) 436–6453, Financial Management Service, room B–101, 3700 East West Highway, Hyattsville, MD 20782.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 91–14588 Filed 6–18–91; 8:45 am]

BILLING CODE 4810–35–M

Customs Service

New Importer Identification Numbering System

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

ACTION: Notice of New Importer Identification Numbering System.

EFFECTIVE DATE: July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Entry Operations Branch, (202) 566–5307.

SUPPLEMENTARY INFORMATION: The Customs Service has undertaken a project to modernize the importer name, address and identification number file contained in our Automated Commercial System. A major objective of this project is to provide standardized data and uniformity of input into this file. A part of this project is the establishment of a new Customs assigned importer identification numbering system.

The Customs Service will implement a new Customs assigned importer identification numbering system on July 1, 1991. The new Customs assigned number will be automatically generated via the Automated Commercial System within Customs after an individual or business has made application for such a number on a Customs Form 5106.

In general, the new Customs assigned number will only be available to individuals and businesses which do not possess a valid Internal Revenue Service employer identification number or a Social Security number.

Pursuant to § 24.5, Customs Regulations (19 CFR 24.5), an importer is required by Customs to be identified by a specific number. There are three types of numbers currently used by the Customs Service for this purpose. They are either an Internal Revenue Service employer identification number, a Social Security number, or a Customs assigned number. Section 24.5 states:

> If an Internal Revenue Service employer identification number, a Social Security number, or both, are obtained after an importer number has been assigned by Customs, a new Customs Form 5106 shall not be filed unless requested by Customs.

Pursuant to 19 CFR 24.5(c), this public notice is to serve as the request by Customs to furnish either an Internal Revenue Service employer identification number or Social Security number for importers who have received a Customs assigned number. The position of the Customs Service is that each person who enters into a Customs transaction using an existing Customs assigned number shall update that identification number by furnishing the importer's Social Security number or Internal Revenue Service employer identification number within 30 days of receipt of such a number. The information should be furnished on a Customs Form 5106.

Each person who engages in a Customs transaction using a Customs assigned identification number issued prior to the new numbering system must update that identification number by furnishing a Social Security number or employer identification number if available. If a Social Security number or employer identification number is not available, application for a new Customs assigned number must be made on a Customs Form 5106.

Importers that need to obtain a new Customs assigned number (those that do not have an Internal Revenue Service employer identification number or Social Security number) are expected to obtain a new Customs assigned number and request that the old numbers be deactivated.

The format of the new Customs assigned number is YYDDPPNNNNN where YY is the calendar year of input, DDPP is the district and port code, and NNNNN is a sequentially system assigned number.

Because the importer identification number cannot be changed on a Customs bond using a rider, importers who have filed Customs bonds using a Customs assigned identification number must replace their existing bond, on their anniversary date, with a new bond and bond application using an Internal Revenue Service employer identification number or a Social Security number, or the importer must obtain a new Customs assigned number.

Customs expects a 1-year transition phase to accommodate all importers. During this period, Customs will allow for dual processing of old and new Customs assigned numbers.

A false statement contained on a Form 5106 may subject the filer to prosecution under the provisions of 18 U.S.C. 1001 or sanctions or penalties under other applicable laws or regulations.

This Notice supersedes the Federal Register Notice dated January 9, 1990, volume 55, number 6.

Dated: June 14, 1991.

Samuel H. Banks,

Assistant Commissioner, Office of Commercial Operations.

[FR Doc. 91–14603 Filed 6–18–91; 8:45 am]

BILLING CODE 4820–02–M

Internal Revenue Service

Establishment of Internal Revenue Service Information Reporting Program Advisory Committee

AGENCY: Internal Revenue Service, Treasury.

ACTION: Announcement.

SUMMARY: The Internal Revenue Service has established an Information Reporting Program (IRP) Advisory Committee. The primary purpose of this Advisory Committee is to provide an organized public forum for discussion of relevant information reporting issues between the officials of the Internal Revenue Service and representatives of the payer community. The Committee will offer constructive observations about the Internal Revenue Service's current or proposed policies, programs, and procedures in this area and, when necessary, suggest ways to improve the Information Reporting Program operation.

SUPPLEMENTARY INFORMATION: The Committee will report to the Director, Information Reporting Program, who is the executive responsible for information reporting and is charged with its system-wide planning and improvement. The Advisory Committee will be instrumental in providing advice to enhance the Information Reporting Program and achieve forms simplification and fairness to taxpayers. Increasing citizen participation in the planning and improvement of the tax system will help achieve the goal of enhancing voluntary compliance. Committee members are not paid for their time or services; but, consistent with Federal regulations, they will be reimbursed for their travel and lodging expenses to attend a two-day meeting twice each year.

The Internal Revenue Service is interested in representation from different areas of the payer community (e.g., banking, real estate, life insurance, securities, etc.). Anyone wishing to be considered for participation on the Advisory Committee should so advise the Internal Revenue Service. Please complete the following questionnaire and forward to Ms Susan Hinton, Staff

Chief, Information Reporting Program Planning Staff, at the address below.

ADDRESSES: Internal Revenue Service, 1111 Constitution Avenue, NW., EX:I:P, room 2011, Washington, DC 20224.

DATES: Completed questionnaires should be received by July 19, 1991. If you have already submitted an application, you do not need to reapply in response to this announcement. An acknowledgment letter will be sent upon receipt of your application.

FOR FURTHER INFORMATION CONTACT: Kate LaBuda at (202) 566–8542 (not a toll-free number).

Dated: June 3, 1991.

Susan Hinton,

Staff Chief, Planning and Management Staff, Information Reporting Program.

Interest Questionnaire—Information Reporting Program Advisory Committee

This questionnaire must be completed by anyone interested in becoming a member of the Information Reporting Program Advisory Committee. The form should be returned to Ms. Susan Hinton, Staff Chief, Information Reporting Program Planning Staff, Internal Revenue Service, 1111 Constitution Avenue, NW., EX:I:P room 2011, Washington, DC 20224, and must be received in that office by July 19, 1991. Applications received after this date will not be considered. If you have already applied, you do not need to reapply in response to this announcement. All applications received will be acknowledged. Questions should be directed to Kate LaBuda at (202) 566–8542.

1. Name:
2. Title:
3. Company or Organization Name:
4. Business Address:
5. Home Address:
6. Business Phone:
7. Home Phone:
8. Social Security Number (This is Reqired for a Tax Check):
9. Prior IRS employment (if applicable, please state position/s and title/s):
10. Professional credentials (e.g., Ph.D., CPA, Enrolled Agent, Attorney, Accountant, Tax Practitioner, Professor, etc.)
11. Which one professional credential most accurately describes your current professional activity?
12. How many years of experience do you have?

_____ Tax related (general)
_____ Information Reporting.

13. What most closely describes your *primary area(s)* of tax administration expertise? (Select no more than three.)

_____ Individual taxpayers
_____ Corporate taxpayers
_____ Small business taxpayers
_____ Minority taxpayers
_____ Employee plans
_____ General tax practice
_____ Information systems
_____ Rulings & Regulations
_____ International taxpayers
_____ Taxpayer service/assistance
_____ Compliance activities
_____ Exempt organizations
_____ Quality management
_____ Other (please describe below)

14. With which of the following information reporting groups does your business or organization most closely identify? (Select no more than three.)

_____ Banking
_____ Data processing
_____ Real estate
_____ Securities
_____ Large corporations
_____ Retirement groups
_____ Utilities
_____ Other (please describe below)
_____ Savings & Loans/Credit Unions
_____ Mortgage companies
_____ Life insurance
_____ Stock broker/Finan. planner
_____ State governments
_____ Trust companies
_____ Federal government agencies.

15. Summarize your background and identify organizations to which you belong and any leadership positions you have held. Please limit job and organization entries to five each (total of 10).

16. We would like you to propose two topic ideas that you would feel appropriate for discussion by the new Information Reporting Program Advisory Committee.

A. Suggested Topic:
Description (no more than two sentences):

B. Suggested Topic:
Description (no more than two sentences):

[FR Doc. 91–14643 Filed 6–18–91; 8:45 am]
BILLING CODE 4830–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Public Comments on U.S. Negotiations With the Republic of Poland in the Context of the Renegotiation of Poland's Terms of Accession to the General Agreement on Tariffs and Trade (GATT)

ACTION: Notice of request for comments.

SUMMARY: Notice is hereby given that the Trade Policy Staff Committee (TPSC) is requesting written comments on Poland's announced intention to renegotiate its Protocol of accession to the GATT and establish a GATT schedule of tariff concessions, and on the negotiations that are part of this process. Comments received will be considered by the Executive Branch in developing U.S. positions and objectives in the bilateral and multilateral negotiations that will take place in response to Poland's request.

DATES: Public comments are due by 12 noon, Friday, July 12, 1991.

ADDRESSES: Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Cecilia Leahy Klein, Director for GATT Affairs (202–395–3063), or Gordana Earp, Deputy Assistant USTR for East-West Trade Policy (202–395–3074), Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC 20506.

SUPPLEMENTARY INFORMATION:

1. Written Comments

The Chairman of the TPSC invites written public comments on issues to be addressed in the course of examination by the Contracting Parties (CPs) to the GATT of the request by Poland for renegotiation of the terms of its Protocol of accession to the GATT. In addition, public advice is sought concerning tariff concessions that might be requested as part of the negotiations. The TPSC is particularly interested in assessments of the impact on U.S. trade of recent Polish economic and trade reforms, on specific issues that should be addressed in developing new terms of Polish participation in the GATT, and on recent experiences of U.S. firms in trading with Poland.

Persons wishing to submit comments should provide a written statement, in twenty copies, by noon, Friday, July 12, 1991, to Carolyn Frank, TPSC Secretary, Office of the U.S. Trade Representative, room 414, 600 17th Street, NW., Washington, DC 20506. Non-confidential information received will be available for public inspection by appointment, in the USTR Reading Room, 600 17th Street, NW., room 101, Washington, DC, Monday through Friday, 10 a.m. to 12 noon and 1 p.m. to 4 p.m. For an appointment call Brenda Webb on 202–395–6186. Business confidential information will be subject to the requirements of 19 CFR 2003.6. Any business confidential material must be clearly marked as such on the cover page (or letter) and succeeding pages, and must be accompanied by a non-confidential summary thereof.

2. Background

On January 15, 1990, the Republic of Poland informed the GATT CPs of its desire to renegotiate the accession Protocol established on June 13, 1967, and to establish a tariff-based schedule of concessions to replace the original non-tariff provisions of Schedule LXV. Special Protocol terms were established for Poland in 1967 to protect GATT CPs from the unbalanced trade effects of non-market economic regimes. These special provisions included a selective safeguard clause, annual reviews of Poland's trade progress with GATT CPs, and provisions for the withdrawal of concessions if Poland's trade practices damaged the industries or trade of other CPs. In addition, and in lieu of tariff commitments that were meaningless under the economic and trade regime existing at the time of Poland's accession, Poland established a GATT schedule that bound Poland to fixed yearly increases in imports from GATT CPs. In the mid-1970s, Poland abandoned this import commitment. The GATT CPs declined to release Poland from its obligation, however, and Poland ceased consulting with GATT CPs concerning its conformity to the provisions of its Protocol and schedule. The safeguard mechanism, designed to permit the application of selective import restrictions by CPs against Polish exports proved cumbersome, and was seldom used. Poland's inability to meet its Protocol and schedule obligations, however, allowed other CPs, including the United States, to withdraw or withhold GATT benefits from Poland without violating their own GATT obligations.

Based on its conviction that recent reforms in its economic and trade regime have substantially eliminated the non-market, centrally planned economic system that made such special, non-market terms of GATT accession necessary, Poland now seeks to establish new terms of GATT participation that are like those traditionally negotiated with other CPs. A Working Party to examine this request, composed of interested GATT CPs was established in February 1990, and Poland circulated a description of its foreign trade regime in September 1990. The Working Party will examine Poland's current foreign trade regime, assess its consistency with GATT obligations, and submit recommendations to the GATT Council that may include a draft Protocol containing new terms of GATT participation for Poland.

As part of the renegotiation process, Poland will also initiate negotiations with interested GATT members to formulate a schedule of tariff concessions that may become part of its new Protocol, attached to the text of the General Agreement. Such concessions normally consist of tariff reductions and/or commitments not to increase tariffs above certain levels. Poland established its current applied tariff regime in 1988, but the rates applied were subsequently altered based on the rapidly changing needs of the Polish economy. Sudden internal economic and price reform, the sharp decline in commerce among the former members of the Council of Mutual Economic Assistance (CMEA) as Eastern and Central Europe converted fully to hard currency trade, and increased competition from imports as quantitative restrictions were eliminated created pressures first to suspend many existing tariffs, then to raise some of them. It is expected that Poland will soon establish a new applied tariff regime, which may be shaped by Poland's tariff negotiations with the GATT.

Poland is also engaged in negotiations with the European Communities (EC) to establish a broad agreement covering economic, cultural, political, and trade relations. Part of this agreement would be a free trade arrangement which would eliminate most tarriffs on trade between Poland and the EC over perhaps a ten year period, with Polish access to the EC market to be improved in advance of similar Polish liberalization. U.S. exports to Poland would continue to be subject to import tariffs and other border restrictions after such measures against EC exports had been eliminated.

If Poland establishes new terms of GATT participation closer to traditional Protocol provisions, Poland will be expected to conduct its trade policies in accordance with the rules set out in the General Agreement, and the terms of its Protocol. Basic GATT obligations include full transparency in trade regulation, national treatment for imported goods, non-discrimination among trading partners, the elimination of quantitative restrictions in trade and a reliance on tariffs, and observance of GATT rules on dumping, subsidies, customs procedures, and state trading. Poland's economic and trade regime must also be capable of responding to GATT provisions in a manner that grants other CPs reciprocal market access and fair trade standards in the conduct of GATT trade relations.

Authority: 15 CFR 2002.2.

Daniel F. Leahy,

Acting Chairman, Trade Policy Staff Committee.

[FR Doc. 91-14592 Filed 6-18-91; 8:45 am]

BILLING CODE 3190-01-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 118
Wednesday, June 19, 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).

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: June, 11, 1991, 56 FR 26849.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: June 12, 1991, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Number has been added to Item CAG–15 on the Agenda scheduled for June 12, 1991:

Item No., Docket No., and Company

CAG–15—Docket No. RP91–111–000, North Penn Gas Company

Lois D. Cashell,

Secretary.

[FR Doc. 91–14672 Filed 6–14–91; 4:45 am]

BILLING CODE 6717–02–M

FEDERAL HOUSING FINANCE BOARD

TIME AND DATE: 9:00 a.m. Tuesday, June 25, 1991.

PLACE: The Park Hyatt, 24th and M Streets, NW., Washington, DC 20037.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: The Board will consider the following:

1. 1992 Budget
2. Strategic Plan
3. Compensation Policy for Bank Presidents

The above matters are exempt under one or more of sections 552(c)(2), (9)(A) and (9)(B) of title 5 of the United States Code. 5 U.S.C. 552b(c)(2), (9)(A) and (9)(B).

CONTACT PERSON FOR MORE INFORMATION: Elaine Baker, Executive Secretary to the Board, (202) 408–2837.

J. Stephen Britt,

Executive Director.

[FR Doc. 91–14663 Filed 6–14–91; 4:55 pm]

BILLING CODE 6725–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m. Monday, June 24, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., 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: June 14, 1991.

William W. Wiles,

Secretary to the Board.

[FR Doc. 91–14685 Filed 6–14–91; 4:55 pm]

BILLING CODE 6210–01–M

FOREIGN CLAIMS SETTLEMENT COMMISSION

F.C.S.C. Meeting Notice No. 3–91

Notice of Meetings

Announcement in Regard to Commission Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date and Time	Subject Matter
Thurs, June 27, 1991 at 10:00 a.m.	Consideration of Proposed Decisions on claims against Iran. Hearings on the Record on objections to Proposed Decisions issued on claims against the Government of the Islamic Republic of Iran: IR–0123—Leslis F. Noell, Jr. IR–1886-Elga Skinders.
Thurs, June 27, 1991 at 2:00 p.m.*.	Oral Hearings on objection to Proposed Decision issued on claim for prisoner of war compensation under the War Claims Act of 1948: SPN–1868—Michael Joseph Bosiljevac, Dec'd.

* The hearing site will be: 601 D Street, NW., Room 10418 (Classroom B), 10th Floor, Patrick Henry Bldg., Washington, DC.

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 601 D Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 601 D Street, NW., Room 10000, Washington, DC 20579. Telephone: (202) 208–7727.

Dated at Washington, D.C. on June 17, 1991.

Judith H. Lock,

Administrative Officer.

[FR Doc. 91–14729 Filed 6–17–91; 12:08 pm]

BILLING CODE 4410–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, June 25, 1991.

PLACE: Conference Rooms 8A, B, C, Eighth Floor, 800 Independence Avenue, SW., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

5416B—Aircraft Accident Report: Northwest Airlines Flights 299 and 1482 (B–727 and DC–9), Detroit, Michigan, December 3, 1990.

NEWS MEDIA CONTACT: Brent N. Bahler Telephone (202) 382–6600.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: June 13, 1991.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 91–14689 Filed 6–17–91; 9:07 am]

BILLING CODE 7533–01–M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of a Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 C.F.R. Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 1:00 p.m. on Monday, July 1, 1991, and at 8:30 a.m. on Tuesday, July 2, 1991, in

Washington, D.C. The July 1 meeting, at which the Board will consider the Postal Rate Commission's May 24, 1991, Opinion and Further Recommended Decision in Docket No R90–1, is closed to the public. (See 56 FR 26457, June 7, 1991)

The July 2 meeting is open to the public and will be held in the Benjamin Franklin Room on the 11th floor of U.S. Postal Service Headquarters, 475 L'Enfant Plaza, S.W. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

Agenda

Monday Session

July 1—1:00 p.m. (Closed)

1. Consideration of the Postal Rate Commission's Opinion and Further Recommended Decision in Docket No. R90–1.

Tuesday Session

July 2—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, June 3–4, 1991.
2. Remarks of the Postmaster General. (Anthony M. Frank)
3. Status Report on the Strategic Plan. (Frank R. Power, Assistant Postmaster General, Planning Department)
4. Status Report on the Integrated Logistics Support System (ILSS). (William J. Dowling, Assistant Postmaster General, Engineering and Technical Support Department, and Jean J. Provost, Director, Office of Procurement and Supply Systems)
5. Briefing on the Expedited Mail Service Project. (Robert E. Michelson, General Manager, Expedited Mail Services Division)
6. Status Report on Olympic Sponsorship. (Deborah K. Bowker, Assistant Postmaster General, Communications Department)
7. Capital Investment. (William J. Dowling, Assistant Postmaster General, Engineering and Technical Support Department)
   a. Flats Sorting Machine—Flat Mail Bar Code Sorter Modification.
8. Tentative Agenda for August 8–9, 1991, meeting in Washington, D.C.

David F. Harris,

Secretary.

[FR Doc. 91–14761 Filed 6–17–91; 2:28 pm]

BILLING CODE 7710–12–M

Corrections

Federal Register
Vol. 56, No. 118
Wednesday, June 19, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[Docket No. 90927-1123]

Northeast Multispecies Fishery

Correction

In proposed rule document 91-12638 beginning on page 24169, in the issue of Wednesday, May 29, 1991 make the following correction:

On the same page, in the third column, in the first paragraph, in the fourth line, after "then to" insert the following, "42°11.0'N. Latitude, 70°04.0'W. Longitude; then back to".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP91-1957-000, et al.]

El Paso Natural Gas Co. et al.; Natural Gas Certificate Filings

Correction

In notice document 91-12064 beginning on page 23562, in the issue of Wednesday, May 22, 1991, make the following corrections:

1. On page 23565, in the third column, the first Docket No. for entry number 11 should read "CP91-1958-000".

2. On page 23566, in the first column, the Docket No. for entry number 12 should read "CI87-910-003".

BILLING CODE 1505-01-D

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 62

RIN 3067-AB68

National Flood Insurance Program; Assistance to Private Sector Property Insurers

Correction

In proposed rule document 91-11642 beginning on page 22670 in the issue of Thursday, May 16, 1991, make the following corrections:

§ Appendix B to Part 62 [Corrected]

1. On page 22674, in the first column, in paragraph a., in the fifth line "62.23" should read "62.63".

2. On the same page, in the same paragraph, in the sixth line "62.63" should read "63.23".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Employmnet and Training Administration

Job Training Partnership Act and Targeted Jobs Tax Credit; Lower Living Standard Income Level

Correction

In notice document 91-12464 beginning on page 24097 in the issue of Tuesday, May 28, 1991, make the following correction:

On page 24099, in the first column, in Table 1., the first entry under "Region" should read "Northeast".

BILLING CODE 1505-01-D

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 1 and 3

RIN 2900-AF09

Omnibus Budget Reconciliation Act of 1990: To Implement Provisions of Public Law 101-508

Correction

In rule document 91-12992 beginning on page 25043 in the issue of Monday, June 3, 1991, make the following correction:

On page 25043, in the third column, under "SUPPLEMENTARY INFORMATION:", in the second paragraph, in the second line, "28" should read "38".

BILLING CODE 1505-01-D

federal register

Wednesday
June 19, 1991

Part II

Department of Transportation

Federal Railroad Administration

49 CFR Part 240

Qualifications for Locomotive Engineers; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 240

[FRA Docket No. RSOR-9, Notice 5]

RIN 2130-AA51

Qualifications for Locomotive Engineers

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Final rule.

SUMMARY: FRA is establishing minimum qualifications for locomotive engineers. The rule requires railroads to have a formal process for evaluating prospective operators of locomotives and determining that they are competent before permitting them to operate a locomotive or train. The procedures would require that railroads (1) make a series of four determinations about a person's competency; (2) devise and adhere to an FRA-approved training program for locomotive engineers; and (3) employ standard methods for identifying qualified locomotive engineers and monitoring their performance. FRA is adopting this regulation to minimize the potentially grave risks posed when unqualified people operate trains.

DATES: *Effective Date:* The rule is effective on September 17, 1991.

OTHER DATES: (1) Compliance with the requirements for initially identifying supervisors of locomotive engineers and "grandfathered" certified engineers is authorized on and after the effective date and is mandatory for supervisors and locomotive engineers after October 31, 1991. Submission of programs adopted by individual railroads is mandatory by November 15, 1991 for Class I railroads; May 1, 1992 for Class II railroads; and November 1, 1992 for Class III railroads. Compliance with the requirements for the issuance of identification documents to all certified engineers is authorized on and after August 1, 1991 and is mandatory after December 31, 1991.

(2) Any petition for reconsideration of any portion of the rule must be submitted no later than 60 days after publication in the **Federal Register**.

(3) In a separate notice to be published shortly, FRA will announce the dates for conferences to be held in several cities for the purpose of acquainting the railroads, employees, and other interested parties with the requirements of the rule.

(4) Compliance with the record keeping and reporting requirements of this rule is authorized on or after the rule's effective date. See the Paperwork Reduction Act discussion below for additional information concerning mandatory compliance dates.

ADDRESSES: Any petition for reconsideration should be submitted to the Docket Clerk, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Richard M. McCord, Regional Director for Safety, FRA, Chicago, Illinois (Telephone: 312-353-6203); or Lawrence I. Wagner, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590 (Telephone: 202-366-0628); or Edward R. English, Director, Office of Safety Enforcement, Office of Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590 (Telephone: 202-366-9252).

SUPPLEMENTARY INFORMATION: Prior to 1970, FRA lacked the legal authority to issue regulations concerning the qualifications of locomotive engineers. However, the Federal Railroad Safety Act of 1970 ("FRSA") (45 U.S.C. 421, 431 *et seq.*) granted FRA regulatory authority over "all areas of railroad safety" and signalled that authority to include employee "qualifications * * * specifically related to safety." At that time, FRA's accident data indicated that its first priority should be track and equipment safety. Since then the mix of accident causes has gradually shifted. Accidents resulting from failure in human performance, although declining in absolute numbers along with all rail accidents, have increased as a percentage of all accidents and become the dominant cause of serious accidents.

Prior to 1988, FRA's analysis of accident data had not indicated that the agency's regulatory priorities should include adoption of locomotive engineer qualification standards. Even if FRA's analysis had so indicated, until very recently, FRA lacked the necessary tools to effectively regulate in this area. However, with passage of the Rail Safety Improvement Act of 1988 ("RSIA") (Pub. L. 100-342, 102 Stat. 624), FRA acquired enforcement authority over individual railroad employees. That authority was a practical necessity for the establishment of an effective locomotive engineer licensing or certification program.

Section 4 of the RSIA, adopted in the wake of the Amtrak/Conrail accident at Chase, Maryland, directed that FRA adopt appropriate regulations concerning the qualifications of locomotive engineers. Congress thus determined the existence of a safety need for such requirements and required that certain subject areas be addressed within those regulations. Section 4(a) of the RSIA provides in pertinent part as follows:

> (l)(1) The Secretary shall, within 12 months after the date of the enactment of this subsection, issue such rules, regulations, orders, and standards as may be necessary to establish a program requiring the licensing or certification of any operator of a locomotive, including any locomotive engineer, after the expiration of 12 months following the establishment of such program.
>
> (2) The program established by the Secretary under paragraph (1)—
>
> (A) shall be implemented through review and approval of each railroad's operator qualification standards;
>
> (B) shall provide minimum training requirements;
>
> (C) shall require comprehensive knowledge of applicable railroad operating practices and operating rules;
>
> (D) shall, except as provided in paragraph (4), require the consideration, to the extent information is available, of the motor vehicle driving record of each individual seeking licensing or certification under such program, including—
>
> (i) any denial of a motor vehicle operator's license by a State for cause within the previous 5 years;
>
> (ii) any cancellation, revocation, or suspension of a motor vehicle operator's license by a State for cause within the previous 5 years; and
>
> (iii) any conviction within the previous 5 years of an offense described under section 205(a)(3) (A) or (B) of the National Driver Register Act of 1982, and may, based on such driving record require disqualification of an individual or the granting of a license or certification conditioned on such terms as the Secretary may prescribe; and
>
> (E) shall require any individual seeking a license or certification under this subsection to—
>
> (i) request the chief driver licensing official of each State in which such individual has within the previous 5 years held a motor vehicle operator's license to provide information to his or her employer or prospective employer, or to the Secretary, as the Secretary may determine, with respect to such individual's driving record; and
>
> (ii) make the request provided for in section 206(b)(5) of the National Driver Register Act of 1982 for information to be transmitted to his or her employer, prospective employer, or the Secretary, as the Secretary may determine.* * *

The remaining provisions of section 4 establish detailed constraints on the use of motor vehicle operator licensing data and make changes to the National Driver Register Act of 1982 to afford individuals access to motor vehicle operator licensing information.

Thus, Congress did not require that FRA assume direct responsibility for the daily implementation of qualification requirements, providing instead that the program could be based on either

licensing or certification and that it "shall be implemented through review and approval of each railroad's operator qualification standards."

This final rule establishes requirements for (1) testing visual and aural acuity; (2) assessing training and knowledge and performance skills; and (3) evaluating past conduct. To minimize governmental intervention, FRA is adopting a certification process rather than a traditional government licensing system.

This final rule is not issued within the statutory deadline. Since enactment of the RSIA, FRA has conducted the ambitious regulatory program contemplated by that statute. The scope of that effort and the magnitude of the task involved in devising an appropriate qualification system for locomotive engineers made it impossible to meet the deadline. The number and the complexity of the issues in this proceeding required substantial time for both the NPRM and the final rule.

FRA's NPRM was published in the **Federal Register** on December 11, 1989 (54 FR 50890). Response to the NPRM from all segments of the railroad industry and the general public was extensive, generating in excess of 220 written comments and more than 1,000 pages of transcript reflecting testimony heard during very full days of public hearings. Virtually all commenters expressed negative views about one or more aspects of the proposal, and a number of commenters suggested that FRA withdraw this NPRM and then publish a significantly revised proposal. The nature and tone of many comments suggest significant misunderstanding of the proposal.

GENERAL SUMMARY OF THE COMMENTS

1. Issues of Terminology and Approach

Reaction to the NPRM

FRA's decision to employ the more expansive but unfamiliar term "locomotive operator" was misunderstood by nearly all commenters. FRA explained that use of the term "locomotive operator" was intended to communicate the application of the proposed rule to individuals identified by a wide range of job titles in the industry. However, some commenters perceived the term as denigrating the more traditional "locomotive engineer." In addition, many individual commenters believed that this rulemaking imposes undeserved "punishment" that is being imposed on all locomotive engineers for the aberrant behavior of a single person who caused the tragic accident at Chase, Maryland. Many commenters objected to the proposal as coming hard on the heels of other recently imposed burdens, such as random drug testing that may detect off-duty substance abuse and individual liability for civil penalties or disqualification (including a prohibition against tampering with locomotive safety devices).

FRA's decision to adopt a certification rather than a governmental licensing scheme generated additional confusion. Many commenters viewed FRA "certification" as unnecessary given existing railroad practices and as undue interference with management prerogative and with matters that rail management and labor have addressed in collective bargaining agreements. Commenters argued that FRA had a burden of proving that the existing system for qualifying engineers, which includes use of labor management agreements and long standing dispute resolution mechanisms, was deficient before FRA should disturb it. Many commenters did not perceive the difference between federally mandated qualifications standards and voluntary, collectively bargained arrangements which are subject to the Railway Labor Act ("RLA") (45 U.S.C. 151 *et seq.*).

In a traditional licensing scheme, a governmental agency is responsible for testing knowledge and performance skills; issuing licensing documents; revoking or suspending licenses; and processing reviews and appeals. Other issues, such as obtaining or retaining employment, seniority rights, or rates of pay, are not comprehended by the agency's licensing responsibility although the agency's decisions can have a direct impact on those job-related issues.

Apparently because FRA proposed a certification system rather than a traditional governmental licensing scheme, several commenters made inappropriate suggestions, for example, that FRA plan to bargain for testing conditions on individual railroads. One commenter, the Association of American Railroads (AAR), argued that no legal theory would support a conclusion that decisions by railroads to grant or withhold this "certificate" could ultimately become FRA's responsibility. Other commenters believed that FRA should not address topics already addressed in collective bargaining agreements and that FRA should have no regulatory provisions relating to "due process" considerations given the dispute resolution mechanisms of the RLA.

FRA's Response

FRA is electing to use the term "locomotive engineer," in which many commenters expressed pride, as urged by many commenters. Since there is some risk of confusion, FRA has included regulatory language to minimize that risk.

FRA also has decided to retain the "certification" option provided by the statute and not resort to a more traditional licensing scheme. FRA is opting for certification in large measure because it permits all parties to continue to rely on the promptness and efficiency of existing programmatic structures. These structures, which have evolved over many years on the individual railroads, have familiar procedures and are administered by experienced and knowledgeable personnel. Licensing, on the other hand, would generate a need to duplicate or replace, to some degree, the existing private sector system with a governmental system that might or might not operate with the same degree of promptness or economic efficiency. Creation of a governmental licensing system would also entail significant new agency costs that arguably would have to be shouldered by railroads under the user fees established by the Omnibus Budget Reconciliation Act of 1990 (sec. 10501, Pub. L. 101–508, 104 Stat. 1388). Perhaps because of such cost implications, few commenters urged that FRA substitute licensing for certification.

In a traditional governmental licensing scheme, such as those devised for the aviation and maritime industries, the licensing agency (a) sets criteria for eligibility; (b) evaluates candidates; (c) issues the necessary documents; (d) provides a system for assessing licensee performance; and (e) provides a mechanism for resolving disputes arising from decisions to deny or rescind licenses. The certification approach of this rule differs by making a railroad responsible for some of these functions. FRA is setting eligibility criteria but leaving it to railroads to evaluate candidates by those standards, affording railroads considerable latitude. Their discretion will extend to the design and administration of test and examination procedures. Railroads will be responsible for daily administration of the program, including issuance and retention of licenses. However, railroads will have limited authority to deny or revoke a person's certificate, and FRA will have responsibility for resolution of disputes arising from decisions to deny or rescind certificates.

FRA will exercise limited control in the daily administration of each railroad's program. Although the rule affords railroads considerable

discretion, FRA bears responsibility for the manner in which railroads exercise that discretion, since the performance of the railroads under this rule will determine whether its safety purposes are fulfilled. Until now, railroads and their employees could negotiate the terms of employment related to operation of a locomotive. This final rule signals a major change in the status quo. Determinations of qualifications must be accomplished under this rule, and the contractual consequences, if any, of those determinations must be sorted out separately. FRA's role will be to assure that the former are performed in compliance with the rule and to take appropriate remedial action if it detects noncompliance; however, it has no role with respect to the latter. (For example, FRA cannot order a railroad to alter its seniority rosters to accommodate a finding that a railroad wrongfully denied certification.)

This institutional arrangement is similar to those in other transportation modes where governmental bodies grant licenses to drive commercial trucks, fly commercial aircraft, or command commercial vessels. Those governmental actions are then givens that must be accommodated by employment contracts.

2. Appropriateness of the Approach

Reaction to the NPRM

Many commenters argued that FRA's proposal was unduly intrusive into the routine management of railroads and carried staggering cost implications. A common theme found in many of the comments was that FRA had failed to demonstrate a need for many aspects of the proposal. For example, many commenters argued that FRA failed to demonstrate a need to regulate the initial training of engineers, noting that FRA failed to cite accidents clearly attributable to specific weaknesses in existing training practices. Where commenters conceded the need to address a particular issue, they often viewed FRA's choice of remedy as unwise, *e.g.*, an overly simplified response to a complex situation, unwarranted constraint to future innovation, or unduly expensive.

FRA's Response

Questions about the need for, and kind of, Federal regulation are appropriate. Railroads have made unprecedented improvements in the safety of their operations in recent years. For example, since 1979 overall accident rates have declined 62.8 percent; track and equipment-related accidents have declined 75.2 percent; and on-duty fatalities for rail employees have declined 43.6 percent. No other mode of transportation approached this record of improvement during these years. Additional safety regulations will have economic consequences, and railroads are legitimately concerned about effects that additional costs can have on the industry's ability to compete for a share of the transportation market.

FRA understands these concerns; however, FRA's discretion in this proceeding is circumscribed by the Congressional determination that additional regulations are needed. As a result, this proceeding has deviated from FRA's usual regulatory practice. Normally, FRA commences with an analysis of accident data that defines a particular safety problem. FRA then reviews the options for solving that problem, and only when it is convinced that Federal rules are needed does FRA contemplate and devise a carefully focused regulatory solution. In devising that solution, FRA attempts to find the regulatory response that will produce an optimal ratio of benefits from the rule to costs associated with compliance. In this proceeding, however, FRA is constrained by the dictates of the RSIA: FRA must (i) approve the qualifications standards set by railroads for engineers; (ii) prescribe minimum training requirements; (iii) require comprehensive knowledge of relevant operating procedures; and (iv) provide for consideration of motor vehicle driving records. As required, FRA's proposal addressed these issues, but did not go beyond them.

FRA's consideration of these issues has benefited greatly from the comments made directly during this proceeding. FRA's overall design for the final rule and its particular provisions have been modified accordingly. In drafting this final rule, FRA has sought to simplify the proposal, avoid constraints to innovation, and promote a positive cost/benefit ratio.

3. Need for a Revised Structure

Reaction to the NPRM

Many commenters suggested that FRA issue a significantly revised proposal, expressing concern about the difficulty of responding to such a complicated proposal to which they objected in one or more ways.

FRA's Response

After reviewing all the comments, FRA has concluded that the NPRM identified all relevant substantive issues and the alternatives available for addressing them: therefore, FRA can in this final rule effectively address the legitimate problems and weaknesses found in the proposal, including those identified by the commenters. None of the comments challenge FRA's safety goals, raises previously unidentified problems, or provides previously unidentified and feasible alternative regulatory approaches to establishing qualification standards. Although it can be argued that a new NPRM could be of some benefit, FRA does not believe that further delay is warranted.

Design of the Final Rule

1. The Concept

A premise of FRA's proposed rule was that every engineer would be trained, tested, and evaluated using the same criteria, with some exceptions for operators of smaller trains at lower speeds. These criteria were distilled from FRA reviews of existing individual railroad programs for setting qualification standards. Rather than make a case-by-case evaluation and approval of individual railroad qualification systems, FRA proposed a general review and approval process. FRA's proposed rule design resembled the motor vehicle licensing scheme employed by state governments for issuance of commercial truck driver licenses.

In contrast to the proposed rule, the final rule takes a more individual approach that tracks the statutory language, *i.e.*, each railroad will formulate an individual program for setting qualifications standards and submit that program to FRA for approval. In formulating its program, each railroad will address specified subject areas while conforming to FRA-established criteria. Each engineer will then be evaluated in terms of meeting the qualification criteria thus established for each subject area.

2. The Regulatory Structure

FRA has reorganized the final rule to reflect this shift, resulting in five subparts rather than the ten found in the proposal. Three of the five subparts contain the major substantive provisions of the rule. One of these subparts provides the elements and the criteria for formulating an individual program concerning each of the subject areas. Another subpart provides for the process of implementing both the overall regulatory program and each of the individual railroad programs subsequent to their approval by FRA. A third subpart provides for the ongoing administration of the railroad programs.

3. Components of a Railroad's Program

FRA is requiring that each railroad adopt its own program for determining the qualifications of its engineers. That program must address the following subjects: (1) Selection of designated supervisors of locomotive engineers; (2) selection of the classes of service for engineers; (3) evaluation of the safety conduct of engineers; (4) evaluation of engineer hearing and visual acuity; (5) education of engineers; (6) testing of engineers; (7) operational monitoring of engineers; and (8) procedural aspects of the operation of the certification program. Each railroad will submit its program to FRA for approval. After approval, the railroad will evaluate every person the railroad wants to authorize to operate a locomotive and determine whether each person meets the qualification requirements to be a locomotive engineer on that railroad. If the railroad determines that the person meets the qualifications for a locomotive engineer, the railroad will certify that person as qualified and issue a certificate documenting that determination.

4. Reasons for Changing the Concept

FRA's proposed rule focused on the common denominators that exist for all railroads and all locomotive engineers. It proposed a qualification system that organized the certification process around the similarities that exist among railroads. FRA proposed gradations in the system only where there appeared to be a major difference that would form a logical basis for distinguishing between the qualifications needed to operate trains of given size and operational complexity. However, commenters repeatedly stressed the individuality of railroads and suggested a better approach to be to sanction individualized solutions on each railroad. Finding these views persuasive, FRA has reoriented its approach in the final rule to permit each railroad to retain its existing program, while bringing it into conformity with a federally established norm. This approach will allow individual programs to differ somewhat as appropriate, yet still result in consistent qualification standards for all railroads.

FRA discusses below the comments received in response to the NPRM, organized in the structure of the final rule. A brief synopsis of the relevant portion of the proposal precedes the discussion.

Requirements of the Final Rule

1. Designated Supervisors of Locomotive Engineers

FRA proposed that railroads be required to use a particular type of person, a designated supervisor of locomotive engineers, to make decisions about the performance skills of locomotive engineers. In FRA's judgment, it is difficult for anyone to evaluate those skills without having had substantial experience as a locomotive engineer; accordingly, FRA proposed that these designated supervisors have a minimum of three years of such experience. Commenters criticized this proposal on three grounds: (1) It failed to give sufficient recognition to the fact that simulator technology could play a very useful role in evaluating performance skills under the proper circumstances; (2) it constrained and might even prevent small railroads from using consultants to perform this function; and (3) it posed an unnecessary hardship for large railroads that had been restructuring their work forces.

In response, FRA has deleted the requirement of three years experience, requiring, instead, that railroads have a specific procedure for evaluating those it is considering designating as a supervisor of locomotive engineers. At a minimum, the procedure shall provide a mechanism by which the candidate for designation will demonstrate to the railroad that he or she has the requisite knowledge to perform this function and adequate supervisory experience both to evaluate a locomotive engineer's skills and, where necessary, to prescribe appropriate remedial actions to correct detected deficiencies. Railroads will have the freedom to use existing procedures, such as selecting experienced senior locomotive engineers with supervisory experience, and the power to create trainee programs that substitute training for experience. Since the procedure can be applied to consultants, small railroads lacking the resources to have a designated supervisor as part of its permanent staff can more easily comply with this regulation.

2. Classes of Service

FRA proposed to divide locomotive engineers into five categories corresponding to gradations of proficiency at handling trains of varying degrees of difficulty, addressing such factors as the number, nature, and placement of cars, the speed of the train, and the effect of terrain on train operation.

Commenters criticized the various category thresholds proposed by FRA. In general, commenters suggested changes that reflected the particular operations on their individual railroads, often urging a reduction in the level of training needed for particular classes of service.

In response, FRA is establishing three classes of service in the final rule: Student engineers, locomotive servicing engineers, and train service engineers. Railroads can use one or all of these classes of service. A railroad that does not have much occasion to move locomotives that are not hauling cars may not want to have locomotive servicing engineers as a class of service on that railroad. Likewise, a railroad that will not have occasion to educate student engineers may not have that class of service.

3. Safety Conduct of Engineers

FRA proposed a system for reviewing the prior safety record of persons seeking certification as a qualified locomotive engineer. Under that proposal, a railroad would have been required to review information concerning both the safety conduct of that person as a railroad employee and as a driver of motor vehicles. Specified types of poor safety conduct while driving a motor vehicle and while operating a locomotive were identified and assigned point values. To be eligible for certification, a person's total accumulated points from incidents in all contexts could not exceed a stated numerical value. Virtually every commenter objected to this scheme, maintaining that consideration of railroad employee conduct in this context is redundant, since railroads already consider it.

Commenters argued that FRA should avoid the motor vehicle issue altogether, asserting the irrelevance of motor vehicle driving data to the qualifications of locomotive engineers. However, Congress found otherwise, requiring in section 4 of the RSIA that consideration of such information be made part of this rule. The statute thus rendered moot further debate of this issue.

(a) Availability of Data

(1) *Motor Vehicle Operation.* Even those commenters who recognized the statutory mandate criticized FRA's proposal, some arguing that FRA had gone too far and others saying not far enough. Some commenters invoked the legal concepts of *ex post facto* laws and double jeopardy, while others decried the lack of a provision for remedial efforts such as attendance at driver

education programs. Others noted that some individuals who use public transportation have no motor vehicle driving record, while still others objected to the weighting of various events under the proposed point system and expressed fear that inequitable enforcement of motor vehicle laws could result in loss of employment.

Many commenters suggested that FRA conduct a study to gain some better insight into the relationship between motor vehicle record data and railroad train operation data before taking final regulatory action. During the public hearings and in written comments, a number of railroads and representatives of several labor organizations indicated they would be willing to assist in the conduct of such a study. Such willingness was predicated on the study being conducted in a scientifically valid manner that respected the privacy of individuals who would provide access to the records being studied.

FRA agrees and has decided to defer most aspects of its proposed eligibility criteria predicated on motor vehicle driver data until completion of such a study, which FRA anticipates can be completed within one year. After completion, FRA will then determine the appropriate course of action.

This decision does not, however, apply to the aspect of FRA's proposal concerning motor vehicle data involving alcohol and drug incidents. Most commenters acknowledged that driving under the influence of alcohol or drugs could be relevant to a person's qualification to be an engineer. Consequently, FRA has retained the portion of the proposed rule that requires evaluation of motor vehicle incidents involving alcohol or drugs. As discussed below, FRA's requirements concerning this data have been modified from those initially proposed.

(2) *Train operation.* FRA has been acquiring data on the causes of train accidents for many years. Railroads have been required since 1975 to report rail equipment accidents and incidents that exceed a dollar threshold set forth in its regulations (49 CFR part 225). Except for revisions to this threshold, FRA's accident reporting requirements have remained essentially the same for many years.

As part of those reporting requirements, railroads must use one of the cause codes listed in the "FRA Guide for Preparing Accident/Incident Reports" to indicate what the railroad has determined to be the cause of each reportable accident. An extensive list of cause codes is provided to segregate accident data into relevant analytic groupings. FRA looked at twenty of those cause codes that reflect poor safety performance by a locomotive engineer. FRA identified 6,990 train accidents during the period 1977–1987 that were reported as attributable in whole or in part to one of those cause codes. Those cause codes indicate instances in which a locomotive engineer failed to properly use the train's brake systems, failed to control train speed, failed to obey signal indications, entered track without authority, or failed to operate the train safely in a variety of other ways.

Among the more notable of these accidents were the following: The train handling derailment at Thayer, Iowa on October 17, 1985; the overspeed derailments at Sanataria Springs, New York on March 22, 1985, Crooks, Oregon on November 25, 1985, and Pittsburgh, Pennsylvania on April 11, 1987; the collisions resulting from failures to obey signal indications at Palmer Lake, Colorado on May 27, 1983, Montello, Nevada on June 22, 1985, Lockair, Georgia on November 8, 1985, Bunnell, Florida on April 11, 1987, and Nugget, Wyoming on November 8, 1987; the unauthorized track occupancy collision at Broomfield, Colorado on August 2, 1985; the improper train operation collisions at Eldon, Texas on November 19, 1983, and Marquette, Iowa on February 2, 1985; and of course the multiple failures at Chase, Maryland.

Given the events that preceded the enactment of the RSIA, the kind of accident data just summarized, and FRA's basic safety mission, FRA must address the safety conduct of those seeking certification as a locomotive engineer.

As noted in the NPRM, detailed analysis of the data concerning those nearly 7,000 accidents is difficult, since FRA lacks specific information for each one. Thus, although the cause codes are helpful, the locomotive engineers' actions could have a wide variety of explanations.

FRA has acted to reduce this problem in the future by revising its procedures for investigating train accidents and by amending its accident reporting rules to provide railroad employees, including locomotive engineers, with a mechanism for supplementing the information being furnished FRA (55 FR 37818). Since December 1, 1990, when a railroad characterizes an accident as having been caused in whole or in part by the act, omission, or physical condition of an engineer, the railroad must notify the engineer of that fact and of his or her right to submit a statement to FRA to supplement the railroad's report. A copy of that statement must also go to the railroad and, if the railroad receives such a statement, the railroad must correct any deficiencies in its report to FRA.

(b) Conclusions Based on the Data

FRA believes that the poor safety performance by locomotive engineers reflected in the accidents data it studied stemmed from either some lack of or failure to employ knowledge, skill, or ability.

The provisions in this final rule concerning the training and testing of locomotive engineers respond to the first problem. By requiring that engineers be trained and that they demonstrate their knowledge, skill, and ability, this rule should reduce the number of accidents attributable to this deficiency. FRA's intent is to prevent recurrence of such accidents as the head-on collision at Randles, Missouri in 1982, the derailment at Missouri Valley, Iowa in 1980, the derailment at Crestview, Florida in 1979, and the head-on collision at Lake Point, Utah in 1977.

Failures to apply acquired knowledge, skill, or ability in a specific situation arise from distortions in engineer judgment, generally induced by abuse of alcohol or drugs, stress and fatigue, or lack of routine vigilance.

(1) *Alcohol and drug abuse.* In 1985 FRA issued its rule on the control of alcohol and drug use by rail workers (49 CFR Part 219), which prohibits possession and/or use of alcohol and controlled substances when assigned to perform service covered by the Hours of Service Act. In addition, the rule prohibits reporting for, going on, or remaining on duty while under the influence of or impaired by alcohol or a controlled substance. In response to the RSIA, FRA has included provisions in this final rule requiring consideration of instances of operation of a motor vehicle while under the influence of or impaired by alcohol or a controlled substance.

(2) *Stress and fatigue.* For several reasons, FRA is not addressing accidents that arguably arise from stress and fatigue. First, the hours that railroad employees may be on duty are controlled by the Hours of Service Act (45 U.S.C. 61–64b), which does not give FRA authority to prescribe through regulation the appropriate tour of duty limitations or rest intervals for locomotive engineers. In 1990, the Department submitted proposed legislation that would have given FRA regulatory authority over this area.

Even if FRA had such authority, it now lacks sufficient information to appropriately regulate the hours of duty of locomotive engineers. Accordingly, FRA is conducting research to gain more

understanding of sleep deficiency problems for rail workers. Building on efforts of other modal administrations, FRA is designing methods for scientifically testing the degradation in locomotive engineer performance and vigilance due to fatigue. Once effective tests are devised, they will permit FRA to use locomotive simulators to effectively measure skill performance degradation under varying levels of fatigue.

FRA is also studying the issue of how the work schedules of locomotive engineers are determined. Since there is very little documentation on this subject, this study seeks to determine how locomotive engineers are currently being scheduled for work, why there is so much unpredictability in those schedules, how various aspects of current practices contribute to stress and fatigue, and what options exist to improve matters. After such studies have been completed, FRA will consider whether to address this issue in an amendment to this rule.

(3) *Lack of routine vigilance.* Although some accidents can be attributed to fatigue and improper use of controlled substances, others are caused by a lack of routine vigilance by locomotive engineers. By requiring that engineers be periodically monitored and provided remedial training when appropriate, this rule should help reduce such accidents. FRA rejects commenter suggestions that this rule be silent on the issue of poor safety conduct by locomotive engineers.

(c) The Final Rule's Provisions on Safety Conduct

This final rule requires that each railroad adopt procedures for reviewing and evaluating the safety record of each candidate to determine whether he or she is eligible to be a certified locomotive engineer. The procedures shall include evaluation of information concerning the person's prior safety conduct as a railroad employee and the person's prior safety conduct as an operator of a motor vehicle. To the extent that the candidate controls access to the information that will form the basis of the evaluation, FRA is imposing a duty on the candidate to furnish that information or access to that information to the railroad.

FRA is modifying its proposal significantly. As previously noted, one change involves deferring a decision concerning the use of non-alcohol and drug related motor vehicle licensing information. FRA has also made changes to respond to commenter concern that FRA's proposal could be implemented in a manner that would not be in harmony with FRA's existing rules for controlling substance abuse by railroad workers. In view of several factors, including the decision to defer implementation of some aspects of the motor vehicle operator data pending completion of a study and the need for better integration of its alcohol and drug rules, FRA has decided not to employ the specific point system proposed in the NPRM.

The risk posed by misuse of alcohol and drugs appears in two distinct forms: (1) Substance abuse disorders that are illnesses; and (2) specific instances of inappropriate conduct, such as prohibited use or possession of alcohol or drugs on the job or operation of motor vehicles under their influence, that may suggest a proclivity for reckless conduct in the future. For any given period of time, one form of risk may exist without the other as to any individual. For instance, an employee may use marijuana on the job without having a chemical dependency; or a person who is in an incipient stage of cocaine dependency may manage to resist using the drug while on the job and function normally for a time, until the disordering effects of the drug lead to an unsafe practice. Both forms of risk must be addressed; and, with respect to specific instances of conduct, it may be pertinent whether the conduct occurred within the regulated occupational context.

(1) *Substance abuse disorders.* Whenever a safety-sensitive employee acquires a substance abuse disorder, the risk increases significantly that the physical or psychological dependence, and loss of control often associated with such disorders, will lead the person to appear on the job significantly impaired. Impairment may result from the acute, chronic, or withdrawal effects of the drug (including, for this purpose, alcohol). See, *e.g.*, 53 FR 16640, 16641–16644 (May 10, 1988). Though many who are in the process of developing a chemical dependency will resist use of drugs in the work environment in order to avoid detection and protect their source of income, in the later stages of the disorder this will often prove impossible. Even if drugs are not actually ingested on the job, their effects may be substantial.

Having a substance abuse disorder is not "conduct" properly punishable under any scheme of regulation. A substance abuse disorder may be acquired without violating any law (*e.g.*, alcoholism) and even as a result of misguided medical treatment. However, this status does render the individual unsuitable for safety-sensitive responsibilities during the period the disorder is active (*i.e.*, while drug intake continues and until post-cessation symptoms have been treated). This is a principle that is already embodied in a variety of Federal regulations analogous to this final rule. See, *e.g.*, 49 CFR 391.41 (motor carrier drivers); 14 CFR 67.13 (pilots).

FRA has previously required successful treatment of substance abuse disorders prior to return to service, where chemical tests indicate violation of alcohol or drug use prohibitions and in certain other circumstances. 49 CFR 219.104(d), 219.405. In providing for certification of engineers pursuant to the mandate of the statute, FRA bears a special responsibility to ensure, to the extent practical through regulatory action, that these individuals are free of active substance abuse disorders. The final rule therefore treats an active substance abuse disorder as a condition rendering the person ineligible to hold a certificate. Following successful completion of primary treatment, the individual is entitled to conditional certification. Where the individual self-refers without prompting under the voluntary referral provision of the FRA alcohol/drug regulations (49 CFR 219.403), confidentiality is maintained and there is no effect on certification status provided the engineer follows through with the recommended course of treatment.

(2) *Motor vehicle data.* Information concerning the non-occupational conduct of the candidate for certification, such as that required to be provided with respect to motor vehicle driving history, has possible significance both with respect to the presence of a substance abuse disorder and with respect to a habit or unpredictable pattern of reckless or irresponsible behavior that may carry over into railroad duties. As explained above, FRA has determined that the weight such information should be given as "unsafe conduct" will be the subject of further study.

However, information such as convictions for drunk or drugged driving also raises the question whether the individual has an active substance abuse disorder. This question may be rather urgent, as in the case of an employee who has been convicted twice in the recent past in incidents involving extremely high blood alcohol concentrations. At the other extreme, the information may be consistent with a single incident almost three years prior involving a somewhat lower level of alcohol. The important point is that the information should be considered, along with the railroad service record (attendance, job-related problems, medical problems, etc.), in the context of

a clinical evaluation of the employee by an appropriate professional.

Accordingly, the rule provides that any conviction for a specified alcohol/drug offense that occurs during the 36-month period prior to certification will result in an evaluation by an "EAP Counselor" to determine whether the person has an active substance abuse disorder. In this setting, the motor vehicle information is merely a factor to be considered and does not, by itself, dictate any outcome.

(3) *Role of the EAP counselor.* The "EAP Counselor" is a concept derived from the FRA alcohol/drug rule (49 CFR part 219) and refers to an appropriate professional who will be responsible for conducting the evaluation and (in words suggested by a commenter) "managing an appropriate treatment plan." As a practical matter, most large railroad systems will likely employ their salaried or contract employee assistance program (EAP) counselors to perform this function. These individuals have extensive experience in evaluating employee substance abuse problems, referring those individuals for appropriate treatment, and monitoring progress after return to service. Their extensive clinical experience and knowledge of the railroad occupational environment make employee assistance counselors a major asset that must be utilized for substance abuse case management. However, any qualified person, such as a physician with knowledge and experience in the field of substance abuse disorders (*e.g.*, a Medical Review Officer), a certified alcohol/drug counselor working in the community, a psychologist with experience in treating substance abuse disorders, etc., could perform the "EAP Counselor" function with respect to evaluation of the substance abuse disorder. It is intended that the EAP Counselor be able to draw upon the usual sources of assistance for this purpose from the health care and mental health communities. Similarly, a qualified person who is reasonably familiar with the particular railroad occupational environment should be capable of managing aftercare.

Certain commenters in this proceeding suggested that FRA should require certification of EAP counselors for this purpose. FRA recognizes that occupational substance abuse professionals providing services to the railroads are drawn from a wide range of backgrounds and differ in education, experience, and formal credentials. FRA believes that it should be the railroad's responsibility to identify and employ (or contract with) appropriately qualified persons to perform this function, taking into consideration any applicable state requirements. This may mean that the person designated as EAP counselor will need to draw upon diagnoses from other professionals in making a final evaluation; or, with respect to a particular case or category of cases, the function itself may need to be transferred to an appropriate professional with specialized knowledge concerning the particular disorder.

FRA does not believe it is the role of a safety regulatory agency to govern provision of these services through a specialized credentialing system. Given the increasing reliance on contract services in the railroad industry and the number of regional and short line railroads that must obtain these services from local contract sources, it does not appear practical to insist on creation of a new substance abuse specialty within the several health care and mental health fields that provide these services. However, FRA is contributing to the augmentation of employee assistance personnel skills in the railroad industry by sponsoring the development of a flexible curriculum model for EAP personnel serving the railroad industry. This effort, which will be founded on a counselor curriculum developed by the National Institute on Drug Abuse, is intended to supplement the extensive educational and training opportunities available from other sources and to provide a bench mark that railroads can employ in providing supplemental and continuing training for salaried personnel and contract personnel who handle railroad employee referrals.

(d) Misuse of Alcohol and Controlled Substances as Conduct

Quite apart from the presence or absence of an active substance abuse disorder, it is critical both to the success of substance abuse prevention and treatment and to the safety of railroad operations that safety-critical personnel be held accountable for the prohibited use of alcohol and controlled substances.

Section 219.101 of current FRA regulations prohibits engineers and other Hours of Service employees from going or remaining on duty while using, possessing, or being under the influence of or impaired by alcohol or a controlled substance or while having a blood alcohol concentration of .04% or more. Section 219.102 prohibits the same individuals from using a controlled substance without specific medical authorization, whether on or off duty. FRA has previously left to the railroads the responsibility for assessing discipline based on violations of these regulations, subject to minimum standards for evaluation, testing and return to service (§ 219.104(d)). This flexibility has generally permitted employers to fashion appropriate responses within the overall employment context, including labor agreements and cooperative programs that seek to involve employees in substance abuse prevention (*e.g.*, Operation Red Block, Operation Stop). However, this flexibility has also led to a wide range of employer responses to individual cases and carries the risk of permitting individual arbitrators to impose a wide range of sanctions. Further, it may be possible for a person dismissed from one railroad to go to work in a similar position with a second railroad. Accordingly, with the onset of Federally-mandated certification of locomotive engineers, it will be important to establish standards for revocation of certificates—without prejudice to the ability of railroad management to impose more severe discipline.

It is useful to re-emphasize for purposes of this discussion that the revocation periods provided in the final rules are minimum periods for revocation of the locomotive engineer certificate. However, holding a certificate does not create an entitlement to employment as an engineer—it merely establishes eligibility to perform certain duties insofar as the Federal regulations are concerned. An employee may be eligible under the regulations, but unqualified under a more stringent company policy. If the employee is unqualified under company policy and the company therefore elects not to consider an application for certification or recertification under the Federal rule (*i.e.*, since any certificate action would have no practical meaning), then it will be critical for the company to clearly state that company policy is the basis of its action.

This final rule includes specific standards for revocation periods that are intended to ensure adequate minimum sanctions without disrupting other countermeasures currently in place. In general, first-time violators of § 219.102 (prohibited use of controlled substances) would be handled in the same manner required in the FRA alcohol/drug regulations. Subsequent violations would require specific revocation periods. First-time violators of § 219.101 (on-duty use, possession, impairment, BAC .04% or more) would be subject to revocation for 9 months, the same period employed in the alcohol/drug rule for refusal of an FRA

mandated chemical test. Those standards are discussed more fully in the section-by-section analysis below.

(5) *Unsafe operation of trains.* Commenters objected to the proposal to hold engineers accountable for unsafe operation of trains, arguing that such a rule would be redundant given the railroads' existing disciplinary system or that, if promulgated, such authority should only rarely be exercised. Several of the Class I railroads argued that FRA has a duty under section 202 of the FRSA to prove that the existing private system for responding to unsafe train operation behavior is flawed before FRA has the legal authority to intervene. They also argued that, even if FRA has the authority, as a matter of policy it should not intervene given the likely complication and confusion that would result. Some commenters expressed concern that the proposal made inadequate allowance for remedial actions and prescribed unduly harsh consequences for unsafe behavior.

A premise of the comments was that the existing system effectively responds to unsafe operation of trains. As noted in the NPRM, FRA has found little evidence supporting or negating that proposition. As FRA's routine investigatory efforts, anecdotal information, commenter responses, and industry literature indicate, administration of the current system is not uniform, *i.e.*, industry handling of alcohol and drug incidents leads to a wide range of responses to similar cases.

FRA recognizes that devising a comprehensive means of responding to operational misconduct by locomotive engineers would require extensive additional study. However, as indicated in the NPRM, FRA data show that noncompliance with five types of railroad operating rules generated a significant portion (more than 5,000) of the 6,990 train accidents described above. The five types of rules are those: (1) Requiring adherence to signal indications; (2) limiting train speed; (3) prescribing operation of the train and engine brake system so as to safely control train operation; (4) prohibiting occupying a track without authority; and (5) prohibiting the unauthorized nullification of locomotive-mounted safety devices.

Given their accident-causing potential, FRA has selected these five kinds of misconduct as requiring attention under this certification program. As noted earlier, FRA's proposed point system was criticized by commenters as faulty. FRA agrees and has amended that approach in this final rule.

FRA's response to unsafe operational conduct by locomotive engineers rests on several policy considerations. First is the need to incorporate sanctions to deter future unsafe conduct. At the same time, we need to account for the fact that unsafe conduct may represent a rare lapse of judgment or may demonstrate a need for supplemental training. As pointed out by commenters, FRA's rule also needs to avoid conflict with its existing rules controlling alcohol and drug use by locomotive engineers. Finally, FRA's rule must recognize the railroads' primary role in detecting the evidence of unsafe conduct, assessing its adequacy, and pursuing appropriate action.

Under the revised approach adopted in this final rule, a railroad's finding that an engineer has failed to comply with one of the five types of safety rules will have two consequences: (1) Revocation of the engineer's certificate for 30 days; and (2) initiation of a probationary period of three to five years during which the engineer will suffer increasingly severe sanctions in the event of additional rules violations. If a second event occurs within three years, the period of mandatory revocation will increase to one year. If a third event occurs within five years, the revocation period increases to five years. After three years with no additional rules violations, a second incident would not result in the one-year revocation. However, that second incident would start a new three-year period within which a second incident would generate a one-year revocation. Moreover, both events would be relevant if a third incident occurs within five years of the first.

FRA has also revised its proposal to mandate responses to alcohol and drug incidents of on-duty possession, use, and impairment. These responses are integrated into the unsafe conduct provisions just described and are fully consistent with FRA's current rules concerning the control of alcohol and drug use by railroad workers.

The revocation periods in this rule have been set so as not to cause unduly harsh punishment in the routine administration of this rule. FRA recognizes that punishment may not always be an appropriate response to the types of conduct addressed in this rule. Particularly flagrant noncompliance, especially that which produces severe consequences, may warrant very serious sanction. Of course, where violations of Federal rules have occurred, FRA may assess civil penalties or disqualify employees from safety-sensitive service. These issues are discussed more extensively in the section-by-section analysis below.

4. Evaluation of Engineer Hearing and Visual Acuity

FRA proposed hearing and visual acuity testing based on standards similar to those found in other transportation modes, published FRA research, and recommended industry guidelines.

Commenters raised four objections to FRA's proposal. As with other aspects of the NPRM, some commenters argued for no action on this subject because of existing practices on a given railroad or group of railroads. Others suggested different acuity standards. Still others urged discretion to permit individualized assessments of acuity. Finally, some commenters wanted greater freedom in selecting ways to accomplish FRA's stated goals. Discussion of this last issue is deferred to the section-by-section analysis below.

FRA has rejected the suggestion that this rule remain silent on the question of physical capacity. As explained in the NPRM, this regulation needs to address a person's physical capacity to serve as an engineer. The absence of reliable scientific data supporting commenter-suggested substitute acuity thresholds means we have no basis for altering those proposed. However, several commenters did provide evidence that supports affording railroads more discretion.

FRA's proposed rule contemplated that there would be few instances of failure to meet the criteria and that in those few cases most candidates could otherwise demonstrate an ability to safely perform as a locomotive engineer. Thus, FRA believed the agency could directly resolve the matter through its own waiver process. Commenters indicate that more than a few instances exist. For example, several commenters cited a number of individuals with only one functioning eye who have learned to adjust for the resulting loss of depth perception and can safely operate locomotives. Commenters from the medical community agreed with FRA's basic theory that individualized evaluations were needed in instances where a person's acuity levels were below the stated minimum, but urged that FRA afford railroads discretion to make those medical judgments. After review of the comments, FRA has decided to afford railroads such discretion in this final rule. Medical discretion will allow railroads to respond appropriately when they encounter individuals who fail to meet the FRA-prescribed acuity levels, but

demonstrate that they can compensate to a sufficient degree for their diminished acuity level.

If in the professional judgment of the railroad's medical officer a person not meeting FRA standards can safely perform the tasks of a locomotive engineer on that railroad, the railroad is authorized to certify that person as a locomotive engineer. The medical officer can, if necessary, impose conditions on the service that person is permitted to perform. Although not raised by commenters, FRA's revised approach to this issue is consistent with the spirit of the recently enacted Americans with Disabilities Act (Pub. L. No. 101-336, 104 Stat. 329 (1990)).

FRA received a number of comments about a perceived unfairness of the proposed rule concerning its contemplated requirement for hearing acuity. Several commenters asserted that there has been serious degradation in the hearing acuity of engineers resulting from exposure to high noise levels in locomotives cabs. FRA is portrayed in these comments as having failed to correct this situation and thus as being responsible to some degree for creating potentially disqualifying hearing impairment of people seeking to be certified. This generated a demand that FRA defer action on hearing acuity until it acts to lower the noise levels found in locomotive cabs.

However, FRA does have noise standards for locomotive cabs (see 49 CFR 229.121). The permissible noise exposure levels are consistent with those formulated by the Occupational Safety and Health Administration (OSHA) and have been in effect for more than ten years. The issue of hearing degradation attributable to cab noise levels was extensively discussed and resolved in the regulatory proceedings that led to the adoption of those standards. To date no party has provided a valid basis for suggesting that FRA should alter those noise exposure thresholds. Thus, FRA does not agree that it should defer action until it lowers exposure levels. Moreover, as pointed out in the proposed rule, there is a need to ensure that engineers have the appropriate level of hearing so that they can safely operate trains. Those who want more information on this topic are referred to FRA's final rule published on March 31, 1980 (45 FR 21092).

Commenter concern over these issues has led FRA to conclude that the agency should sponsor a technical conference on the acuity standards being adopted in this rule. Notice of that conference will be provided in the Federal Register.

5. Education of Locomotive Engineers

FRA proposed to regulate both the initial training of persons new to locomotive operation and the continuing education of experienced engineers. FRA proposed detailed rules for initial training and more limited, but no less controversial, rules for continuing education.

A number of commenters objected to the detailed requirements for railroads' initial training programs in the proposal. Small railroads were concerned about the apparent cost of compliance. Comments on the proposed continuing education requirement were critical of the provisions relating to maintaining familiarity with the physical characteristics of the territory. Some commenters saw FRA as unduly restrictive by requiring actual train operation over the territory. Others saw the number of trips specified as too few or too many depending on the physical configuration of the territory. These provisions were generally viewed as too costly.

In response to the comments, FRA has changed the proposed rule to allow railroads greater discretion to design their own course of study for the initial training of locomotive engineers, specifying only the general subject matter to be covered. The final rule will thus accommodate those railroads already developing new programs, *e.g.*, using computer-based training techniques or advanced train control systems that will change the knowledge and skill required of engineers. Smaller railroads will also be afforded the latitude to tailor their programs to meet their more limited needs.

Similar changes providing significant discretion have been made with respect to continuing education of engineers. To assure engineer familiarity with a territory, railroads will have the freedom to select the interval at which familiarization must be provided and the authority to use a variety of methods (*e.g.*, hi-rail trips, simulators, and films of the right of way) to keep their engineers conversant with the physical characteristics of the territory they can be called to operate over.

In reviewing the railroads' individual programs, FRA will consider the degree to which each deviates from the norms established by this final rule. Where a program deviates materially, FRA will focus on the rationale for the alternative approach and evaluate the degree to which that approach is likely to produce locomotive engineers with the knowledge, skill, and ability to safely operate trains.

6. Knowledge and Skill Testing of Locomotive Engineers

FRA proposed requiring periodic knowledge and skill performance testing of locomotive engineers. The proposal prescribed the subject matter to be covered, the manner of administering the test, and the consequences of failure.

Some commenters viewed these requirements as redundant, given existing railroad operating rules examinations. Commenters objecting to FRA's limitations on the manner for administering the knowledge test took exception to the number of questions criteria, to the passing score requirements, and to taking written tests without reference materials available. Commenters objecting to FRA's skill performance test were concerned about the consequences of failure.

The concern about redundancy appears to rest on an assumption that the FRA knowledge tests would add yet another tier of examinations to existing periodic rules testing. However, FRA does not anticipate a new tier of tests; instead, FRA expects that railroads will modify their existing periodic rules examinations to include the subject matter specified by FRA to the extent those subjects are not covered by existing tests.

Other commenter criticisms are well taken. FRA agrees that there is no particular value in employing a 150-question test rather than a test with 300 or 100 questions. Similarly, no compelling rationale supports setting 85 percent as the passing grade. There is, however, substantial value in requiring that written objective testing be conducted and that tests be conducted without immediate access to reference materials. Engineers must have effective reading skills to comprehend the myriad written instructions they are given to ensure the safe operation of trains. Tests must be conducted fairly and be reviewable. These are objectives most likely to be achieved through the use of written examinations. Prohibiting immediate access to reference materials assists railroads in determining whether candidates are familiar with the rules and comprehend them. In most situations an engineer will not have time to consult a rule book before taking action to safely control his or her train. However, FRA agrees that a railroad test intended to evaluate an engineer's ability to use reference materials requires access and the rule has been modified to accommodate such testing.

Response to FRA's proposed consequences for test failures generally focused on existing contractual

arrangements concerning railroad operating rules examinations. FRA proposed that a person who failed a periodic test would be retested at specified intervals and precluded from operating a locomotive until he or she was successful.

Commenters objected to FRA's disrupting contractual agreements that permit those who fail tests to continue operating trains pending retest and interfering with provisions that specify the number of and intervals between retests. Others urged FRA to supersede those contractual arrangements to avoid the potential for reinstituting the presence of "firemen" on locomotives or to assure public safety by precluding less than fully knowledgeable or fully skilled engineers from operating locomotives.

In part, the concerns of these commenters reflect the government rule/private contract debate discussed earlier. FRA proposed periodic examinations to assure that an engineer maintains the requisite levels of knowledge and skill. If a railroad elects to conduct a separate examination on railroad-specific issues with contractual implications, railroads could create the "fireman flowback" problem they fear. To clarify the intent of this provision, FRA has added an explanatory section to this final rule. Discussion of this new provision is provided in the section-by-section analysis below.

FRA accepts commenter arguments that the rule should focus on FRA's bottom-line objective, *i.e.*, whether a locomotive engineer has the requisite knowledge and performance skills. Accordingly, FRA has eliminated its proposed provisions concerning the number of and interval between retests and other consequences of test failure. Only the prohibition against operating a locomotive prior to success on the test has been retained in the final rule.

7. Monitoring Certified Engineers While Operating Trains

FRA proposed that railroads monitor the routine operations of locomotive engineers to assure that they demonstrate appropriate operating skills and compliance with safety rules. FRA's proposal called for annual unannounced rules compliance tests and in-cab observations of performance.

Few commenters objected to this proposal. Those objecting to unannounced testing argued that such testing (*i.e.*, "efficiency testing") already exists, can breed distrust, will be applied unfairly, and should not apply to railroad managers who only operate trains on rare occasions. Those objecting to in-cab observations wanted FRA to reduce the duration, frequency, and restrictive methods proposed. In general, these commenters wanted discretion to prescribe the duration of the observation period, the interval between observations, and the use of electronic monitoring.

FRA investigatory efforts and accident data have indicated serious deficiencies in current railroad operating rules testing. In the context of safety assessments, FRA has repeatedly advised railroads about the poor quality of their existing "efficiency testing" programs, and the agency's routine monitoring of railroad testing suggests that the minimal failure rates often reported by railroads are misleading. A quality program that ensures the competence of engineers should inspire confidence in rail employees and dispel any lack of trust. The suggestion that FRA should employ a lower standard for one group of locomotive engineers, those who hold managerial positions, is unwarranted. Those who infrequently operate locomotives clearly need such testing. Assuring that testing is conducted for all operators of locomotives according to established criteria should reduce any perception of unfairness.

In response to comments, FRA has amended its proposal for in-cab observations, including elimination of the proposed prescriptions for the duration of monitoring. Designed to permit evaluation of engineer response to an appropriate range of situations, FRA's proposal would have compelled railroads to allocate substantial resources to this task. FRA believes that railroads should be given more discretion on this point. FRA also believes that commenter suggestions that electronic monitoring be permitted have merit. Train monitoring devices ("event recorders" or "black boxes") and advanced train control systems now under development can provide electronically much of the monitoring FRA believes necessary. Moreover, these devices can define the nature and timing of critical events. There is also some risk that FRA's proposed requirements on this issue could be viewed as a disincentive to the use or future installation of such devices. FRA has decided, therefore, to allow the use of such devices in the final rule. These changes obviate the need to adopt commenter suggestions for a longer interval between observations.

Although not directly raised by commenters, FRA's proposal concerning operational monitoring failed to address the question of whether it was permissible to use simulators in satisfying this monitoring requirement. Recognizing the value of simulators of the type FRA is otherwise sanctioning for the purposes of this rule, FRA has modified the final rule to permit the use of simulators for operational monitoring.

8. Implementing Each Railroad's Program

FRA's proposal addressed in some detail the process of converting from the current industry practice to the certification system prescribed by this rule. The NPRM also contained proposed procedures that would be employed in the routine administration of the certification system.

(a) The Conversion Process

The conversion process was discussed primarily in terms of the "grandfathering" of existing engineers, since it envisioned an initial recognition of the qualifications of those currently authorized by railroads to operate locomotives. Under FRA's proposal, railroads would be free to select and identify those individuals it deemed eligible for certification on the basis of their prior experience as engineers. Those persons would be certified without evaluating their eligibility based on prior conduct or testing of their knowledge, skill, or acuity levels. That initial certification would remain in effect for three years, during which the railroads would conduct "formal" evaluations that fully comply with the requirements of this rule.

Commenters raised four objections to FRA's proposed conversion process. Some commenters wondered why FRA did not immediately test all engineers prior to initial certification, given the volume of accidents attributed to poor performance as engineers. Other commenters, particularly individuals who would be affected by this rule, felt that FRA should not require any testing of those who have already proved themselves. Still others argued that requiring older engineers to pass the same kinds of tests that are given to new engineers who have the benefit of long, sophisticated training programs is unfair. A number of commenters urged FRA to use a five-year transition period.

Most commenter objections appeared to stem from an interest in maintaining the status quo. At present, once a railroad qualifies an employee to be an engineer, the railroad does not review that decision unless the railroad takes exception to poor performance by the engineer. While some railroads aggressively monitor the knowledge and skill of their engineers on a periodic basis, most wait until they see a problem before considering whether to

re-evaluate an engineer's qualifications. FRA proposed and is requiring all railroads to conduct periodic reassessments because that is the more effective way to prevent accidents.

FRA has not accepted commenter suggestions for no phase-in period for certification of experienced engineers. As noted in the NPRM, the rail industry has compiled an enviable safety record that does not warrant such an extraordinary step.

As to the nature of the tests and capacity of engineers to pass them, FRA believes that the testing proposed is similar to that currently used by many railroads on their operating rules. FRA proposed and is requiring that railroads expand the subjects covered by these "book of rules" examinations to include additional topics required by this final rule, such as train handling and Federal rules concerning the operation of trains. Although railroads already require their engineers to know this additional information and to comply with Federal rules, some commenters expressed concern that engineers will fail these tests in significant numbers—apparently as a result of poor test-taking skills. Such fears can be allayed by administering preliminary examinations, a procedure that can give candidates insight into their command of the subject matter and their test-taking skills. Pretesting could be presented by rail labor organizations, railroads, or outside educational services, as could any needed refresher training.

The final concern expressed by commenters was the duration of the conversion period. Many commenters suggested a five-year period, and a number wanted to delay the start of formal evaluations for those five years. Virtually no rationale was provided in support of these suggestions. However, several reasons appeared in commenter discussion of other issues: (1) Small railroads may require more time than large railroads; (2) delay would limit consideration of prior events for certification purposes; and (3) a five-year recertification cycle suggests a similar period for conversion.

FRA is electing to retain the three-year phase-in-period; however, FRA is staggering the beginning dates to give smaller railroads more time to complete conversion. Commenter concern about the certification import of prior events has been resolved through deletion of the proposed point system and the changes made concerning motor vehicle driving data and train operation data.

(b) FRA Approval of Railroad Programs

FRA has amended the process for implementing the certification program. As a first step, all railroads will identify their designated supervisors of locomotive engineers and then their existing locomotive engineers whom they intend to "grandfather".

All railroads are to complete conversion to the certification program by December 31, 1991. After that date, all who operate locomotives must be certified engineers as required by this rule, either as new engineers certified under approved programs or as grandfathered engineers.

For Class I railroads, commuter railroads, and Amtrak, January 1, 1992 will mark the start of the three-year period for evaluating the qualifications of existing certified engineers. After that date, Class I railroads must certify engineers in accordance with FRA-approved programs.

Those programs will be submitted to FRA no later than November 15, 1991, giving FRA thirty days to make an initial evaluation. FRA will respond in writing only to those railroads whose program submissions are deficient. Since railroads generally have an analogous process in place for making qualification determinations, FRA expects that its initial review and approval should be easier and can be accomplished fairly quickly.

FRA will subsequently conduct a more detailed, extended assessment of the programs, which will include such tasks as evaluating the questions on a railroad's written knowledge examination. Delaying implementation of railroad programs until completion of such a detailed review is not warranted, given the safety record of train operations during the past ten years.

If FRA finds deficiencies during these detailed reviews, FRA will address them with the railroads. Based on past responsiveness, FRA expects this to be an effective way to proceed. FRA, of course, retains the authority to rescind its approval if identified deficiencies are not cured.

A similar pattern will be followed with Class II and Class III railroads. For Class II railroads, June 1, 1992 will mark the start of the three-year period for evaluating the qualifications of their existing certified engineers. After that date, Class II railroads must certify engineers in accordance with their FRA-approved programs. Those programs will be submitted to FRA no later than May 1, 1992. For Class III railroads the relevant dates are November 1, 1992 for submission of programs and December 1, 1992 for implementation of approved programs. Since FRA is phasing in the formal certification decisions for Class II and Class III railroads, FRA is allowing these railroads an extended period in which to certify engineers on the basis of their existing practices.That extension terminates on the same dates such railroads are required to implement their FRA-approved program.

(c) Administration of the Program

FRA proposed that, once the program was established, railroads would routinely conduct evaluations of each engineer's qualifications by examining information relevant to eligibility and by administering tests concerning knowledge, skill, and acuity levels. Such evaluations would be mandatory for all initial certifications of new locomotive engineers and for periodic evaluations of previously certified locomotive engineers. The proposal addressed issues of the certification candidate's rights to due process in the conduct of evaluations; the documentation needed for formal evaluations, including the certificate to be issued to accredited locomotive engineers; the degree of reliance that one railroad might place on evaluations performed by another railroad; and the mechanism for resolving disputes about denial, suspension, or revocation of certification.

Commenters responded to a few of these issues. Several wanted intervals of five years instead of three years for recertification and suggested that railroads be given more time to perform the testing at recertification. Other commenters, usually individuals, wanted greater access to records containing adverse information before railroads could rely on such information. A few commenters desired clarification of FRA's views on how the inter-railroad reliance provisions would function. A few commenters were concerned about administrative details such as the need for better identification of certificate holders and for a method of obtaining replacement certificates. Finally, a number of commenters voiced concerns about the proposed dispute resolution mechanisms.

As noted above, FRA is not adopting a five-year recertification interval. However, comments suggesting the railroads be given more time to conduct the required acuity, knowledge, and skill testing have merit. These suggestions would not seriously impinge on FRA's objective of assuring that such testing be contemporaneous with the qualification decision. Accordingly, FRA is modifying the rule to accommodate these suggestions; details can be found in the discussion of § 240.217 in the section-by-section analysis below.

Due process concerns about the accuracy of information considered by

railroads were addressed in the proposed rule only in the context of motor vehicle data. FRA agrees that it should provide similar protection to train operation conduct records and has modified the proposal accordingly. FRA response to commenter desires for clarification concerning the reliance by one railroad on decisions reached by another railroad are also found in the section-by-section analysis, particularly the discussion of §§ 240.225 through 240.229.

FRA response to commenter concern with administrative detail can be found in the section-by-section analysis. With only minor exceptions discussed there, FRA is adopting the proposed administrative provisions.

Commenters expressed concerns about the proposed dispute resolution mechanisms for railroad decisions regarding periodic certification and unsafe conduct.

Commenters did not object to the mechanism FRA proposed for initially resolving questions of whether a person was or was not entitled to obtain or retain certification; they were instead concerned about the appeals process. In response, FRA reviewed its entire approach to the issue and has made several changes in the final rule that are discussed in the section-by-section analysis below.

Under the proposed rule, FRA took responsibility for dispute resolution, and we continue to believe that the propriety of a railroad's decision to deny a person certification—to the extent that denial is based on a railroad's application of the minimum qualification standards of FRA's rule—is FRA's responsibility. The final rule provides the mechanism necessary to carry out that responsibility.

The comments reflected concern about the relationship between FRA decisions on appeal under this rule and extra-regulatory matters. Such FRA decisions will not necessarily be relevant to the person's employment status or any rights or obligations arising from that employment relationship. A railroad and its employees can agree that such decisions are or are not relevant to those issues. Resolution of contractual disputes is entrusted to the dispute resolution mechanisms under the Railway Labor Act.

Given the clarity of this demarcation, FRA does not believe the conflicting decisions feared by some commenters, one from FRA and another from a Railway Labor Act decisionmaker, will occur.

(d) Reliance on Decisions by Other Railroads

FRA's proposal to allow one railroad to rely heavily on the qualification decisions of another railroad prompted a few comments seeking clarification. FRA has made several changes in this regard to reflect changes in the design of the final rule.

The rule addresses reliance in three contexts: (1) Where a locomotive engineer operating in this country has been qualified under foreign law; (2) where a locomotive engineer seeks to work for a different railroad; and (3) where a locomotive engineer is to operate on trackage under the operational control of another railroad.

For the purpose of this rule, FRA proposed to accept qualification decisions made under the regulations issued by Transport Canada, and this final rule retains that provision.

Where a certified locomotive engineer seeks certification by a second railroad, FRA proposed a minimal check of the person's background. Under the final rule, however, the second railroad must first evaluate the engineer's knowledge, skill, and ability and assure that the engineer is familiar with the territory. Only the safety performance and acuity testing aspects of the prior certification will not require reevaluation.

Most locomotive engineers will operate trains only on the tracks of the railroad that issued them their certification as a qualified engineer. However, the reliance issue also involves those situations in which an engineer has occasion to operate over trackage controlled by a foreign railroad, *e.g.*, near large metropolitan areas where the trains of several railroads operate over a single set of tracks.

In such settings, one railroad has responsibility for the control of trains operating over the joint trackage. Since that railroad selects and administers the operating rules for the trackage, it must determine whether a locomotive engineer is qualified to operate in that environment.

FRA has adopted its proposal to permit the controlling railroad to rely on the qualification decisions made by other railroads. However, FRA has modified the relevant provisions to handle situations in which joint operations are an exception. Joint operations can occur unexpectedly; for example, adverse weather conditions result in trains of one railroad being rerouted over the lines of another. In these circumstances, commenters noted, it would be difficult to comply with the reliance provisions of FRA's proposed rule. Commenters raised similar questions with respect to such situations as military trains operated by members of the armed forces, steam excursions requiring special expertise, and track inspection, rail flaw detection, and rail grinding trains that have distinctive operating characteristics. FRA agrees that its proposed rule did not sufficiently accommodate this problem and has modified the final rule accordingly.

(e) Other Details

FRA's proposed rule concerning administration of the certification process by railroads did not cover such details as how to handle replacement of lost or damaged certificates, how to accommodate the need on some railroads to assign certain ministerial functions to people other than those initially envisioned by FRA, the functioning of the process for revoking a certification during its normal duration, and the dispute resolution process involving FRA.

Although commenters did not focus much of their attention on these aspects of the proposed rule, FRA is acting to correct several minor problems it has identified. These are discussed in the section-by-section analysis.

(f) Future Issues

A significant number of commenters argued that FRA's proposal was deficient because it did not address issues of stress and fatigue associated with the work of locomotive engineers. In the view of many of these commenters, safety lapses by engineers were more directly related to these problems than any other.

As noted in the earlier discussion concerning locomotive engineer conduct, FRA did not address these issues in this proposal for several reasons. After the ongoing studies and Congressional decision making have been completed, it may be appropriate for FRA to directly respond to these commenter concerns with subsequent regulatory proposals.

SECTION-BY-SECTION ANALYSIS

This rule contains five subparts that correspond to the organizational structure of the certification process. This new organization is different from and more compact than that employed in the NPRM.

Subpart A

This subpart contains the general provisions of the rule, as did subpart A in the NPRM, but it has been significantly rewritten to, for example, include new sections concerning

information collection and the relationship of this rule to other laws.

Section 240.01

Section 240.01 has been revised and expanded to more fully explain the purpose and scope of this rule. The purpose of the rule is to prescribe the minimum standards for qualification, training, and monitoring of virtually any person who operates a locomotive. Although such persons are called "locomotive engineers" under this regulation, the rule will affect a wide variety of personnel, including those holding such job titles as hostler, machinist, utility person, trainmaster, or transportation specialist. Since FRA uses the term "locomotive engineer" throughout the text of the rule and a person reading only the regulatory text could be confused or misled by prior industry practice or nomenclature, FRA has added a new clarifying paragraph (c).

Section 240.03

Section 240.03 contains the same applicability section that FRA proposed. FRA has not accepted the suggestions of a variety of commenters that FRA exclude from this rule operations that are conducted primarily inside an installation, such as steel plants or mining and logging areas. These commenters wanted the authority to operate trains on the general railroad system without the responsibility for meeting the minimum safety criteria of this regulation, arguing they made only limited use of the general system. Although operations within an installation may not require a high degree of sophistication, whenever a locomotive is operating on the general system, minimum standards must apply. The safety risks posed by operations on the general system demand that qualified engineers be at the controls of a locomotive.

Section 240.05

Section 240.05 addresses several legal issues. Paragraphs (a) and (b) note that FRA's rule will preempt existing State law covering the same subject matter, with an exception for State criminal law. The remaining paragraphs address the relationship of this rule to preexisting legal relationships.

Section 240.07

Section 240.07 contains the definitions in proposed 240.05. A few changes have been made in response to commenter suggestions or as a result of the new structure of the rule. For example, FRA has deleted the definition of what constitutes a "designated supervisor of locomotive engineers," deleted the definition of "class instructor." and revised the definition of "locomotive" to mirror that in part 229. FRA also has revised its definition of "simulators" to reflect a more precise grouping of available equipment. That revised definition continues to reflect FRA's belief that, for the purposes of this rule, simulators must be truly analogous to the operation of a real train, not a mere piece of video software.

FRA has not adopted three major changes advocated by commenters. Several suggested that FRA alter the definition of "locomotive." The commenters were concerned that FRA had excluded only hi-rail and specialized maintenance equipment from the scope of the definition and urged exclusion of other equipment. FRA has elected to stay with a narrow set of exclusions. If the equipment in question is deemed a locomotive for the purposes of compliance with part 229, the rule requires that a railroad have a certified engineer at the controls. To illustrate the kinds of issues raised by the comments, FRA intends that engines coupled to rail grinding equipment, self-propelled track inspection equipment, or rail flaw detection cars as well as track mobiles be operated by qualified locomotive engineers. This equipment is operated in the same manner and with the same safety implications as any train. The exclusion covers only equipment designed to maintain the track structure and not normally capable of being operated like a train, such as self-propelled tampers and mobile cranes.

In a similar vein, commenters suggested that FRA narrow the definition of the functions to be covered by this rule by, for example, lengthening the distances that can be operated and expanding the types of movement that can occur without having a certified engineer at the controls. FRA has not accepted this suggestion since it intends to exclude only those incidental movements of locomotives to accomplish inspection and maintenance functions and those operations within a locomotive servicing area with limits marked in accordance with part 218. Adopting the suggested changes, which envisioned movements of nearly a half mile and routine switching functions for certain freight cars, would be contrary to FRA's basic safety premise that all who operate a locomotive on the general system should be qualified, unless there is some other way to provide an equivalent degree of safety. At least one commenter provided a description of a unique factual setting that may indeed present a different way to provide an equivalent degree of protection when conducting operational tests of locomotives. That fact pattern presents the type of issue more appropriately addressed in terms of a waiver of compliance rather than creation of a regulatory provision to accommodate unique facts. Another commenter inferred from the proposal that a railroad could comply with the letter of the rule by moving only 100 feet, then stopping, and then moving another 100 feet with an uncertified person at the controls as long as necessary to reach the destination. As with other rules, blatant efforts to circumvent the intent of the regulation will be treated as noncompliance and responded to appropriately by FRA when detected.

Commenters suggested that FRA employ a new definition for "EAP counselor." FRA has decided to retain the originally proposed definition that mirrors the definition in its rules concerning control of alcohol and drug use by railroad workers (part 219). The reasons advanced by commenters for altering FRA's proposed definition were considered and rejected in the context of amending the alcohol and drug rules.

FRA has also added definitions of "drug" and "substance abuse disorder," also found in part 219 to ensure that the two regulations are consistent. "Drug" is defined as any substance (other than alcohol) that has known mind- or function-altering effects on a human subject, specifically including any psychoactive substance and including, but not limited to, controlled substances. The term is intended to refer to substances that have a significant potential for abuse and/or dependence. Normal ingestion of caffeine in beverages and use of nicotine from tobacco products, even though involving some degree of habituation or dependence, are not intended to be included within the definition.

Similarly, "substance abuse disorder" is defined as a psychological or physical dependence on alcohol or a drug or another identifiable and treatable mental or physical disorder involving the abuse of alcohol or drugs as a primary manifestation. This is essentially the same language employed to govern disposition of employees referred to an employee assistance program under the "co-worker report" (bypass) provision of the alcohol/drug regulations. It describes the condition of chemical dependency, as determined by an appropriate professional. Reference is made to other disorders involving abuse of alcohol and other drugs to avoid disputes concerning diagnoses of "underlying" problems. The point is,

very simply, that a person making uncontrolled use of alcohol or drugs is not a suitable candidate for the highly sensitive duties entrusted to a locomotive engineer. Since chemical dependency typically has the aspect of poly-drug abuse, and in essentially all cases bears the potential for abuse of more than one substance, the appropriate long-term therapy is abstinence from alcohol and all other drugs.

The definition explains that the disorder is considered "active" within the meaning of the rule if the person is not currently abstaining from use of alcohol and drugs (except under medical supervision consistent with FRA's alcohol/drug regulations) or has not participated in treatment as required.

FRA is aware that many individuals abuse alcohol and drugs, with consequent ill-effects on their health and potential implications for fitness, without fitting within common definitions of chemical dependency. However, degrees of abuse are difficult to define; and significant disagreements prevail with regard to appropriate therapeutic responses. Accordingly, FRA has not required withholding of certification for patterns of abuse that fall short of chemical dependency. At the same time, FRA does not intend to convey that the concept of chemical dependency need meet the most rigid test used in any particular segment of the health care or mental health communities. For instance, much of the medical community was slow to recognize the dependence potential of cocaine, while other clinicians were properly recognizing and beginning to treat very serious cocaine addiction cases encountered in their practices. The critical point here with respect to safety is that engineers not be in the grip of uncontrolled abuse patterns that, if addressed through treatment and permanent abstinence, could be put behind them.

Finally, FRA has altered the definition of "knowingly." FRA is not changing the proposed standard of care to which parties will be held under certain portions of this rule, but has concluded that the new definition is more clear. The definition found in the rule is modeled on one formulated in recently enacted legislation that addresses a similar issue (see section 12 of Pub. L. 101 615, 104 Stat. 3244).

Sections 240.09 and 240.11

Sections 240.09 and 240.11, essentially renumbered versions of sections found in the NPRM, relate to waivers and the consequences of noncompliance.

Section 240.11 contains the penalty provisions of the rule. FRA has already provided extensive guidance on how it intends to use its enforcement power in this context (53 FR 52918). In addition to FRA's general policy statement concerning exercise of its enforcement authorities (49 CFR part 209, app. A; 53 FR 52918), readers may want to review FRA's comments on the discharge of its responsibilities under the regulations establishing disqualification procedures (54 FR 42894), prohibiting alcohol and drug use by rail workers (50 FR 31508, 31567), and those prohibiting tampering with locomotive-mounted safety devices (54 FR 5485). This section also addresses the potential for criminal sanctions for knowing and willful falsification of records required by this rule, as authorized by section 209(e) of the Federal Railroad Safety Act of 1970. Final decisions to bring charges under this provision would rest with the Department of Justice.

Section 240.13

Section 240.13 is new and is designed to aid those who have an interest in the information collection or record keeping requirements of this rule.

Subpart B

This subpart contains the basic elements of the railroad certification program required by this rule. It has no precise counterpart in the NPRM because it contains the elements that were spread out over five different subparts in the proposal.

Section 240.101

This section requires that each railroad have a written program composed of eight elements, each of which comports with specific provisions relating to that element.

Section 240.103

This section requires each railroad to submit its program and a summary outline to FRA for approval in accordance with the following schedule: Class I railroads, Amtrak, and the commuter railroads by November 15, 1991; Class II railroads by May 1, 1992; and Class III railroads or others not classified elsewhere by November 1, 1992. The format and contents of the submission are discussed at length in appendix B. This section also requires that each railroad indicate how it intends to acquire future engineers. If the railroad wants the power to train a previously uncertified person to become an engineer, the railroad must explain its training regimen for such trainees, including provisions for relying on another railroad or other some outside training organization to provide the actual training. The rule provides only thirty days for FRA review and approval of railroad programs, which will limit the depth of the review that FRA can accomplish. FRA is proceeding in this manner because most railroads have existing programs intended to accomplish a similar goal that can be easily modified; the quality of such programs is generally good; and the problems that may be encountered will not involve basic design flaws and generally will not surface until FRA has had time to observe the actual administration of the program. In screening all submissions FRA should be able to quickly detect any substantial deficiencies. Given the quality of existing programs, FRA sees little value in delaying implementation of the programs for time-consuming agency review. FRA may, of course, disapprove any program during the review cycle or at a later date. FRA will explain any deficiencies in writing. This section provides for timely railroad response to an FRA disapproval action. In addition to its limited initial review of a railroad's program, FRA intends to conduct a more thorough evaluation at a later date to assure that all aspects of the program are properly analyzed.

Section 240.105

In the NPRM, FRA proposed that individuals responsible for evaluating the skills of engineer candidates have a specified level of experience as an engineer and hold supervisory authority within the railroad. FRA's proposal was designed to ensure that these individuals have the requisite knowledge, skill, and judgment to be effective decision makers. However, some commenters objected that experience was not a legitimate substitute for good judgment; that the specified level of three years' experience was unacceptably long base on current industry practices; and that the approach prevented small railroads from continuing to employ part-time evaluators with no direct supervisory duties.

In response to these comments, FRA has amended the proposal to give to railroads the discretion to select the individuals who will evaluate their engineer candidates. Section 240.105, which replaces the proposed definition of "designated supervisors," implements that decision. Each railroad must now have a procedure for determining the qualifications of individuals to serve as designated supervisors of locomotive engineers. The section contains a performance standard for measuring a

person's capabilities and, in conjunction with § 240.203, gives FRA the power to respond to abuse of this discretion. Each railroad must have at least one designated supervisor of locomotive engineers, although many railroads would want to have more. FRA has deleted its proposed requirement that the designated supervisor be an employee of the railroad. Thus, a railroad that does not have a reason to have such a designated supervisor available on a full-time basis can obtain the services of a designated supervisor on a part-time or contract basis.

To assure that designated supervisors have the necessary knowledge and skills, paragraph (b)(4) requires that all designated supervisors be certified under this rule. This paragraph should be read in conjunction with § 240.211, which does not permit self-certification under this rule.

This section does not fully respond to commenter suggestions that FRA devise a way of more objectively determining the qualifications of designated supervisors. FRA is unable, at this time, to provide an effective objective testing scheme for such designated supervisors. FRA may consider improved methods for evaluating designated supervisors in the future.

Section 240.107

This section contains the simplified scheme for classifying those authorized to operate locomotives. Section 240.13 of the NPRM proposed five classifications; section 240.107 of this rule establishes three: Train service, locomotive servicing, and student engineer. The gradations of train service that were integral to a standardized training and testing scheme have been eliminated in light of FRA's decision to allow individual railroad programs for training and testing engineers.

This simplified classification scheme will indirectly respond to numerous suggestions by commenters on ways to alter the threshold levels proffered in the NPRM. This simplification does have implications for the "portability" of certificates when an engineer wants to move from one railroad to another. This issue is discussed further in connection with the analysis of § 240.225.

Section 240.109

This section defines the processes required for evaluating a candidate's qualifications. It contains elements of the NPRM that can be found in proposed §§ 240.51 and 240.57. Few commenters focused on these mechanics.

A railroad's procedures must include an evaluation process that effectively examines relevant prior conduct and may reflect the railroad's current approaches. Since motor vehicle data will go directly to the railroad, FRA requires in paragraphs (f) and (g) of this section that the certification candidate be given an opportunity to review those records that contain adverse information. This review will avoid the potential for accidental reliance on records that were somehow erroneously associated with a candidate. It will also allow the candidate to explain or offer any mitigating information the railroad should consider before making an eligibility decision. Since an opportunity for review and comment is not needed in all instances, FRA is only imposing the duty to afford that opportunity to a candidate whose record contains sufficient adverse data to support a determination of ineligibility. This section does not contain detailed procedures for informing the candidate, specific limits on the time for review or submission of rebuttal information, or a variety of other possible controls for implementing the intent of this section. Instead, FRA has required that these be reasonable and be described in the program description submitted for FRA's approval in accordance with § 240.109 and appendix B.

The requirements of this section are equally applicable to the issues presented when a railroad is confronting data concerning prior railroad service. The provisions of these paragraphs are similar to proposed § 240.55.

As originally proposed, FRA has limited railroads to considering only certain types of incidents involving safety-related action or inaction by a person seeking certification or recertification as a train or locomotive servicing engineer. These involve failure to comply with rules designed to prevent accidents. FRA has deleted the NPRM's provisions focusing on individuals who were seeking certification as a student engineer. Commenters have convinced FRA that the proposed provisions, which would have permitted railroads to consider an additional group of incidents concerning student certification candidates who may have provided prior service as a member of a train crew, are not necessary at this time.

This section also responds to commenter concern about the degree to which railroads would be permitted to base their certification decisions on conduct that occurred prior to adoption of this rule. Several commenters offered the view that, by permitting a railroad to rely on incidents of misconduct that occurred before locomotive engineers had any basis of suspecting that such action could render them ineligible for certification, the regulation would constitute an *ex post facto* application of the rule. Other commenters, while not articulating any legal theory to support their views, urged that all locomotive engineers be permitted to start with a clean slate for certification purposes as a matter of basic fairness.

Permitting railroads to impose additional, retroactive consequences for incidents that occurred prior to adoption of this rule would not mean that this regulation has a prohibited *ex post facto* effect. Such retroactive effect, although not absolutely precluded by the Administrative Procedure Act (5 U.S.C. 553), is discouraged under existing law (see *Bowen* v. *Georgetown University Hospital*, 109 S. Ct. 468 (1988)). Moreover, FRA agrees that fairness precludes the use of events that occurred prior to the effective date of this rule, and this section so provides.

This section also permits railroads and candidates to create arrangements whereby the railroad can directly obtain motor vehicle data or prior railroad service data. This last provision responds directly to the concerns of many individual commenters who felt aggrieved that they were being required to personally participate in a procedure that could ultimately render them ineligible.

Section 240.111

This section essentially contains the requirements proposed in § 240.52 of the NPRM. The major difference is that FRA has responded to commenter suggestions that FRA expand the responsibility of the certification candidate for soliciting motor vehicle data. In instances where a railroad's initial check of motor vehicle records revealed the existence of additional information in the control of a state licensing agency, FRA had proposed that the railroad seek the secondary information. Commenters pointed out that railroad access could be as easily stymied when seeking the secondary data as it could under the circumstances that had prompted FRA to make the certification candidate initially responsible for seeking motor vehicle data. Therefore, § 240.111 charges the candidates with responsibility for requesting the information. Finally, § 240.111 has been revised to require timely provision of the information to the railroad.

Section 240.113

This section contains requirements analogous to those just described for seeking motor vehicle records when a railroad needs information concerning

prior railroad service. As noted earlier, most commenters wanted FRA to delete any consideration of prior conduct and thus to eliminate this section from the final rule. The few commenters who discussed evaluation of prior conduct data urged that FRA establish a similar duty to provide information because of difficulties railroads have experienced on this score. In response, FRA has established that duty in this section. The section requires timely provision of the information to the railroad.

Section 240.115

This section imposes a duty on railroads to make proper determinations concerning an individual's eligibility to become a certified engineer based on the person's motor vehicle driving record. It draws on §§ 240.53, 240.57, and 240.59 of the NPRM. Similar to proposed § 240.53, this section sets limits on railroads in considering motor vehicle driving data.

As noted earlier, until completion of a study of the possible correlation between safe train operation and motor vehicle conduct, this rule will only permit consideration of data involving incidents of alcohol- or drug-related motor vehicle driving operation. Thus, this section does not address any motor vehicle record data that involves events such as excessive speed, racing on the highway, or reckless driving.

This section identifies the types of events that can be considered and allows both convictions and state actions that revoke, cancel, suspend, or deny licensing to be considered. Actual operation of a vehicle while impaired or under the influence of alcohol or drugs, as well as refusal to undergo testing to determine whether the person is impaired or under the influence, will be considered by the railroad. Paragraph (a) requires that a railroad review the available information concerning the candidate's motor vehicle driving record.

Paragraph (b) requires evaluation of motor vehicle driving records to determine if specified alcohol/drug-related conduct has occurred. If an incident is identified, this information is provided to the EAP Counselor, along with railroad service record data (rules compliance, attendance, other job-related incidents), and the engineer is referred for evaluation. The engineer is required to furnish any other pertinent records concerning counseling or treatment for confidential review by the EAP Counselor. The purpose of this referral and review is to determine whether the person currently has an active substance abuse disorder.

If the person is found not to have an active substance abuse disorder, the data will not be considered further with respect to the certification (and the EAP Counselor retains as confidential the data provided by the employee concerning any prior treatment). However, if the EAP Counselor determines that the person has in the past had an active substance abuse disorder, the EAP Counselor may recommend that certification be conditioned on any needed aftercare. It is intended that this decision be made based on the EAP Counselor's clinical evaluation. For example, an employee treated three years before who could demonstrate sobriety over that period might in an appropriate case receive unconditional certification. By contrast, an employee with a history of substance abuse episodes, including a relapse after treatment a few months before, might receive conditional certification.

As provided in § 240.119, a person with an active substance abuse disorder could not be currently certified. However, that employee would be permitted to utilize the voluntary referral policy of the alcohol/drug rule (§ 219.403) if the employee had not previously taken advantage of the policy. This provision is in contrast to handling under § 240.119, where violation of § 219.101 or § 219.102 leads to adverse certificate action and access to the EAP is a matter of management policy. In those cases (except co-worker reports, which are treated differently), management will have detected violative behavior; and the voluntary referral rule by its own terms will not apply. In the context of motor vehicle driving data, however, referral to the EAP Counselor is necessary for the purpose of evaluation; and cooperation by the employee may be critical to documenting the extent and nature of the substance abuse disorder—*i.e.*, the motor vehicle record will seldom be dispositive in the sense of providing a wholly satisfying foundation for a professional evaluation. Both for the purpose of preserving the experience and training represented by the current employee (an important factor in safety) and for the purpose of encouraging development of all the pertinent clinical indications, it is desirable for the person being evaluated to know that help, if needed, will be available. The same considerations do not apply with equal force to a person who is not a current employee, and the employer would have no obligation to make available the services of the EAP in that case.

The section also prohibits use of data so old as to be irrelevant to present condition or future behavior. With the exception of some information involving substance abuse and unsafe operating safety practices, the rule limits railroads to considering events that occurred within the previous 36 months. FRA originally proposed a five-year period, but has learned that a number of states do not maintain records for that length of time. The final rule's three-year period matches the minimum record retention practices of all state driver licensing agencies and the retention interval for most data found in the NDR.

Section 240.117

This section requires that railroads have a program for examining incidents in which certified locomotive engineers may have failed to comply with railroad safety rules or procedures intended to ensure the safe operation of trains. To comply with this requirement and the related provisions of section 240.307, the railroad's program must afford each locomotive engineer the opportunity to participate in the fact-finding process. Except in relatively rare instances, it will be the railroads themselves that will, before action required by this rule will be taken, detect the evidence of possibly unsafe conduct, make the decision on whether there is sufficient evidence to proceed with formal responsive action, and convince a railroad's hearing officer that the operating rule was violated.

The section makes clear that the railroad's responsibilities for responding to infractions by locomotive engineers are not limited to periodic recertification, providing that any pertinent incident can prompt review of certification status.

Paragraph (e) identifies the five kinds of rule infractions covered by this regulation: failure to comply with railroad rules (1) requiring adherence to a signal indication; (2) limiting the operating speed of the train; (3) prescribing operation of the train and engine brake system so as to safely control train operation; (4) prohibiting occupying a track without authority; or (5) prohibiting the unauthorized nullification of locomotive-mounted safety devices. Railroads should, of course, respond to other forms of unsafe train operation conduct as appropriate.

Paragraph (g) provides that once a railroad has determined that an engineer has failed to comply with its mandatory safety rule concerning one of these five types of incidents, two consequences will occur. First, the railroad will be required to revoke the engineer's certificate for 30 days. Second, that finding will initiate a period during

which the engineer will suffer an increasingly more severe response if additional incidents occur in the next 36 to 60 months. If a second event occurs within 36 months of the first event, the period of mandatory revocation will increase to one year. If a third event occurs within 60 months, the revocation period increases to five years. If the locomotive engineer does not engage in unsafe conduct for three years, a second incident will not serve as an aggravating factor warranting imposition of the one-year revocation. However, that second incident will start a new 36-month period during which a second incident can generate a one-year revocation. Moreover, both events will be relevant if a third incident occurs within 60 months. This paragraph also integrates certain aspects of alcohol and drug related data stemming from detected incidents of on-duty possession, use, and impairment. If both this section and § 240.119 apply to a given incident, the longer mandatory period of revocation will control.

Paragraph (g) also addresses instances when the locomotive engineer is found to have violated the pertinent provisions of the railroad's rules twice within a three-year period. Although the railroad must revoke certification and/or deny recertification for at least one year, a railroad can reinstate a person after a minimum period of six months. Prior to reinstatement the engineer must be evaluated by a designated supervisor and the designated supervisor must conclude that the remedial action was effective. If the designated supervisor does not so conclude, the engineer must await passage of the full year interval. A railroad that concludes that the engineer needs supplemental training, prior to early reinstatement, must determine that the engineer has successfully completed that training before it can authorize reinstatement.

If the locomotive engineer is found to have violated the pertinent rules three times in any consecutive 60-month interval the engineer shall be ineligible for certification for five years. No railroad can reinstate a person until after expiration of that 60-month period.

Section 240.119

This section addresses two separate dimensions of the alcohol/drug problem in relation to engineers—(1) active substance abuse disorders and (2) specific alcohol/drug regulatory violations.

Paragraph (a) requires railroads to address both dimensions of this issue in their programs. Paragraph (b) provides that a person with an active substance abuse disorder shall not be currently certified as a locomotive engineer. This means that appropriate action should be taken with respect to a certificate (whether denial or suspension) whenever the existence of an active substance abuse disorder comes to the official attention of the railroad, with the exception discussed below. This section and § 240.115 address certain situations in which inquiry must be made into the possibility that the individual has an active substance abuse disorder if the individual is to obtain or retain a certificate. The fact that specific instances are cited does not exclude the general duty of the railroad to take reasonable and proportional action in other appropriate cases. Declining job performance, extreme mood swings, irregular attendance and other indicators may, to the extent not immediately explicable, indicate the need for an EAP evaluation. These issues are addressed in the FRA Field Manual for Control of Alcohol and Drug Use in Railroad Operations, the revised edition of which will be available in the next few months.

Paragraph (c) deals with conduct constituting a violation of § 219.101 or § 219.102 of the alcohol/drug regulations. Section 219.101 prohibits any employee from going or remaining on duty in covered service while using, possessing, or being under the influence of or impaired by alcohol or a controlled substance or with a blood alcohol concentration of .04% or more. This is conduct that specifically and directly threatens safety in a way that is wholly unacceptable, regardless of its genesis and regardless of whether it has occurred previously. It is roughly analogous to a violation of the railroad's own Rule G, for which the traditional sanction was dismissal (albeit with possibility of reinstatement following a first offense). In its more extreme forms, such conduct is punishable as a felony under the criminal laws of the United States (18 U.S.C. 341 *et seq.*) and a number of states.

Section 219.102 prohibits use of a controlled substance by a covered employee, at any time, on or off duty, except under the exception for approved medical use. Abuse of marijuana, cocaine, amphetamines, and other controlled substances poses unacceptable risks to safety. However, where on-the-job use, possession, or impairment is not established, as is most often the case where urinalysis is the means of detection (*e.g.*, through a random drug test which can detect drugs remaining in the system for some period after actual use), this violation is marginally less serious than a § 219.101 violation.

Under the alcohol/drug regulations, whenever a violation of § 219.101 or § 219.102 is established based on authorized or mandated chemical testing, the employee must be removed from service and may not return until after an EAP evaluation, any needed treatment, or a negative return-to-duty test, and is subject to follow-up testing (§ 219.104). This structure suggests an absolute minimum for action when a locomotive engineer is determined to have violated one of these prohibitions. Considering the need both for general and specific deterrence with respect to future unsafe conduct, additional action should be premised on the severity of the violation and whether the same individual has prior violations.

One key consideration in evaluating this conduct and appropriate responses is the duration of retrospective review. The final rule uses the same nominal period set forth in the statute for consideration of alcohol/drug related motor vehicle conduct—5 years (60 months). This is also the same period used by FRA as a maximum period for follow-up of those who commit violations (§ 219.104(d)) and has been employed in some railroad "bypass agreements" as the retrospective period to determine if the employee has a prior alcohol/drug rule violation or prior treatment. Further, it is employed in this rule as the maximum period of ineligibility for certification following repeated alcohol/drug violations.

Use of a 5-year cycle reflects anecdotal experience in the railroad industry indicating that conduct committed as much as 5 years before may tend to predict future alcohol or drug abuse behavior (and recognizes the reality that most individual violations are probably not detected). On the other side of the coin, it reflects a certain confidence in the resilience of human nature—*i.e.*, a reasonable expectation that the person who remains in compliance for that period of time will not again be found in violation.

The full reach of the 5-year period will not be realized initially. Since § 219.101 did not become effective until February 10, 1986 and § 219.102 was effective on October 2, 1989, even if FRA has not elected to employ the retrospective limitations discussed earlier, conduct prior to those dates could not properly be measured against those standards with respect to certification. Of course, railroads retain the flexibility to consider prior conduct (including conduct more than 5 years prior) in determining whom they will hire and assign as locomotive engineers.

Note that conduct violative of the FRA proscriptions against alcohol and drugs need not occur while the person is serving in the capacity of a locomotive engineer in order to be considered. For instance, an employee who violated § 219.101 while working as a conductor and then sought engineer certification six months later (under the provision described below) would not be currently eligible for certification.

The railroad's responsibility is not limited to periodic recertification. The rule provides that any conduct in violation of § 219.101 or § 219.102 shall prompt a review of certification status.

The rule requires a determination of ineligibility for a period of 9 months for an initial violation of § 219.101. This parallels the 9-month disqualification for refusal to cooperate in post-accident or random testing and also matches most estimates of discipline actually assessed, on average, in the railroad industry. FRA does not believe that a locomotive engineer should be able to seek the shelter of a collective bargaining agreement or more lenient company policy in the case of a clear on-the-job violation, insofar as Federal eligibility to serve as a locomotive engineer is concerned. Specifying a period of ineligibility will serve the interest of deterrence while giving further encouragement to co-workers to deal with the problem before it is detected by management.

In order to preserve and enhance the leverage available to co-workers, the 9-month period is waived only in the case of a qualifying co-worker report (§ 219.405). FRA believes that this distinction in treatment is warranted as a strong inducement to participation by other employees in enforcement of the regulations. Although few actual co-worker reports may be generated, the intended result will be served if an atmosphere of intolerance for drug abusing behavior is reinforced in the workplace and violators know that they will be turned in if they come on the job impaired.

In the case of a second violation of § 219.101, the engineer will be ineligible for a period of 5 years. Given railroad employment practices and commitment to alcohol/drug compliance, it is likely, of course, that any individual so situated would also be permanently dismissed from employment. However, it is important that the employing railroad also follow through and revoke the certificate under this rule so that the engineer does not go to work for another railroad within the 5-year period using the certificate issued by the first railroad as the basis for certification. We note that these sanctions are reasonably consistent with the Commercial Motor Vehicle Safety Act, title XII, Public Law No. 99–570, 100 Stat. 3207–170, which requires the Federal Highway Administration to disqualify a commercial motor vehicle driver for one year in the case of driving a commercial motor vehicle under the influence (defined as a blood alcohol concentration of .04% or greater) and for life in the case of a second offense.

Under this rule, one violation of § 219.102 within the 5-year window would require only temporary suspension and the minimum response described in paragraph (d) (referral for evaluation, treatment as necessary, negative return-to-duty test, and appropriate follow-up). FRA has considered whether a more stern approach should be required, but does not wish to undercut the therapeutic approach to drug abuse employed by many railroads. This approach permits first-time positive drug tests to be handled in a non-punitive manner that concentrates on remediation of any underlying substance abuse problem and avoids the adversarial process associated with investigations, grievances and arbitrations under the Railway Labor Act and collective bargaining agreements. This approach is most often coupled to commitments from labor organizations to lead peer prevention efforts such as Operation Red Block and Operation Stop. While time may yet prove this approach to be excessively lenient, FRA is not persuaded that experience has impeached the seasoned judgment of railroad medical officers, EAP personnel, operating officers, and employees who have committed their companies to this approach.

A second violation of § 219.102 would subject the employee to a mandatory 2-year period of ineligibility. A third violation within 5 years would lead to a 5-year period of ineligibility.

The rule also addresses violations of §§ 219.101 and 219.102 in combination. A person violating § 219.101 after a prior § 219.102 violation would be ineligible for 3 years; and the same would be true for the reverse sequence. A person violating either section thereafter (cumulative 3rd violation) would be ineligible for 5 years from the most recent violation.

Refusals and failures to participate in chemical tests are treated as if the test were positive. A post-accident blood analysis for alcohol and controlled substances, for instance, in the worst case could establish use on the job, violation of the .04% alcohol prohibition, or—with other evidence—impairment. Such a refusal would be "scored" as if a § 219.101 violation. The same would be true for refusal to take a breath alcohol test. Refusal of a drug urinalysis, which in most cases could only be used to establish a § 219.102 violation, would be treated as if it were a violation of that section.

The refusal or failure to participate in testing as required under part 219 would be treated as provided in the rule even though the testable event did not involve a mandatory 9-month disqualification under part 219. Under part 219 a "refusal" triggers a mandatory disqualification only in the case of post-accident and random tests. The term "failure to participate" is used here to denote other instances of noncooperation involving a federally mandated or authorized test (*e.g.*, reasonable cause, follow-up) where FRA regulations do not specify the responsive action.

The specific periods of ineligibility obviously represent decisions about which "reasonable minds may differ." However, they have antecedents in other fields of regulation and reflect FRA's best judgment of what would be both fair to locomotive engineers and reasonably effective from the point of view of deterrence. It is important that practice among the railroads with respect to certification be as uniform as possible, regardless of more stringent disciplinary action that may (and likely would) be taken in the case of some of the cases posited. Further, it is a legitimate objective to avoid excessive FRA involvement in reviewing requests for exceptions for alleged hardship, particularly since railroad disciplinary policy can normally be expected to address most cases at the other extreme of the range of culpability.

Paragraph (d) prescribes the conditions under which employees may be certified or recertified after a determination that the certification should not be granted, or should be suspended or revoked, due to a violation of § 219.101 or § 219.102 of the alcohol/drug regulations. These conditions closely parallel the return-to-duty provisions of the alcohol/drug rule, but are more stringent in the following respects:

- Return-to-duty testing shall be for both alcohol and controlled substances, regardless of the nature of the original violation.
- Follow-up tests must include at least 6 alcohol tests and 6 drug tests during the first 12 months following return to service and may include tests for both alcohol and controlled substances throughout the period.

Alcohol tests may be on either blood or breath samples using methods described in the alcohol/drug regulation. Alcohol tests must be conducted while the employee is in "duty status" in the sense that the employee is available for duty and is subject to the commingled service provisions of the Hours of Service Act. The regulation does not require compensation of the employee for the time spent in this testing, which is a condition precedent to retention of the certificate; but the issue of compensation is ultimately resolved by reference to the collective bargaining agreement or other terms and conditions of employment under the Railway Labor Act.

Paragraph (e) ensures that an engineer, like any other covered employee, may self-refer for treatment under the alcohol/drug rule (§ 219.403) before being detected in violation of alcohol/drug prohibitions and is entitled to confidential handling of that referral and subsequent treatment. This means that the railroad will not normally receive notice of any substance abuse disorder identified by the EAP Counselor. However, the paragraph also provides that the railroad policy must (rather than may) provide that confidentiality is waived if the engineer fails to participate successfully in treatment as directed by the EAP Counselor, to the extent that the railroad must receive notice that the employee has an active substance abuse disorder so that appropriate certificate action can be taken. The effect of this provision is that the certification status of an engineer who seeks help and cooperates in treatment will not be affected, unless the engineer fails to follow through.

Section 240.121

This section contains requirements for visual and hearing acuity testing that a railroad must incorporate in its program. FRA's proposal for visual and hearing acuity were proposed as § 240.43 of the NPRM.

As FRA pointed out when it issued the proposal, any person who operates a locomotive must have sufficient vision and hearing acuity if there is to be a reasonable expectation that trains will be operated safely by that person. Since many railroads do not have standards for either visual or hearing acuity or any program to periodically monitor these aspects of an engineer's health, FRA proposed to require both periodic examinations and minimum acuity thresholds.

This section contains FRA's revised criteria for a railroad's program concerning acuity standards. Since none of the commenters provided scientific evidence or documented research findings that provide a sound basis for setting acuity thresholds for locomotive engineers different from those used in other transportation modes, FRA has retained the acuity values proposed in the NPRM in paragraphs (c) and (d).

FRA has modified this section, by the inclusion of the wording in paragraphs (c) and (d), to afford railroads some discretion in applying these criteria. Commenters have persuaded FRA that some individuals, although not meeting these threshold acuity levels, may be able to compensate in other ways that will permit them to function at an appropriate safety level despite their physical limitations. FRA, therefore, has revised this section by the inclusion of paragraph (e) to permit a railroad to have procedures whereby doctors can evaluate such individuals and make discrete determinations about each person's ability to compensate for his or her physical limitations. If the railroad's doctor concludes that an individual has compensated for his or her limitations and can safely operate a locomotive on that railroad, the railroad can certify that person under this regulation once it possesses the doctor's professional medical opinion to that effect.

FRA has also revised the wording of paragraph (d) of this section. One aspect of the revision deletes the authorization to have hearing acuity tests performed without the use of audiometers. As pointed out by several commenters, audiometers are generally available throughout this country. Thus, there should not be any problem, or at most a minimal problem in isolated cases, for engineers to obtain access to these devices for testing purposes. Since there is no scientifically reliable basis on which to determine hearing acuity absent the use of this device, FRA is requiring that they be used. The other aspect of the revision involves the reference to the calibration standards which must be adhered to when determining that an audiometer is functioning properly. As one commenter noted, FRA could simplify compliance with its rule by requiring use of the same calibration standard that OSHA employs for other workers. FRA agrees and has used the same calibration standard mandated by OSHA.

Section 240.123

This section contains FRA's revised approach to the education of locomotive engineers. It melds ideas contained in §§ 240.61 through 240.67 of the NPRM and converts them to design and performance criteria. It also contains the concepts of section 240.19 of the NPRM that dealt with the need for maintaining familiarity with physical characteristics.

This section contains the requirement that each railroad provide for the continuing education of its engineers. At a minimum, that continuing education effort must address the need to keep engineers conversant with the personal safety directives of the railroad, the operating rules and practices of the railroad with which the engineer must comply, the rules for inspecting and testing the mechanical condition of rolling equipment with which the engineer must comply, and the methods of safe train handling, including familiarity with physical characteristics. As noted earlier, this section does not require that a railroad conduct its training at FRA-determined intervals or for specified durations as was proposed. This section affords each railroad the latitude to design its own program so long as that design addresses each of the required elements.

In designing its program, railroads must ensure that their engineers are kept advised of changes. These changes can include a wide range of subjects such as new or amended guidance provided in documents such as new "general orders" or "special instructions," amendments to its "book of rules," changes that occur in the physical characteristics of the territory with which the engineer is required to be familiar, and the introduction of new technology. The railroad must also provide for programs to ensure that each engineer stays familiar with existing rules and procedures that were initially learned years ago, as well as with the physical characteristics of the territory learned at some point in the past but unused for a significant period. Since the railroads' training programs must be described and submitted to FRA for approval, the exercise of the discretion being afforded railroads by this section will be monitored by FRA.

This section also contains requirements for the initial training of persons not previously trained as engineers. It identifies the subject matter to be covered and contains minimum constraints on the manner in which the training is to be conducted.

Section 240.125

This section, derived from § 240.73 of the NPRM, requires that railroads provide for the periodic testing of engineers. That testing must effectively examine and measure an engineer's knowledge of five subject areas: the personal safety directives of the railroad, the operating rules and practices of the railroad, the rules for

inspecting and testing the mechanical condition of rolling equipment, the methods of safe train handling including familiarity with physical characteristics, and compliance with Federal safety laws.

Again, railroads have discretion to design the tests that will be employed; for most railroads that will entail some modification of their existing "book of rules" examination to include new subject areas. This section does not specify things like the number of questions to be asked or the passing score to be obtained. It does retain the proposed requirement that the test not be conducted with open reference books unless use of such materials is part of a test objective. This section also requires that the test be in writing. FRA was not unmindful of commenter concern over the test taking skills of some individuals or of the possibility that some persons may have literacy problems when FRA decided to require a written test. However, FRA believes that minimum reading and comprehension skills are needed to assure safe train operations by a locomotive engineer. Some commenters asserted that there may be existing engineers who lack such basic skills. Those individuals, perhaps assisted by their railroad and co-workers, will have ample opportunity to achieve the requisite degree of literacy before being required to pass such a test for recertification purposes. This section affords each railroad latitude in designing its own testing effort so long as that design addresses each of these elements. Since the testing effort selected by the railroad must be submitted to FRA for approval, the exercise of the discretion being afforded railroads by this section will be monitored by FRA.

Section 240.127

This section, originally found in § 240.83 of the NPRM, requires that railroads provide for the periodic testing of an engineer's applied knowledge and performance skills. At a minimum, that testing effort must effectively examine and measure an engineer's knowledge and skill when operating a train or a locomotive. The test can be conducted when the engineer is operating either an actual train or a simulator. Whether real or simulated, the train must be representative of the type of train the engineer could reasonably expect to encounter in normal operations and must be operated over the type of terrain the engineer can reasonably be expected to encounter. The test must cover the engineer's applied knowledge of the operating rules and practices of the railroad with which the engineer must comply, the rules for inspecting and testing the mechanical condition of rolling equipment with which the engineer must comply, the methods of safe train handling including familiarity with physical characteristics, and compliance with Federal safety laws.

Unlike the proposed rule, this section does not specify the duration of the operation of the test train that must be witnessed. Deletion of that requirement responds to repeated commenter assertions that the proposal was unduly restrictive in requiring a lengthy period of test observation. This section does not authorize the use of anything less than a Type 1 or Type 2 simulator, since other simulators do not provide a sufficient replication of the real world environment to provide the degree of assurance needed concerning an individual's applied knowledge and skills. Again, a railroad's submitted plan regarding duration of the observation period for testing purposes is subject to FRA approval.

Section 240.129

This section derived from § 240.93 of the NPRM, requires that each railroad provide for the annual observation and compliance testing of its engineers' applied knowledge and performance skills. At a minimum, that compliance testing effort must effectively examine engineer response when operating a train or a locomotive and confronted with an unforeseen situation that requires affirmative reaction to less favorable conditions than those that existed prior to initiation of the test. The test can be conducted when the engineer is operating either an actual train or a simulator, but it must be done without prior warning to the engineer being tested.

The test required under this section is intended to improve routine compliance with major operating rules such as those that require engineers to operate prepared to stop within one-half the person's range of vision, or to approach a signal at reduced speed prepared to stop or make a diverging movement. Very few comments were received about this aspect of the monitoring proposal. Among those comments, two that have been rejected by FRA merit mention. One commenter urged that FRA not require tests because of a belief that covert testing breeds distrust and another commenter urged that this requirement not be applicable to those who only occasionally operate trains. FRA's routine field observations, experiences during system assessments, and some of the accident data clearly show the need for covert testing, since in its absence major safety rules intended to prevent collisions and derailments are often violated. FRA would expect that rail employees, whose safety is at issue, would understand this program as inuring to their benefit. The need for testing compliance with operating rules does not disappear because a person only occasionally operates a locomotive. There may in fact be a heightened value in assuring that those who do not routinely operate locomotives have their knowledge and skill periodically tested. One commenter did raise a valid concern that must be addressed by railroads during their design and implementation efforts: The failure of some railroads to properly control the placement of loads and empties when making up a train's consist. Unorthodox placement of loaded and empty freight cars does have the potential for generating severe train handling problems when engineers are required to respond to a compliance test conducted in territory that already presents an engineer with difficult train handling situations.

This section also requires an annual observation of each certified engineer by a supervisor of locomotive engineers, not as part of a test, but to provide for observation performance in routine operations, rather than merely in test environments. FRA has revised the portion of the section that pertains to such operational monitoring in light of the comments received. Railroads will be free to select the duration of the monitoring effort devoted to each individual engineer. Railroads also will have the option of using some or all of the following techniques: on-board observations, simulator observations, and evaluation of train operation event recorder data. As with prior provisions, this section affords each railroad latitude in designing its own monitoring effort, so long as that design addresses each of these elements. Since the testing and monitoring effort selected by the railroad must submitted to FRA for approval, the exercise of the discretion being afforded railroads by this section will be monitored by FRA.

This section has been revised to clearly indicate the duties of a railroad responsible for conducting joint operations under this section. FRA will permit but not require a railroad responsible for conducting joint operations, which involve certified engineers from other railroads operating over its territory, to annually observe and perform compliance tests of all such engineers under § 240.229.

Subpart C

Reflecting FRA's effort to simplify this rule, this subpart sets out the steps for implementing the railroads' certification programs. This subpart has no counterpart in the NPRM because its provisions appeared throughout the proposal.

Section 240.201

This section contains the timetable for implementation of the rule; its provisions are drawn primarily from §§ 240.1, 240.3, and 240.61 of the proposed rule.

This section requires that railroads identify supervisors of locomotive engineers and qualified engineers by November 1, 1991. All engineers must be issued certificates documenting their status by the end of 1991. Beginning in January 1992, no person may operate a locomotive without having an engineer's certificate in his or her possession.

Class I railroads, Amtrak, and commuter railroads may designate additional locomotive engineers without formal qualification findings until the end of 1991. Beginning in January 1992, those railroads must make the series of formal determinations required under this rule before issuing additional certificates. Similar provisions apply to Class II and Class III railroads effective May 31, 1992 and November 30, 1992, respectivey. Any railroad that comes into existence before the date for mandatory compliance with formal procedures applicable to similar railroads may employ the grandfathering approach of this section. A railroad that commences operation after the pertinent date for mandatory compliance by similar railroads must comply with the formal determination procedures of this rule. This section also contains a requirement that railroads make formal determinations concerning those they have grandfathered within 36 months of the date for compliance by their class of railroad.

Section 240.203

This section, derived from §§ 240.21, 240.41, 240.71 and 240.81 of the proposal, imposes a duty on railroads to make proper decisions in designating locomotive engineers.

Paragraph (a) requires that a railroad evaluate candidates in accordance with its approved program and determine that those it designates as locomotive engineers, including students, meet the criteria of this rule. The paragraph is organized to assure that railroads make the basic decisions about all engineers to preclude ineligible persons or those with unacceptably poor acuity levels from gaining access to the controls of a locomotive.

Paragraph (b) permits railroads that are conducting the initial training of persons as engineers to upgrade those students to the status of train or locomotive servicing engineer. It also authorizes such advancement without revisiting questions of the person's eligibility and acuity, provided the upgrading occurs within the time limits specified.

Section 240.205

This section, derived from §§ 240.21, 240.51, and 240.55 of the proposal, imposes a duty on railroads to employ proper procedures and make appropriate decisions in selecting persons to be locomotive engineers.

Paragraph (a) requires that a railroad evaluate candidates in accordance with its approved program and determine that those it designates as locomotive engineers, including students, meet the criteria of this rule. Paragraph (b) requires that the railroad have appropriate documentation to assure that railroads have the basic data to support their decisions about all engineers including decisions to preclude ineligible persons from being authorized access to the controls of a locomotive.

Section 240.207

This section, derived from §§ 240.41 and 240.45 of the proposed rule requires that a railroad have either a medical examiner's certificate documenting that the candidate has been tested and found to meet the acuity thresholds or a written opinion from the railroad's medical examiner that the candidate has adequate acuity to perform safely as an engineer. In response to commenter suggestions, the section permits the actual administration of the acuity test to be done by a wider variety of personnel than was contemplated by the NPRM. Allowing broader participation in the conduct of the test while maintaining responsibility for proper conduct of the test, at higher levels, should assist in lowering the cost of conducting such tests. FRA has also changed the reference to the calibration standard to be consistent with the OSHA calibration requirements (29 CFR part 1910) that apply when railroads are testing the hearing acuity of other railroad workers.

If the acuity testing reveals that a person needs corrective lenses or a hearing aid to function as an engineer, that fact must be noted on the actual certificate issued to the engineer and imposes a duty on the engineer to use the needed device while operating a locomotive. The wording of this section has also been revised to accommodate situations in which improvements occur that obviate the need for corrective devices.

A number of commenters questioned who would have responsibility for absorbing the costs associated with obtaining the necessary tests. This section does not address that issue since it is not a safety matter but may be an appropriate subject for discussion among the affected parties.

Section 240.209

This section, drawn from §§ 240.73 and 240.79 of the proposed rule, requires that a railroad employ the FRA-approved testing procedures in concluding that a person has sufficient knowledge concerning the railroad's rules and practices for the safe operation of trains. It also contains a requirement to document that testing and a prohibition against permitting a person who has failed a test to operate as a train or locomotive servicing engineer until successful completion of a reexamination.

This section differs from the proposed rule in that it tracks the performance approach to test and examination designs contained in § 240.125 and it omits all references to the conduct of reexaminations. FRA has concluded in both instances that commenter suggestions for altering the proposal were valid. FRA is sensitive to the fact that precluding those who fail such tests from operating a locomotive until successful passage of a reexamination will place a premium on proper preparation for such tests. But allowing those who have failed to demonstrate the knowledge needed to operate a locomotive, as was urged by a number of commenters, is simply not acceptable from a safety perspective.

Section 240.211

This section, drawn from §§ 240.83 and 240.89 of the proposed rule, requires that a railroad employ the skill testing procedures approved by FRA in concluding that a person has the ability to safely operate locomotives and trains. The same analysis provided for § 240.209 applies to this section with one change. Paragraph (d) prohibits a designated supervisor of locomotive engineers from sitting in judgment of his or her own skills. Railroads that have only a single designated supervisor of locomotive engineers will have to make arrangements with other parties to facilitate skill performance evaluation of its designated supervisor.

Section 240.213

This section, drawn from § 240.61 of the proposed rule, imposes a duty on railroads to make determinations concerning a student's overall knowledge, applied knowledge, and skill in the safe operation of trains before certifying that person as a train or locomotive servicing engineer.

The section has been written to better accommodate the potential for a wide variety of providers who may train students to be engineers. It requires that a railroad relying on skill training off its own lines examine the candidate's familiarity with the physical characteristics of the certifying railroad's trackage.

Section 240.215

This section, derived from §§ 240.103 and 240.107 of the NPRM, contains the record keeping responsibilities of railroads for those persons it has certified as locomotive engineers. FRA has revised this section to specify the records that must be kept by the railroad. FRA has provided this detailed recitation to eliminate any possible misunderstandings that might arise from the use of the phrase, "the information relied on," that was in the proposed rule. This section consolidates record keeping duties that were scattered throughout the NPRM.

Section 240.217

This section, drawn from §§ 240.45, 240.77, and 240.87 of the NPRM, contains the various time constraints that FRA has established to preclude railroads from relying on stale information when evaluating a candidate for certification or recertification. All of the time constraints in this section have been lengthened in response to commenter requests.

Section 240.219

This section, drawn from §§ 240.57, 240.59, 240.107, and 240.113 of the NPRM, establishes the procedures to be followed when a railroad decides to deny a person certification or recertification.

This section has no equivalent in the proposed rule. Although several sections of the NPRM provided for notice to candidates that the railroad possessed adverse information and required that candidates be given an opportunity to review and respond to that information, these provisions were not consistent and did not reach all the kinds of adverse data that a railroad might possess. Several commenters expressed concern about this situation. Thus, FRA has decided to clearly provide for an opportunity for review in all instances. Since some provisions of this final rule contain a similar but discrete opportunity for review, FRA does not intend to impose a second opportunity under this section. Moreover, the proposed rule impliedly required a railroad to communicate to the candidate, and document in writing, the basis for any decision to deny. This section clearly obligates a railroad to perform that function within a reasonable time after it makes its decision to deny.

Section 240.221

This section, proposed § 240.105, requires that each railroad maintain a list of its designated supervisors of locomotive engineers and certified locomotive engineers. This section has been revised slightly to resolve three different concerns about its content. First, FRA has specifically provided for the periodic updating of the list so that it retains its usefulness. Second, FRA has responded to commenter concern over where such information must be kept available by establishing an optional special approval process for railroads that conduct far flung operations but want to maintain data at a central location. Finally, FRA has included a provision addressing the duty of a railroad that controls operations over joint operations territory and certifies engineers for the limited purpose of operating over such territory under § 240.229 to comply with this section.

Section 240.223

This section, which appeared as proposed § 240.101, contains the requirements for the certificate that must be carried by each locomotive engineer. FRA has revised this section slightly to provide for better identification of the person to whom it has been issued by adding a duty to include the person's employee identification number if one is used by the railroad or the person's social security number if no unique identification code is used by the railroad. It also requires that identification data be included to provide assurance that the bearer of the card is the person to whom it was issued. The identification data can be either a physical description (height, weight, eye color and hair color) or a photograph. This change responds to commenter suggestions that FRA require that a photograph of the engineer be part of the certificate. While railroads are not foreclosed from using photographs, FRA is not convinced that their use should be mandated. The revised section also requires that the certificate include the date of the engineer's most recent operational monitoring test.

Although it has been suggested, FRA has not imposed specific duties on a railroad to institute security and audit procedures to preclude unauthorized acquisition and use of blank certificate forms. FRA is confident that railroads, on their own initiative, will take effective steps to properly monitor and control access to these documents.

Section 240.225

This section, derived from proposed § 240.25, contains the requirements that apply when a previously certified engineer is about to begin service for a different railroad. It has been revised to reflect the renumbering of various provisions occasioned by reorganization of this part. It also has been changed, in response to a commenter suggestion, to preclude a railroad from upgrading the class of service an engineer may perform on the second railroad without tests to determine the engineer's ability to handle the demands of the upgraded classification. It also imposes a duty on the second railroad to determine that the transferring engineer has the necessary knowledge concerning the new railroad's operating rules and practices and that the engineer has the necessary skills, including familiarity with physical characteristics of the second railroad. The need for this detailed independent assessment by the second railroad stems from the decision to eliminate the more stratified classification system for types of locomotive engineers contained in the NPRM.

Section 240.227

This section contains the requirements for a railroad that wants to rely on the system of locomotive engineer qualification established by the Canadian Government. It is virtually unchanged from the provisions of proposed § 240.27 of the NPRM, except to show Transport Canada as the Canadian agency with responsibility for rail safety.

Section 240.229

This section, proposed § 240.23, contains requirements for railroads responsible for conducting joint operations with another railroad. Several commenters suggested that FRA clarify this section to account for unusual situations in which a train from another railroad or another entity needs to operate on its lines, *i.e.*, a steam train operated on an excursion trip, a short-term detour routing caused by adverse

weather conditions, or other *ad hoc* joint operations. FRA agrees that the proposal focused on longer term operations and did not adequately address these unusual situations. FRA, therefore, has revised this section to permit railroads to conduct joint operations by providing a qualified person to accompany a "foreign" train over its lines. In this way, the railroad with responsibility for conducting the joint operations will have a simple and prompt response capability when confronted with the types of situations posed by the commenters. Since the person providing guidance on how to negotiate the joint operations territory will have to offer guidance on or provide for proper train handling procedures while traversing the territory, FRA has included criteria for what will constitute a qualified person in such situations.

This section also has been revised to clearly permit a controlling railroad, certifying a person for the limited purpose of operating over joint operations territory, to fulfill its duty to issue that person a certificate by endorsing the preexisting certificate issued by the other railroad as provided for in paragraph (c) of § 240.223.

Subpart D

This subpart reflects FRA's effort to simplify this rule. It provides for the routine administration of the railroad certification programs. This subpart has no counterpart in the NPRM, but contains the provisions of proposed subpart J and elements found in other subparts in the proposal.

Section 240.301

This section has no counterpart in the proposed rule. Although FRA proposed a fairly comprehensive approach to the issuance and reissuance of certificates and their possible revocation or suspension, FRA's proposal did not contain a clear requirement that railroads have a system for the replacement of lost or damaged certificates. Several commenters were concerned that, in the absence of such a requirement, they could encounter problems replacing certificates. In response, FRA has decided to require that railroads have a system that allows the replacement of certificates when necessary. Commenters urging adoption of such an approach suggested that engineers should not have to bear any expenses in connection with obtaining replacements. This provision does not attempt to resolve the question of who will bear the cost of operating such a replacement system, since that is not a safety matter and is an appropriate subject for discussion among the affected parties.

Section 240.303

This section, which appeared as proposed § 240.93, contains the requirements for conducting the operational monitoring and compliance testing of certified engineers. It imposes a duty on railroads to adhere to their approved monitoring program and to conduct their unannounced compliance test program in a particular manner. Few comments were received on this proposal and FRA has revised this section only to reflect the greater latitude given railroads to design the implementation of its program (see the earlier discussion of § 240.129) for routine periodic operational monitoring of each engineer. Since FRA will allow railroads to select the best way to conduct annual monitoring from among several options, in lieu of the proposed requirement for an extended on-board observation, FRA has not accepted commenter suggestions that these observation be conducted at 18-month intervals. This options approach was discussed above in connection with the discussion of § 240.129.

Section 240.305

This section, which appeared as § 240.93 of the NPRM, proscribes certain types of conduct once the initial phase of the certification program is implemented. As noted in the preamble discussion of the proposed rule, FRA has identified three types of events not covered by current Federal safety rules that FRA believes should be regulated here: Operating a locomotive or train at excessive speed; failing to stop at signals requiring a stop; and entering a segment of track without proper authority. FRA received very few comments on this proposal. Those rare comments from individual engineers objected to the idea that FRA would now have enforcement powers similar to those of railroad companies; other comments urged adoption of the section so as to provide a basis for disqualification proceedings under part 209.

FRA is adopting the section but with two changes. First, this section will not become effective before railroads have completed their initial selection of locomotive engineers and had an opportunity to issue the certificates required by this rule. Second, FRA has revised this section to make the prohibitions against the three types of conduct mentioned above clearly applicable to both railroads and individual engineers. Although the wording of this section does not reflect that railroad companies and individuals are held to different standards, the fact is that FRA can only take civil penalty action against individuals who willfully violate the provisions of this section.

In devising the wording of this section and in administering the new authority contained in this section, FRA will approach the question of whether particular facts warrant the initiation of civil penalty action or some other remedial response in accordance with FRA's statement of enforcement policy in appendix A to part 209. FRA will also be guided by the following principles in interpreting the operational constraint provisions of this section. FRA will consider whether train speed is excessive by looking at the limits for train speed established by the timetable, train order, or similar mandatory directive. Where FRA observes, or has evidence supporting a finding that, a train's speed exceeding the maximum by one half the authorized speed but less than a 10-mile-per-hour overspeed, FRA will acknowledge the calibration limitations of locomotive speed indicators. In determining whether a train has been operated past a signal that requires a complete stop in contravention of a railroad rule requiring a stop, FRA will be guided by railroad interpretations of the application of that rule to particular factual settings. In this context the term "signal" encompasses the same wide range of devices currently employed by the industry and is not limited to automatic roadway signals regulated by FRA in parts 233, 235, and 236 of its regulations. Similarly, FRA will be guided by the individual railroad's operating rules and practices, including railroad interpretations of these rules and practices when evaluating whether a train entered a segment of track without proper authority.

Section 240.307

This section, which appeared as § 240.95 of the NPRM, requires that a railroad proceed in a specified manner when it acquires information indicating that a certified engineer no longer meets these qualification standards.

The rare comments received on this matter focused on the topic of loss of eligibility due to poor safety conduct and generally urged FRA either to ignore the topic or invoke the FRA disqualification procedures. As previously explained it is not appropriate for FRA to ignore issues such as loss of eligibility or simply rely on its disqualification procedures. Since an engineer can cease to meet these qualification standards in a variety of

ways, FRA is retaining, but revising, these provisions. Paragraph (a) now provides that a railroad shall suspend the certificate of an engineer about whom it has acquired convincing information indicating he or she no longer meets the qualification criteria of this rule.

Paragraph (b) requires that before suspending a certificate, or contemporaneous with the suspension, the railroad shall give the engineer written notice of the reason for the pending revocation action and provide an opportunity for a hearing. The duration of the suspension is limited since the engineer can demand that the hearing be held within 10 calendar days of the suspension. If the person is ill, injured, or unavailable for sufficient cause, the hearing can be delayed. At the hearing, the railroad hearing officer shall determine on the record, if such a conclusion is reached by the hearing officer, the basis for the hearing officer's finding that the engineer no longer meets the qualifications established by this regulation. Based on such a conclusion the railroad shall revoke the locomotive engineer's certificate.

Since there is reason to believe that the parties to a hearing required under this section may wish to consolidate that hearing with disciplinary or other proceedings arising from the same facts, FRA has provided for such consolidation in paragraph (c). FRA also has sanctioned, in paragraph (d), parties' adhering to different procedural arrangements, such as those concerning disciplinary matters that were arrived at through collective bargaining in lieu of adhering to the procedural constraints specified in subparagraphs (b)(1) and (b)(2).

Paragraphs (e) and (f) address the issue of what response is required when a person has been certified by more than one railroad. Such dual certification typically occurs so that an engineer can operate in joint operations territory, but may also occur when an engineer holds dual employment. Under such circumstances, when information is acquired causing belief that the person may no longer meet the requirements of this part, the duty to hold a hearing under this section need be satisfied by only one of the railroads. If the railroad holding the hearing concludes that the person's certificate must be revoked, other railroads will be bound by that determination. Railroads will receive notification of such revocation because the locomotive engineer is obligated to advise all affected railroads of such adverse action under the provisions of § 240.305(d). Paragraphs (e) and (f) do not dictate which railroad should hold the hearing.

Section 240.309

This section, derived from §§ 240.51, 240.55, 240.57, and 240.59 of the NPRM, establishes internal review and analysis procedures to be followed by Class I and Class II railroads. As discussed earlier, most commenters objected to FRA's proposal to identify particular types of unsafe performance, assign each type a point value, and then predicate loss of eligibility on the accumulation of a certain number of points. The commenters strongly urged FRA to allow railroads to employ their existing, non-regulatory system of imposing punishment for failures to comply with safety directives, rather than adopt a rigid point system. That approach is rejected because it would be inappropriate to resolve issues at the heart of a Federal safety rule through a collective bargaining mechanism.

As discussed earlier, FRA is requiring railroads to have their own individual systems for examining and evaluating incidents of noncompliance with its rules and procedures for the safe operation of trains. FRA has formulated the information collection requirements of this section to ensure that railroads collect data on engineer safety behavior and feed that information back into its operational monitoring efforts, thereby enhancing safety. As acknowledged by commenters, railroads lack a current system for routinely monitoring and evaluating the effectiveness of their existing discipline system. Although some types of disciplinary data may be monitored for limited purposes, such as the conduct of labor relations activities, the broad spectrum of such data is not routinely integrated and applied to the evaluation of the effectiveness of railroad safety programs. Several commenters endorsed this type of information gathering as an interim response.

This section requires that, beginning on January 1, 1992, large and medium sized railroads have an internal auditing plan to keep track of 10 distinct kinds of events that involve poor safety conduct by locomotive engineers. For each event, the railroad will have to indicate what response it took to that situation. The railroad will evaluate this information, together with data showing the results of annual operational testing and the causation of FRA reportable train accidents, to determine what additional or different efforts, if any, are needed to improve the safety performance of that railroad's certified locomotive engineers.

FRA is not requiring that a railroad furnish this data or its analysis of the data to FRA. Instead, FRA requires that the railroad be prepared to submit such information when requested.

Subpart E

FRA proposed to establish a simplified set of procedures to permit quick resolution of any disputes concerning a railroad's decision to deny certification or recertification or to revoke certification. Except for comments suggesting that FRA defer to the existing dispute resolution mechanisms of the Railway Labor Act, in lieu of creating a separate set of dispute resolution procedures, FRA received only one substantive comment on its proposal concerning this issue. That commenter urged that FRA use the identical procedures for this process that FRA has adopted for instituting FRA-initiated disqualification proceedings. FRA believes the commenter fails to recognize the significant differences that exist in the two distinct settings. These differences make it inappropriate for FRA to burden the engineer, the railroad, or the agency to the same degree in both situations. In the context of disputes about qualifications under this rule, FRA will be reviewing a detailed record of events rather than conducting a fact finding effort of its own.

Section 240.401

This section, § 240.111 in the proposed rule, has been adopted with only minor editorial changes.

Section 240.403

This section was identified as § 240.113 in the proposed rule. Paragraphs (c) and (d) have been reworded to indicate that failure to adhere to the time limit of 180 days for seeking FRA review will result in dismissal of the review petitions as untimely. In addition, some minor editorial changes have been made to this section.

Section 240.405

This section, § 240.115 of the proposed rule, has been adopted without change.

Section 240.407

This section, § 240.117 of the proposed rule, has been adopted without substantive change.

Section 240.409

This section, § 240.119 of the proposed rule, has been adopted without substantive change.

Section 240.411

This section, § 240.120 of the proposed rule, has been adopted without change.

Appendix A

FRA noted in the NPRM that Appendix A of the final rule would contain a schedule of civil penalties similar to that FRA has issued for all of its regulations. Although such an appendix is a statement of policy, FRA solicited public comments expressing views on how FRA should handle this matter. Despite the extensive number of comments filed, no party commented on this appendix. Appendix A specifies the civil penalty FRA will ordinarily assess for the violation of a particular provision of this rule and reserves FRA's right to assess a penalty up to the statutory maximum where circumstances warrant. The process by which FRA will seek to impose such penalties is described in part 209.

Appendix B

FRA is providing both the organizational requirements and a narrative description of the submission required under §§ 240.101 and 240.103. FRA is not requiring that railroad submissions be made on a Federally mandated form. Instead, FRA is prescribing only minimal constraints on the organization and manner of presenting information. FRA requires that the submission be divided into six sections. FRA requires that each section deal with a different subject matter and that the railroad identify the appropriate person to be contacted in the event FRA needs to discuss some aspect of the railroad's program which relates to that section.

Although FRA is not prescribing in detail the form of the submission, FRA will make available, during the meetings held to discuss compliance with this rule, sample formats for such submissions. To assist those who must generate these submissions, FRA has provided a narrative description of the kinds of topics that should be covered in a railroad's submission. This narrative description is intended to aid railroads in preparing their submissions and should not be read as modifying or replacing any of the specific requirements of the relevant regulatory section(s) to which it relates.

Appendix C

In this appendix FRA is providing a narrative discussion of the procedures that a person seeking certification or recertification will have to follow to furnish a railroad with information concerning his or her motor vehicle driving record. The appendix has been modified to reflect the changes made to § 240.113, which places full responsibility on the individual to seek data.

Appendix D

This appendix contains the list of participating state motor vehicle licensing agencies that can directly furnish data on both NDR information and the state's own internal recorded information. As noted in the proposed rule, there are multiple advantages when a certification candidate can discharge both aspects of his or her responsibilities under § 240.113 by contacting such agencies. Thus, FRA has made this the preferred practice under this rule.

Appendix E

FRA has included an appendix that contains recommended practices for conducting skill performance tests. FRA has provided in this appendix an outline of the types of concerns that should be addressed during the administration of a skill performance test and guidance on how a form could be devised to assist in promoting uniformity in the application of this test.

Regulatory Impact

E.O. 12291 and DOT Regulatory Policies an Procedures

This rule has been evaluated in accordance with existing regulatory policies and is considered to be non-major under Executive Order 12291. However, it is considered to be significant under the DOT policies and procedures (44 FR 11034; February 26, 1979) because it initiates a substantial regulatory program.

Consequently, FRA has prepared and placed in the rulemaking docket a regulatory evaluation addressing the economc impact of this rule. It may be inspected and copied at room 8201, 400 Seventh Street, SW., Washington, DC. Copies may be obtained by submitting a written request to the FRA Docket Clerk at the same address.

The economic evaluation identifies total estimated potential benefits, from avoidance of accidents and incidents, of $334 million and total estimated costs of $50 million over a twenty-year period that can be associated with adoption of this proposal. Both benefits and costs are stated at a discounted present value (10% discount factor) for a program life of 20 years using constant 1988 dollars. The 20 year estimated program life appears reasonable given the relatively long tenure of locomotive engineers, the useful life of any equipment used for this rule's purposes, and the recurring costs assumed over the life of the program.

There are two points that bear mention concerning FRA's economic evaluation. In determining the quantifiable benefits from the proposed rule, FRA selected accidents that occurred during the period 1977 through 1987 that were caused by human factors that appear to reflect poor locomotive operator performance. Although human factor accidents have seen a dramatic reduction in actual numbers, they have not been decreasing at the same rate as accidents attributed to other causes. Of the 18,140 human-factor caused accidents reported during the period, FRA identified a total of 6,990 train accidents that resulted in 61 fatalities, 1,482 personal injuries, and $325 million in property damage that can be ascribed to poor locomotive operator performance. Those accidents included 214 resulting from improper use of the automatic brake, 62 due to improper use of dynamic brake, and an additional 171 due to improper use of the independent brake valve. These appear to stem from poor performance curable through improved training. Also within that total are some 1,649 accidents attributed to excessive speed and 3,375 caused by excessive in-train force levels that may not be as directly related to training.

The difficulty that FRA encountered in analysis of the data involves the absence of specific information that indisputably identifies inadequate training as a causal factor. This resulted in FRA's encountering difficulty in reliably estimating a specific effectiveness level for accident avoidance that could be employed in estimating the benefits associated with adoption of this rule. The difficulty in estimating any specific effectiveness level is caused by an inability to document with specificity the correlation between testing, training, and actual safety performance. In essence, accident investigation data in the railroad industry at times reflect a conclusion that locomotive operators did not take effective action. The investigations generally do not isolate whether that stemmed from inadequate training, a failure to recall a vital piece of information learned long ago, or lack of proper execution due to simple inattentiveness. Although data limitations do not make it possible for FRA to reliably estimate a specific level of effectiveness for this rule, it would only require about a 14 percent realization of the potential benefits to make this proposed rule economically justified. FRA believes that such a level of realization is achievable.

Regulatory Flexibility Act

FRA certifies that this rule will not have a significant economic impact on a substantial number of small entities. These rules will apply to railroads and individuals seeking to operate locomotives for railroads. Although a substantial number of small railroads will be subject to this regulation, the economic impact of this rule will not be significant for several reasons. Small railroads historically have not elected to train their own engineers and thus generally will not incur the training costs associated with this rule. Thus, the only costs that a small railroad normally will incur are those associated with routine administration of the certification program. Since small railroads individually and in the aggregate employ only a few locomotive engineers, FRA concludes that this economic impact will not be significant. As noted, FRA estimates that roughly 34,000 locomotive engineers are currently in service. Each of these individuals could be expected to incur some nominal expenses under this rule. Every three years, each engineer may be required to pay a fee of less than $10 for furnishing motor vehicle driver's license data. This fee reflects the costs associated with getting a document notarized and paying state motor vehicle agency documentation charges.

The proposed rule will have no direct impact on small units of government, businesses, or other organizations. State rail agencies will be free to participate in the administration of this program but are not required to do so. State motor vehicle driver's licensing agencies can anticipate on a nationwide basis that they will annually receive 10,000 additional requests for motor vehicle driver's licensing data. Since such state agencies costs are reimbursed through fees paid by the person making the data request, this rule would not have a direct adverse economic impact on these agencies.

Paperwork Reduction Act

There are collection of information requirements contained in this rule and, in accordance with the Paperwork Reduction Act of 1980, the record keeping and reporting requirements contained in this rule have been submitted to the Office of Management and Budget for approval. The information collection requirements of this rule will become effective when they are approved by OMB. FRA has endeavored to keep the burden associated with these rules as simple and as minimal as possible for such a program. For some entities that already have similar programs in place, the burden created will be minimal. For others, the burden could be extensive.

There are significant variables in the time required to comply with these requirements. Thus a total overall estimate of the reporting burden is not easily arrived at and could be seriously misleading. FRA, therefore, has elected to identify each of the sections that contain information collection requirements and indicate the time estimated to fulfill each requirement. All of these estimates include time for reviewing instructions, searching existing data sources, gathering or maintaining the needed data, and reviewing the information.

Section	Brief description	Estimated average time
240.9	Request for Waiver	1 hour each.
240.101 & 240.103 & 240.107 & 240.109 & 240.119 & 240.121 & 240.123 & 240.125 & 240.127 & 240.129 & 240.303 & Appendix B.	Certification Program —preparation if perform student training. —preparation if do not perform student training. —submission to FRA.	200 hours each railroad. 40 hours. each railroad. 1 hour each railroad.
240.111 &	Request for State License Data.	15 minutes per person.
Appendix C	Request for NDR data.	30 minutes per person.
240.111 &	Notice of Absence of License.	15 minutes per person.
Appendix D	Additional data-follow-up request.	30 minutes per person.
240.111	Request for Railroad Data.	15 minutes per person.
	Response to Data Request.	30 minutes per person.
240.115	Review of Eligibility Data.	30 minutes per person.
240.201 &	List of—Designated Supervisors updating.	15 minutes per railroad.
240.221	—Certified Engineers updating.	15 minutes per railroad.
240.201 & 240.207 & 240.223 & 240.229 & 240.301.	Locomotive Engineers Certificates.	5 minutes per person.
240.205	Data to EAP Counselor.	5 minutes per person.
240.207	Medical Certificate	30 minutes per person.
240.209 &	Written Test	2 hours per person.
240.211 &	Performance Test	2 hours per person.
240.213	Annual Operational Monitor Test.	1 hour per person.
	Annual Operational Observation.	2 hours per person.
	—Examination Grading.	15 minutes per person.
240.215	Record Keeping for each Engineer.	1 hour per person.
240.219	Certification Denial Notice.	1 hour per person.
	Response to Notice	1 hour per person.
240.221	Request Electronic listing.	30 minutes per railroad.
240.227	Canadian Certification Data.	15 minutes per person.
240.305	—Engineer's Notice of Non-Qualification.	15 minutes per person.
	—Engineer's Notice of loss of qualification.	1 hour per person.
240.307	Notice to Engineer of Disqualification.	1 hour per person.
240.309	Railroad Annual Review & Analysis.	60 hours per railroad.
240.401 & 240.403.	Engineer Appeals to FRA if lose certification.	30 minutes per person.
240.405	Railroad Response to Appeal.	15 minutes per person.
240.407	Request for Hearing	30 minutes per person.
240.411	Appeals	30 minutes per person.
Appendix C	Notice to Engineer about State with Driver Record.	15 minutes per person.
	Response to Follow-up request for Data.	15 minutes per person.

Although FRA solicited comments on the accuracy of the FRA estimates, the practical utility of the information, and alternative methods for obtaining this information that might be less burdensome, FRA did not receive many comments on this aspect of its proposal. As stated earlier, FRA received virtually no comments on the alternative procedures for obtaining information concerning a certification candidate's driving record, specifically in accessing the National Driver Register. The comments that addressed the issue of information collection were limited to suggestions that FRA employ a longer interval for certification (*e.g.*, five years instead of three years). The five-year interval is an alternative FRA found to be undesirable for the reasons previously given. The costs estimated to be associated with the information collection requirements are contained in the regulatory evaluation.

Environmental Impact

FRA has evaluated this regulation 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 related directives. This regulation meets the

criteria that establish this as a non-major action for environmental purposes.

Federalism Implications

This rule will not have a substantial effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

List of Subjects in 49 CFR Part 240

Railroad safety, railroad operating procedures.

The Rule

Therefore, in consideration of the foregoing, FRA amends chapter II, subtitle B of title 49, Code of Federal Regulations as follows:

1. By adding a new part 240 to read as follows:

Part 240—Qualification and Certification of Locomotive Engineers

Subpart A—General

Sec.
240.1 Purpose and Scope
240.3 Applicability
240.5 Construction
240.7 Definitions
240.9 Waivers
240.11 Consequences for Noncompliance
240.13 Information Collection Requirements

Subpart B—Component Elements of the Certification Process

Sec.
240.101 Certification Program Required
240.103 Approval of Design of Individual Railroad Programs by FRA
240.105 Criteria for Selection of Designated Supervisors of Locomotive Engineers
240.107 Criteria for Designation of Classes of Service
240.109 General Criteria for Eligibility Based on Prior Safety Conduct
240.111 Individual's Duty to Furnish Data on Prior Safety Conduct as Motor Vehicle Operator
240.113 Individual's Duty to Furnish Data on Prior Safety Conduct as an Employee of a Different Railroad
240.115 Criteria for Consideration of Prior Safety Conduct as a Motor Vehicle Operator
240.117 Criteria for Consideration of Operating Rules Compliance Data
240.119 Criteria for Consideration of Data on Substance Abuse Disorders and Alcohol/Drug Rules Compliance
240.121 Criteria for Vision And Hearing Acuity Data
240.123 Criteria for Initial and Continuing Education
240.125 Criteria for Testing Knowledge
Sec.
240.127 Criteria for Examining Skill Performance
240.129 Criteria for Monitoring Operational Performance of Certified Engineers

Subpart C—Implementation of the Certification Process

Sec.
240.201 Schedule for Implementation
240.203 Determinations Required as a Prerequisite to Certification
240.205 Procedures for Determining Eligibility Based on Prior Safety Conduct
240.207 Procedures for Making the Determination on Vision and Hearing Acuity
240.209 Procedures for Making the Determination on Knowledge
240.211 Procedures for Making the Determination on Performance Skills
240.213 Procedures for Making the Determination on Completion of Training Program
240.215 Retaining Information Supporting Determinations
240.217 Time Limitations for Making Determinations
240.219 Denial of Certification
240.221 Identification of Qualified Persons
240.223 Criteria for the Certificate
240.225 Reliance on Qualification Determinations Made by Other Railroads
240.227 Reliance on Qualification Requirements of other Countries
240.229 Requirements for Joint Operations Territory

Subpart D—Administration of the Certification Programs

Sec.
240.301 Replacement of Certificates
240.303 Operational Monitoring Requirements
240.305 Prohibited Conduct by Certified Engineers
240.307 Revocation of Certification
240.309 Railroad Oversight Responsibilities

Subpart E—Dispute Resolution Procedures

Sec.
240.401 Review Board Established
240.403 Petition Requirements
240.405 Processing Qualification Review Petitions
240.407 Request for a Hearing
240.409 Hearings
240.411 Appeals
Appendix A to Part 240—Schedule of Civil Penalties
Appendix B to Part 240—Procedures for Submission and Approval of Locomotive Engineer Qualification Programs
Appendix C to Part 240—Procedures for Obtaining and Evaluating Motor Vehicle Driving Record Data
Appendix D to Part 240—Identification of State Agencies that Perform National Driver Register Checks
Appendix E to Part 240—Recommended Procedures for Conducting Skill Performance Tests

Authority: 45 U.S.C. 431 and 438, as amended; Pub. L. 100-342; and 49 CFR 1.49(m).

Subpart A—General

§ 240.1 Purpose and scope.

(a) The purpose of this part is to ensure that only qualified persons operate a locomotive or train.

(b) This part prescribes minimum Federal safety requirements for the eligibility, training, testing, certification, and monitoring of all locomotive engineers. This part does not restrict a railroad from implementing additional or more stringent requirements for its locomotive engineers that are not inconsistent with this part.

(c) The qualifications for locomotive engineers prescribed in this part are pertinent to any person who operates a locomotive, unless that person is specifically excluded by a provision of this part, regardless of the fact that a person may have a job classification title other than that of locomotive engineer.

§ 240.3 Applicability.

(a) This part applies to all railroads that operate locomotives on standard gage track that is part of the general railroad system of transportation.

(b) This part does not apply to:

(1) rapid transit operations in an urban area that are not connected with the general system of transportation; and

(2) a railroad that operates only on track inside an installation which is not part of the general railroad system of transportation.

§ 240.5 Construction.

(a) Under section 205 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 434), issuance of these regulations preempts any State law, rule, regulation, order, or standard covering the same subject matter.

(b) FRA does not intend by issuance of these regulations to preempt any provisions of State criminal law that impose sanctions for reckless conduct that leads to actual loss of life, injury, or damage to property, whether such provisions apply specifically to railroad employees or generally to the public at large.

(c) FRA does not intend, by use of the term "locomotive engineer" in this Part, to preempt or otherwise alter the terms, conditions, or interpretation of existing collective bargaining agreements that employ other job classification titles when identifying persons authorized by a railroad to operate a locomotive.

(d) FRA does not intend by issuance of these regulations to preempt or otherwise alter the authority of a railroad to initiate disciplinary sanctions

against its employees, including managers and supervisors, in the normal and customary manner, including those contained in its collective bargaining agreements.

(e) Nothing in this part shall be construed to create an eligibility or entitlement to employment in other service for the railroad as a result of denial, suspension, or revocation of certification under this part.

§ 240.7 Definitions.

As used in this part—

Alcohol means ethyl alcohol (ethanol) and includes use or possession of any beverage, mixture, or preparation containing ethyl alcohol.

Controlled Substance has the meaning assigned by 21 U.S.C. 802 and includes all substances listed on Schedules I through V as they may be revised from time to time (21 CFR parts 1301–1316).

Current Employee is any employee with at least one year of experience in transportation service on a railroad.

Designated Supervisor of Locomotive Engineers is a person designated as such by a railroad in accordance with the provisions of § 240.105 of this part.

Drug means any substance (other than alcohol) that has known mind or function-altering effects on a human subject, specifically including any psychoactive substance and including, but not limited to, controlled substances.

EAP Counselor means a person qualified by experience, education, or training to counsel people affected by substance abuse problems and to evaluate their progress in recovering from or controlling such problems. An EAP Counselor can be a qualified full-time salaried employee of a railroad, a qualified practitioner who contracts with the railroad on a fee-for-service or other basis, or a qualified physician designated by the railroad to perform functions in connection with alcohol or substance abuse evaluation or counseling. As used in this rule, the EAP Counselor owes a duty to the railroad to make an honest and fully informed evaluation of the condition and progress of an employee.

FRA Representative means the Associate Administrator for Safety, FRA, and the Associate Administrator's delegate, including any safety inspector employed by the Federal Railroad Administration and any qualified state railroad safety inspector acting under Part 212 of this Chapter.

Instructor Engineer means a person who

(1) Is a qualified locomotive engineer under this part,

(2) Has been selected by the railroad to teach others proper train handling procedures, and

(3) Has demonstrated an adequate knowledge of the subjects under instruction.

Joint Operations means rail operations conducted by more than one railroad on the same track regardless of whether such operations are the result of—

(1) Contractual arrangement between the railroads,

(2) Order of a governmental agency or a court of law, or

(3) Any other legally binding directive.

Knowingly means having actual knowledge of the facts giving rise to the violation or that a reasonable person acting in the circumstances, exercising due care, would have had such knowledge.

Locomotive means a piece of on-track equipment, other than hi-rail or specialized maintenance equipment

(1) With one or more propelling motors designed for moving other equipment;

(2) With one or more propelling motors designed to carry freight or passenger traffic or both; or

(3) Without propelling motors but with one or more control stands.

Locomotive engineer means any person who moves a locomotive or group of locomotives regardless of whether they are coupled to other rolling equipment except:

(1) A person who moves a locomotive or group of locomotives within the confines of a locomotive repair or servicing area as defined in 49 CFR 218.5(f); or

(2) A person who moves a locomotive or group of locomotives for distances of less than 100 feet and this incidental movement of a locomotive or locomotives is for inspection or maintenance purposes.

Medical examiner means a person licensed as a doctor of medicine or doctor of osteopathy. A medical examiner can be a qualified full-time salaried employee of a railroad, a qualified practitioner who contracts with the railroad on a fee-for-service or other basis, or a qualified practitioner designated by the railroad to perform functions in connection with medical evaluations of employees. As used in this rule, the medical examiner owes a duty to the railroad to make an honest and fully informed evaluation of the condition of an employee.

Newly hired employee is any person who is hired with no prior railroad experience, or one with less than one year of experience in transportation service on that railroad or another railroad.

Railroad means all forms of non-highway ground transportation that run on rails or electromagnetic guideways, including

(1) Commuter or other short-haul rail passenger service in a metropolitan or suburban area 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.

Railroad Officer means any supervisory employee of a railroad.

Segment means any portion of a railroad assigned to the supervision of one superintendent or equivalent transportation officer.

Substance abuse disorder refers to a psychological or physical dependence on alcohol or a drug or another identifiable and treatable mental or physical disorder involving the abuse of alcohol or drugs as a primary manifestation. A substance abuse disorder is "active" within the meaning of this Part if the person (1) is currently using alcohol and other drugs, except under medical supervision consistent with the restrictions described in § 219.103 of this chapter or (2) has failed to successfully complete primary treatment or successfully participate in aftercare as directed by an EAP Counselor.

Type I Simulator means a replica of the control compartment of a locomotive with all associated control equipment that:

(1) Functions in response to a person's manipulation and causes the gauges associated with such controls to appropriately respond to the consequences of that manipulation;

(2) Pictorially, audibly and graphically illustrates the route to be taken;

(3) Graphically, audibly, and physically illustrates the consequences of control manipulations in terms of their effect on train speed, braking capacity, and in-train force levels throughout the train; and

(4) Is computer enhanced so that it can be programmed for specific train consists and the known physical characteristics of the line illustrated.

Type II Simulator means a replica of the control equipment for a locomotive that:

(1) Functions in response to a person's manipulation and causes the gauges associated with such controls to

appropriately respond to the consequences of that manipulation;

(2) Pictorially, audibly, and graphically illustrates the route to be taken;

(3) Graphically and audibly illustrates the consequences of control manipulations in terms of their effect on train speed braking capacity, and in-train force levels throughout the train; and

(4) Is computer enhanced so that it can be programmed for specific train consists and the known physical characteristics of the line illustrated.

Type III Simulator means a replica of the control equipment for a locomotive that:

(1) Functions in response to a person's manipulation and causes the gauges associated with such controls to appropriately respond to the consequences of that manipulation;

(2) Graphically illustrates the route to be taken;

(3) Graphically illustrates the consequences of control manipulations in terms of their effect on train speed braking capacity, and in-train force levels throughout the train; and

(4) Is computer enhanced so that it can be programmed for specific train consists and the known physical characteristics of the line illustrated.

§ 240.9 Waivers.

(a) Any person may petition the Federal Railroad Administration for a waiver of compliance with any requirement prescribed in this Part.

(b) Each petition for a waiver under this section must be filed in the manner and contain the information required by part 211 of this chapter.

(c) If the Administrator finds that a waiver of compliance is in the public interest and is consistent with railroad safety, he or she may grant the waiver subject to any conditions he or she deems necessary.

§ 240.11 Consequences for Noncompliance.

(a) 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, but not more than $10,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. Appendix A is a statement of policy that contains a schedule of civil penalty amounts used in connection with this rule.

(b) 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 may be subject to disqualification from all safety-sensitive service in accordance with part 209 of this chapter.

(c) Any person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad) who knowingly and willfully falsifies any record required by this Part may be subject to criminal penalties under the provisions of 45 U.S.C. 438.

(d) In addition to the enforcement methods referred to in paragraphs (a), (b), and (c) of this section, FRA may also address violations of this Part by use of the emergency order, compliance order, and/or injunctive provisions of the Federal Railroad Safety Act.

§ 240.13 Information collection requirements.

(a) The information collection requirements of this Part are being reviewed by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have not yet been assigned an OMB control number.

(b) The information collection requirements are found in the following sections: § 240.101, § 240.103, § 240.105, § 240.107, § 240.109, § 240.111, § 240.113, § 240.115, § 240.117, § 240.119, § 240.121, § 240.123, § 240.125, § 240.127, § 240.129, § 240.201, § 240.205, § 240.207, § 240.209, § 240.211, § 240.213, § 240.215, § 240.219, § 240.221, § 240.223, § 240.227, § 240.229, § 240.301, § 240.303, § 240.305, § 240.307, § 240.309, § 240.401, § 240.403, § 240.405, § 240.407, § 240.411.

Subpart B—Component Elements of the Certification Process

§ 240.101 Certification program required.

(a) After September 17, 1991, each railroad in operation on that date and subject to this Part shall have in effect a written program for certifying the qualifications of locomotive engineers.

(b) A railroad commencing operations after September 17, 1991, shall have such a program in effect prior to commencing operations.

(c) After the pertinent date specified in paragraphs (e), (f), or (g) of § 240.201, each railroad shall have a certification program approved in accordance with § 240.103 that includes:

(1) A procedure for designating any person it determines to be qualified as a supervisor of locomotive engineers that complies with the criteria established in § 240.105;

(2) A designation of the classes of service that it determines will be used in compliance with the criteria established in § 240.107;

(3) A procedure for evaluating prior safety conduct that complies with the criteria established in § 240.109;

(4) A procedure for evaluating visual and hearing acuity that complies with the criteria established in § 240.121;

(5) A procedure for training that complies with the criteria established in § 240.123;

(6) A procedure for knowledge testing that complies with the criteria established in § 240.125;

(7) A procedure for skill performance testing that complies with the criteria established in § 240.127; and

(8) A procedure for monitoring operational performance that complies with the criteria established in § 240.129.

§ 240.103 Approval of design of individual railroad programs by FRA.

(a) Each railroad shall submit its written program and a description of how its program conforms to the specific requirements of this part in accordance with the procedures contained in appendix B and the following schedule:

(1) A Class I railroad (including National Railroad Passenger Corporation) and a railroad providing commuter service shall submit no later than November 15, 1991;

(2) A Class II railroad shall submit no later than May 1, 1992; and

(3) A Class III railroad (including a switching and terminal railroad or any other railroad not otherwise classified) shall submit no later than November 1, 1992.

(4) A railroad commencing operations after the pertinent date previously specified in this paragraph shall submit its certification program for approval at least 60 days before commencing operations.

(b) That submission shall state the railroad's election either:

(1) To accept responsibility for the training of student engineers and thereby obtain authority for that railroad to initially certify a person as an engineer in an appropriate class of service, or

(2) To recertify only engineers previously certified by other railroads.

A railroad that elects to accept responsibility for the training of student engineers shall state in its submission whether it will conduct the training

program or employ a training program conducted by some other entity on its behalf but adopted and ratified by that railroad.

(c) A railroad's program is considered approved and may be implemented thirty days after the required filing date (or the actual filing date) unless the Administrator notifies the railroad in writing that the program does not conform to the criteria set forth in this part.

(1) If the Administrator determines that the program does not conform, the Administrator will inform the railroad of the specific deficiencies.

(2) If the Administrator informs the railroad of deficiencies more than 30 days after the initial filing date, the original program may remain in effect until 30 days after approval of the revised program is received.

(d) A railroad shall resubmit its program within 30 days after the date of such notice of deficiencies. A failure to resubmit the program with the necessary revisions will be considered a failure to implement a program under this part.

(1) The Administrator will inform the railroad in writing whether its revised program conforms with this part.

(2) If the program does not conform, the railroad shall resubmit its program.

(e) A railroad that intends to materially modify its program after receiving initial FRA approval shall submit a description of how it intends to modify the program in conformity with the specific requirements of this Part at least 30 days prior to implementing such a change.

(1) A modification is material if it would affect the program's conformance with this part.

(2) The modification submission shall contain a description that conforms with the pertinent portion of the procedures contained in appendix B.

(3) The modification submission will be handled in accordance with the procedures of paragraphs (c) and (d) of this section as though it were a new program.

§ 240.105 Criteria for selection of designated supervisors of locomotive engineers.

(a) Each railroad's program shall include criteria and procedures for implementing this section.

(b) The railroad shall examine any person it is considering for qualification as a supervisor of locomotive engineers to determine that he or she:

(1) Knows and understands the requirements of this part;

(2) Can appropriately test and evaluate the knowledge and skills of locomotive engineers;

(3) Has the necessary supervisory experience to prescribe appropriate remedial action for any noted deficiencies in the training, knowledge or skills of a person seeking to obtain or retain certification; and

(4) Is a certified engineer.

§ 240.107 Criteria for designation of classes of service.

(a) Each railroad's program shall state which of the three classes of service, provided for in paragraph (b) of this section, that it will cover.

(b) A railroad may issue certificates for any or all of the following classes of service:

(1) Train service engineers,

(2) Locomotive servicing engineers, and

(3) Student engineers.

(c) The following operational constraints apply to each class of service:

(1) Train service engineers may operate locomotives singly or in multiples and may move them with or without cars coupled to them;

(2) Locomotive servicing engineers may operate locomotives singly or in multiples but may not move them with cars coupled to them; and

(3) Student engineers may operate only under direct and immediate supervision of an instructor engineer.

(d) Each railroad is authorized to impose additional conditions or operational restrictions on the service an engineer may perform beyond those identified in this section provided those conditions or restrictions are not inconsistent with this part.

§ 240.109 General criteria for eligibility based on prior safety conduct.

(a) Each railroad's program shall include criteria and procedures to implement this section.

(b) A railroad shall evaluate the prior safety conduct of any person it is considering for qualification as a locomotive engineer and the program shall require that a person is ineligible if the person has an adverse record of prior safety conduct as provided for in § 240.115, § 240.117, or § 240.119.

(c) The program shall require evaluation of data which reflect the person's prior safety conduct as a railroad employee and the person's prior safety conduct as an operator of a motor vehicle, provided that there is relevant prior conduct. The information to be evaluated shall include:

(1) The relevant data furnished from the evaluating railroad's own records, if the person was previously an employee of that railroad;

(2) The relevant data furnished by any other railroad formerly employing the person; and

(3) The relevant data furnished by any governmental agency with pertinent motor vehicle driving records.

(d) The railroad's process for evaluating information concerning prior safety conduct shall be designed to conform wherever necessary with the procedural requirements of § 240.111, § 240.113, § 240.115, § 240.117, § 240.119, and § 240.217.

(e) When eva1uating a person's motor vehicle driving record or a person's railroad employment record, a railroad shall not consider information concerning motor vehicle driving incidents or prior railroad safety conduct that

(1) Occurred prior to the effective date of this rule; or

(2) Occurred at a time other than that specifically provided for in § 240.115, § 240.117 or § 240.119 of this subpart.

(f) A railroad's program shall provide a candidate for certification or recertification a reasonable opportunity to review and comment in writing on any record which contains information concerning the person's prior safety conduct, including information pertinent to determinations required under § 240.119 of this subpart, if the railroad believes the record contains information that could be sufficient to render the person ineligible for certification under this subpart.

(g) The opportunity for comment shall be afforded to the person prior to the railroad's rendering its eligibility decision based on that information. Any responsive comment furnished shall be retained by the railroad in accordance with § 240.215 of this part.

(h) The program shall include a method for a person to advise the railroad that he or she has never been a railroad employee or obtained a license to drive a motor vehicle. Nothing in this section shall be construed as imposing a duty or requirement that a person have prior railroad employment experience or obtain a motor vehicle driver's license in order to become a certified locomotive engineer.

(i) Nothing in this section, § 240.111, or § 240.113 shall be construed to prevent persons subject to this part from entering into an agreement that results in a railroad's obtaining the information needed for compliance with this subpart in a different manner than that prescribed in § 240.111 or § 240.113.

§ 240.111 Individual's duty to furnish data on prior safety conduct as motor vehicle operator.

(a) Except for initial certifications under paragraphs (b), (h), or (i) of § 240.201 or for persons covered by § 240.109(h), each person seeking certification or recertification under this part shall, within 180 days preceding the date of the railroad's decision on certification or recertification:

(1) Take the actions required by paragraphs (b) through (h) or paragraph (g) of this section to make information concerning his or her driving record available to the railroad that is considering such certification or recertification; and

(2) Take any additional actions, including providing any necessary consent required by State or Federal law to make information concerning his or her driving record available to that railroad.

(b) Each person seeking certification or recertification under this Part shall:

(1) Request, in writing, that the chief of each driver licensing agency identified in paragraph (c) of this section provide a copy of that agency's available information concerning his or her driving record to the railroad that is considering such certification or recertification; and

(2) Request, in accordance with the provisions of paragraph (d) or (e) of this section, that a check of the National Driver Register be performed to identify additional information concerning his or her driving record and that any resulting information be provided to that railroad.

(c) Each person shall request the information required under paragraph (b)(1) of this section from:

(1) The chief of the driver licensing agency which last issued that person a driver's license; and

(2) The chief of the driver licensing agency of any other state or states that issued or reissued him or her a driver's license within the preceding five years.

(d) Each person shall request the information required under paragraph (b)(2) of this section from the Chief, National Driver Register, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 in accordance with the procedures contained in appendix C unless the person's motor vehicle driving license was issued by one of the driver licensing agencies identified in appendix D.

(e) If the person's motor vehicle driving license was issued by one of the driver licensing agencies identified in appendix D, the person shall request the chief of that driver licensing agency to perform a check of the National Driver Register for the possible existence of additional information concerning his or her driving record and to provide the resulting information to the railroad.

(f) If advised by the railroad that a driver licensing agency or the National Highway Traffic Safety Administration has informed the railroad that additional information concerning that person's driving history may exist in the files of a state agency not previously contacted in accordance with this section, such person shall:

(1) Request in writing that the chief of the state agency which compiled the information provide a copy of the available information to the prospective certifying railroad; and

(2) Take any additional action required by State or Federal law to obtain that additional information.

(g) Any person who has never obtained a motor vehicle driving license is not required to comply with the provisions of paragraph (b) of this section but shall notify the railroad of that fact in accordance with procedures of the railroad that comply with § 240.109(d).

(h) The actions required for compliance with paragraph (a) of this section shall be undertaken within the 180 days preceding the date of the railroad's decision concerning certification or recertification.

§ 240.113 Individual's duty to furnish data on prior safety conduct as an employee of a different railroad.

(a) Except for initial certifications under paragraphs (b), (h), or (i) of § 240.201 or for persons covered by § 240.109(h), each person seeking certification or recertification under this part shall, within 180 days preceding the date of the railroad's decision on certification or recertification:

(1) Take the actions required by paragraph (b) of this section to make information concerning his or her prior railroad service record available to the railroad that is considering such certification or recertification; and

(2) Take any additional actions, including providing any necessary consent required by State or Federal law to make information concerning his or her service record available to that railroad.

(b) Each person seeking certification or recertification under this Part shall request, in writing, that the chief operating officer or other appropriate person of the former employing railroad provide a copy of that railroad's available information concerning his or her service record to the railroad that is considering such certification or recertification.

§ 240.115 Criteria for consideration of prior safety conduct as a motor vehicle operator.

(a) Each railroad's program shall include criteria and procedures for implementing this section.

(b) When evaluating a person's motor vehicle driving record, a railroad shall not consider information concerning motor vehicle driving incidents that occurred more than 36 months before the month in which the railroad is making its certification decision and shall only consider information concerning the following types of motor vehicle incidents:

(1) A conviction for, or completed state action to cancel, revoke, suspend, or deny a motor vehicle drivers license for, operating a motor vehicle while under the influence of or impaired by alcohol or a controlled substance; (2) A conviction for, or completed state action to cancel, revoke, suspend, or deny a motor vehicle driver's license for, refusal to undergo such testing as is required by State law when a law enforcement official seeks to determine whether a person is operating a vehicle while under the influence of alcohol or a controlled substance.

(c) If such an incident is identified,

(1) The railroad shall provide the data to the railroad's EAP Counselor, together with any information concerning the person's railroad service record, and shall refer the person for evaluation to determine if the person has an active substance abuse disorder;

(2) The person shall cooperate in the evaluation and shall provide any requested records of prior counseling or treatment for review exclusively by the EAP Counselor in the context of such evaluation; and

(3) If the person is evaluated as not currently affected by an active substance abuse disorder, the subject data shall not be considered further with respect to certification. However, the railroad shall, on recommendation of the EAP Counselor, condition certification upon participation in any needed aftercare and/or follow-up testing for alcohol or drugs deemed necessary by the EAP Counselor consistent with the technical standards specified in § 240.119(d)(3) of this part.

(4) If the person is evaluated as currently affected by an active substance abuse disorder, the person shall not be currently certified and the provisions of § 240.119(b) will apply.

§ 240.117 Criteria for consideration of operating rules compliance data.

(a) Each railroad's program shall include criteria and procedures for implementing this section.

(b) A person who has demonstrated a failure to comply, as described in paragraph (e) of this section, with railroad rules and practices for the safe operation of trains shall not be currently certified as a locomotive engineer.

(c) A certified engineer who has demonstrated a failure to comply, as described in paragraph (e) of this section, with railroad rules and practices for the safe operation of trains shall have certification revoked.

(d) *Limitations on consideration of prior operating rule compliance data.* In determining whether a person may be or remain certified as a locomotive engineer, a railroad shall consider as operating rule compliance data only conduct described in paragraph (e) of this section that occurred within a period of 60 consecutive months prior to the determination. A review of an existing certification shall be initiated promptly upon the occurrence and documentation of any occurrence of conduct described in this paragraph.

(e) A railroad shall consider violations of its operating rules and practices that involve:

(1) Failure to control a locomotive or train in accordance with a signal indication;

(2) Failure to adhere to limitations concerning train speed;

(3) Failure to adhere to procedures for the safe use of train or engine brakes;

(4) Entering track segment without proper authority;

(5) Failure to comply with prohibitions against tampering with locomotive mounted safety devices; and

(6) Incidents of noncompliance with § 219.101 of this Chapter; however such incidents shall be considered as a violation only for the purposes of subsections (2) and (3) of paragraph (g) of this section.

(f) If in any single incident the person's conduct contravened more than one operating rule or practice, that event shall be treated as a single violation for the purposes of this section.

(g) A period of ineligibility described in this paragraph shall:

(1) Begin, for a person not currently certified, on the date of the railroad's written determination that the most recent incident has occurred; or

(2) Begin, for a person currently certified, on the date of the railroad's notification to the person that recertification has been denied or certification has been revoked; and

(3) Be determined according to the following standards:

(i) In the case of a single incident involving violation of one or more of the operating rules or practices described paragraphs (e)(1) through (e)(5) of this section, the person shall be ineligible to hold a certificate for a period of one month.

(ii) In the case of two separate incidents involving violations of one or more of the operating rules on practices described in paragraph (e) of this section that occurred within 36 months of each other, the person shall be ineligible to hold a certificate for a period of one year.

(iii) In the case of more than two such violations in any consecutive 60 month interval, the person shall be ineligible to hold a certificate for a period of five years.

(iv) Where, based on the occurrence of violations described in subparagraph (e)(6) of this section, different periods of ineligibility may result under the provisions of this section and § 240.119, the longer period of ineligibility shall control.

(h) *Future eligibility to hold certificate.* Only a person whose certification has been denied, suspended or revoked for a period of one year in accordance with the provisions of paragraph (g)(2) for reasons other than noncompliance with § 219.101 of this chapter shall be eligible for grant or reinstatement of the certificate prior to the expiration of the initial period of ineligibility. Such a person shall not be eligible for grant or reinstatement unless and until—

(1) The person has been evaluated by a designated supervisor of locomotive engineers and determined to have received adequate remedial training;

(2) The person has successfully completed any mandatory program of training or retraining, if that was determined to be necessary by the railroad prior to return to service; and

(3) At least one half the pertinent period of ineligibility specified in paragraph (g)(2) has elapsed.

§ 240.119 Criteria for consideration of data on substance abuse disorders and alcohol drug rules compliance.

(a) Each railroad's program shall include criteria and procedures for implementing this section.

(b) *Fitness requirement.* (1) A person who has an active substance abuse disorder shall not be currently certified as a locomotive engineer.

(2) Except as provided in paragraph (e) of this section, a certified engineer who is determined to have an active substance abuse disorder shall be suspended from certification. Consistent with other provisions of this part, certification may be reinstated as provided in paragraph (d) of this section.

(3) In the case of a current employee of the railroad evaluated as having an active substance abuse disorder (including a person identified under the procedures of § 240.115), the employee may, if otherwise eligible, voluntarily self-refer for substance abuse counseling or treatment under the policy required by § 219.403 of this chapter; and the railroad shall then treat the substance abuse evaluation as confidential except with respect to current ineligibility for certification.

(c) *Prior alcohol/drug conduct; Federal rule compliance.* (1) In determining whether a person may be or remain certified as a locomotive engineer, a railroad shall consider conduct described in paragraph (c)(2) of this section that occurred within a period of 60 consecutive months prior to the review. A review of certification shall be initiated promptly upon the occurrence and documentation of any incident of conduct described in this paragraph.

(2) A railroad shall consider any violation of § 219.101 or § 219.102 of this chapter and any refusal or failure to provide a breath or body fluid sample for testing under the requirements of Part 219 of this chapter when instructed to do so by a railroad representative.

(3) A period of ineligibility described in this paragraph shall:

(i) Begin, for a person not currently certified, on the date of the railroad's written determination that the most recent incident has occurred; or

(ii) Begin, for a person currently certified, on the date of the railroad's notification to the person that recertification has been denied or certification has been revoked; and

(4) The period of ineligibility described in this paragraph shall be determined in accordance with the following standards:

(i) In the case of a single violation of § 219.102 of this chapter, the person shall be ineligible to hold a certificate during evaluation and any required primary treatment as described in paragraph (d) of this section. In the case of two violations of § 219.102, the person shall be ineligible to hold a certificate for a period of two years. In the case of more than two such violations, the person shall be ineligible to hold a certificate for a period of five years.

(ii) In the case of one violation of § 219.102 of this chapter and one violation of § 219.101 of this chapter, the

person shall be ineligible to hold a certificate for a period of three years.

(iii) In the case of one violation of § 219.101 of this chapter, the person shall be ineligible to hold a certificate for a period of 9 months (unless identification of the violation was through a qualifying "co-worker report" as described in § 219.405 of this chapter and the engineer waives investigation, in which case the certificate shall be deemed suspended during evaluation and any required primary treatment as described in paragraph (d)). In the case of two or more violations of § 219.101, the person shall be ineligible to hold a certificate for a period of five years.

(iv) In the case of a refusal or failure to provide a breath or body fluid sample for testing under the requirements of part 219 of this chapter when instructed to do so by a railroad representative, the refusal or failure shall be treated for purposes of ineligibility under this paragraph in the same manner as a violation of—

(A) § 219.102, in the case of a refusal or failure to provide a urine specimen for testing; or

(B) § 219.101, in the case of a refusal or failure to provide a breath sample (subpart D), or a blood specimen for mandatory post-accident toxicological testing (subpart C)).

(d) *Future eligibility to hold certificate following alcohol/drug violation.* The following requirements apply to a person who has been denied certification or who has had certification suspended or revoked as a result of conduct described in paragraph (c) of this section:

(1) The person shall not be eligible for grant or reinstatement of the certificate unless and until the person has—

(i) Been evaluated by an EAP Counselor to determine if the person currently has an active substance abuse disorder;

(ii) Successfully completed any program of counseling or treatment determined to be necessary by the EAP Counselor prior to return to service; and

(iii) Presented a urine sample for testing under Subpart H of this Part that tested negative for controlled substances assayed and has tested negative for alcohol under paragraph (d)(4) of this section.

(2) An engineer placed in service or returned to service under the above-stated conditions shall continue in any program of counseling or treatment deemed necessary by the EAP Counselor and shall be subject to a reasonable program of follow-up alcohol and drug testing without prior notice for a period of not more than 60 months following return to service. Follow-up tests shall include not fewer than 6 alcohol tests and 6 drug tests during the first 12 months following return to service.

(3) Return-to-service and follow-up drug tests shall be performed consistent with the requirements of subpart H of part 219 of this chapter.

(4) Return-to-service and follow-up alcohol tests shall consist of—

(i) Analysis of a breath specimen for alcohol under safeguards consistent with those specified for reasonable cause breath testing under subpart C of part 219 of this chapter; or

(ii) Analysis of a blood specimen for alcohol in the same manner as prescribed in § 219.303(c) of this chapter. Alcohol tests shall be conducted while the employee is in duty status. However, this paragraph shall not be construed to require compensation of an employee or applicant for any period devoted exclusively to such tests.

(5) Satisfaction of the more stringent return-to-service requirements of this paragraph shall also be deemed to satisfy the requirements of § 219.104(d) of this chapter.

(6) This paragraph does not create an entitlement to utilize the services of a railroad EAP Counselor, to be afforded leave from employment for counseling or treatment, or to employment as a locomotive engineer. Nor does it restrict any discretion available to the railroad to take disciplinary action based on conduct described herein.

(e) *Confidentiality protected.* Nothing in this part shall affect the responsibility of the railroad under § 219.403 of this chapter ("Voluntary Referral Policy") to treat voluntary referrals for substance abuse counseling and treatment as confidential; and the certification status of an engineer who is successfully assisted under the procedures of that section shall not be adversely affected. However, the railroad shall include in its voluntary referral policy required to be issued pursuant to § 219.403 of this chapter a provision that, at least with respect to a certified locomotive engineer or a candidate for certification, the policy of confidentiality is waived (to the extent that the railroad shall receive from the EAP Counselor official notice of the substance abuse disorder and shall suspend or revoke the certification, as appropriate) if the person at any time refuses to cooperate in a recommended course of counseling or treatment.

§ 240.121 Criteria for vision and hearing acuity data.

(a) Each railroad's program shall include criteria and procedures implementing this section.

(b) *Fitness Requirement.* A person who does not have visual acuity and hearing acuity that meets or exceeds the levels prescribed in this section shall not, except as permitted by paragraph (e) of this section, currently be certified as a locomotive engineer.

(c) Except as provided in paragraph (e), each person shall have visual acuity that meets or exceeds the following thresholds:

(1) for distant viewing either

(i) Distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or

(ii) Distant visual acuity separately corrected to at least 20/40 (Snellen) with corrective lenses and distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses;

(2) a field of vision of at least 70 degrees in the horizontal meridian in each eye; and

(3) the ability to recognize and distinguish between the colors of signals.

(d) Except as provided in paragraph (e) of this section, each person shall have hearing acuity that meets or exceeds the following thresholds when tested by use of an audiometric device (calibrated to American National Standard Specification for Audiometers, S3.6–1969): the person does not have an average hearing loss in the better ear greater than 40 decibels at 500Hz, 1,000 Hz, and 2,000 Hz with or without use of a hearing aid.

(e) A person not meeting the thresholds in paragraphs (c) and (d) of this section may be subject to further medical evaluation by a railroad's medical examiner to determine that person's ability to safely operate a locomotive. If the medical examiner concludes that, despite not meeting the threshold(s), the person has the ability to safely operate a locomotive, the person may be certified as a locomotive engineer and such certification conditioned on any special restrictions the medical examiner determines in writing to be necessary.

§ 240.123 Criteria for initial and continuing education.

(a) Each railroad's program shall include criteria and procedures for implementing this section.

(b) A railroad shall provide for the continuing education of certified locomotive engineers to ensure that each engineer maintains the necessary knowledge, skill and ability concerning personal safety, operating rules and practices, mechanical condition of equipment, methods of safe train handling (including familiarity with

physical characteristics), and relevant Federal safety rules.

(c) A railroad that elects to train a previously untrained person to be a locomotive engineer shall provide initial training which, at a minimum:

(1) is composed of classroom, skill performance, and familiarization with physical characteristics components;

(2) includes both knowledge and performance skill testing;

(3) is conducted under the supervision of a qualified class instructor;

(4) is subdivided into segments or periods of appropriate duration to effectively cover the following subject matter areas:

(i) Personal safety,

(ii) Railroad operating rules,

(iii) Mechanical condition of equipment,

(iv) Train handling procedures (including use of locomotive and train brake systems),

(v) Familiarization with physical characteristics including train handling, and

(vi) Compliance with Federal regulations;

(5) is conducted so that the performance skill component shall

(i) Be under the supervision of a qualified instructor engineer located in the same control compartment whenever possible;

(ii) Place the student engineer at the controls of a locomotive for a significant portion of the time; and

(iii) Permit the student to experience whatever variety of types of trains are normally operated by the railroad.

§ 240.125 Criteria for testing knowledge.

(a) Each railroad's program shall include criteria and procedures for implementing this section.

(b) A railroad shall have procedures for testing a person being evaluated for qualification as a locomotive engineer in either train or locomotive service to determine that the person has sufficient knowledge of the railroad's rules and practices for the safe operation of trains.

(c) The testing methods selected by the railroad shall be:

(1) designed to examine a person's knowledge of the railroad's rules and practices for the safe operation of trains;

(2) objective in nature;

(3) administered in written form;

(4) cover the following subjects:

(i) Personal safety practices;

(ii) Operating practices;

(iii) Equipment inspection practices;

(iv) Train handling practices including familiarity with the physical characteristics of the territory; and

(v) compliance with Federal safety rules;

(5) Sufficient to accurately measure the person's knowledge of the covered subjects; and

(6) Conducted without open reference books or other materials except to the degree the person is being tested on his or her ability to use such reference books or materials.

(d) The conduct of the test shall be documented in writing and the documentation shall contain sufficient information to identify the relevant facts relied on for evaluation purposes.

§ 240.127 Criteria for examining skill performance.

(a) Each railroad's program shall include criteria and procedures for implementing this section.

(b) A railroad shall have procedures for examining the performance skills of a person being evaluated for qualification as a locomotive engineer in either train or locomotive service to determine whether the person has the skills to safely operate locomotives and/or trains, including the proper application of the railroad's rules and practices for the safe operation of locomotives or trains, in the most demanding class or type of service that the person will be permitted to perform.

(c) The testing procedures selected by the railroad shall be:

(1) Designed to examine a person's skills in safely operating locomotives or trains including the proper application of the railroad's rules and practices for the safe operation of locomotives or trains when performing the most demanding class or type of service that the person will be permitted to perform;

(2) Conducted by a designated supervisor of locomotive engineers;

(3) Cover the following subjects during the test period

(i) Operating practices;

(ii) Equipment inspection practices;

(iii) Train handling practices; and

(iv) Compliance with Federal safety rules;

(4) Be of sufficient length to effectively evaluate the person's ability to operate trains; and

(5) Conducted when the person either

(i) Is at the controls of the type of train normally operated on that railroad or segment of railroad and which this person might be permitted or required by the railroad to operate in the normal course of events after certification or

(ii) Is at the controls of a Type I or Type II simulator programmed to replicate the responsive behavior of the type of train normally operated on that railroad or segment of railroad and which this person might be permitted or required by the railroad to operate in the normal course of events after certification.

(d) The conduct of the test shall be documented in writing by the designated supervisor and the documentation shall contain:

(1) The relevant facts concerning the train being operated;

(2) The constraints applicable to its operation; and

(3) The factors observed and relied on for evaluation purposes by the designated supervisor.

§ 240.129 Criteria for monitoring operational performance of certified engineers.

(a) Each railroad's program shall include criteria and procedures for implementing this section.

(b) A railroad shall have procedures for monitoring the operational performance of those it has determined as qualified as a locomotive engineer in either train or locomotive service.

(c) The procedures shall:

(1) Be designed to determine that the person possesses and routinely employs the skills to safely operate locomotives and/or trains, including the proper application of the railroad's rules and practices for the safe operation of locomotives and trains;

(2) Be designed so that each engineer shall be annually monitored by a designated supervisor of locomotive engineers;

(3) Be designed so that the locomotive engineer is either accompanied by the designated supervisor for a reasonable length of time or has his or her train handling activities electronically recorded by a train operations event recorder;

(d) The procedures may be designed so that the locomotive engineer being monitored either

(i) Is at the controls of the type of train normally operated on that railroad or segment of railroad and which this person might be permitted or required by the railroad to operate in the normal course of events after certification or

(ii) Is at the controls of a Type I or Type II simulator programmed to replicate the responsive behavior of the type of train normally operated on that railroad or segment of railroad and which this person might be permitted or required by the railroad to operate in the normal course of events after certification.

(e) The testing and examination procedures selected by the railroad for the conduct of a monitoring program shall be:

(1) Designed so that each locomotive engineer shall be given at least one unannounced test each calendar year.

(2) Designed to test engineer compliance with provisions of the railroad's operating rules that require response to signals that display less than a "clear" aspect, if the railroad operates with a signal system that must comply with part 236 of this chapter;

(3) Designed to test engineer compliance with provisions of the railroad's operating rules, timetable or other mandatory directives that require affirmative response by the locomotive engineer to less favorable conditions than that which existed prior to initiation of the test;

(4) Designed to test engineer compliance with provisions of the railroad's operating rules, timetable or other mandatory directives violation of which by engineers were cited by the railroad as the cause of train accidents or train incidents in accident reports filed in compliance with part 225 of this Chapter in the preceding calendar year;

(5) Designed so that the administration of these tests is effectively distributed throughout whatever portion of a 24-hour day that the railroad conducts its operations; and

(6) Designed so that individual tests are administered without prior notice to the engineer being tested.

Subpart C—Implementation of the Certification Process

§ 240.201 Schedule for implementation.

(a) After October 30, 1991, each railroad in operation on that date shall designate in writing any person(s) it deems qualified as a designated supervisor of locomotive engineers. Each person so designated shall have demonstrated to the railroad through training, testing or prior experience that he or she has the knowledge, skills, and ability to be a designated supervisor of locomotive engineers.

(b) No later than November 1, 1991, each railroad shall designate in writing all persons that it will deem to be qualified as certified locomotive engineers for the purpose of initial compliance with paragraph (d) of this section, except as provided for in paragraph (h) of this section.

(1) Each person so designated shall have demonstrated to the railroad through training, testing or prior experience that he or she has the knowledge and skills to be a certified locomotive engineer.

(2) Each railroad shall issue, no later than December 31, 1991, a certificate that complies with § 240.223 to each person that it designates as qualified under the provisions of paragraph (b) of this section.

(c) No railroad shall permit or require a person, designated as qualified for certification under the provisions of paragraph (b) of this section, to perform service as a certified locomotive or train service engineer for more than the 36-month period beginning on the pertinent date for compliance with the mandatory procedures for testing and evaluation set forth in the applicable provisions of paragraph (e), (f) or (g) of this section unless that person has been determined to be qualified in accordance with procedures that comply with subpart C.

(d) After December 31, 1991, no railroad shall permit or require any person to operate a locomotive in any class of locomotive or train service unless that person has been certified as a qualified locomotive engineer and issued a certificate that complies with § 240.223.

(e) After December 31, 1991, no Class I railroad (including the National Railroad Passenger Corporation) or railroad providing commuter service shall designate any person it deems qualified as a designated supervisor of locomotive engineers or initially certify or recertify a person as a locomotive engineer in either locomotive or train service unless that person has been tested, evaluated, and determined to be qualified in accordance with procedures that comply with subpart C.

(f) After May 31, 1992 no Class II railroad shall designate any person it deems qualified as a designated supervisor of locomotive engineers or initially certify or recertify a person as a locomotive engineer in any class of locomotive or train service unless that person has been tested, evaluated and determined to be qualified in accordance with procedures that comply with subpart C.

(g) After November 30, 1992 no Class III railroad (including a switching and terminal or other railroad not otherwise classified) shall designate any person it deems qualified as a designated supervisor of locomotive engineers or initially certify or recertify a person as a locomotive engineer in any class of locomotive or train service unless that person has been tested, evaluated and determined to be qualified in accordance with procedures that comply with subpart C.

(h) A railroad may continue to designate any person it deems qualified as a designated supervisor of locomotive engineers or as a certified engineer, on the basis of paragraph (b) determinations, prior to the pertinent date by which a railroad of its class must comply with the procedures for testing and evaluating persons required under subpart C. Each person designated as a locomotive engineer shall be issued a certificate that complies with § 240.223 prior to being required or permitted to operate a locomotive.

(i) A railroad commencing operations prior to the pertinent date for compliance by a railroad of its class may designate any person it deems qualified as a designated supervisor of locomotive engineers or as a certified locomotive engineer on the basis of paragraph (b) until the pertinent date for compliance with the procedures for testing and evaluating required under subpart C. Each person designated as a locomotive engineer shall be issued a certificate that complies with § 240.223 prior to being required or permitted to operate a locomotive.

§ 240.203 Determinations required as a prerequisite to certification.

(a) Except as provided in paragraph (c), after the pertinent date specified in paragraph (e), (f), or (g) of § 240.201, each railroad, prior to initially certifying or recertifying any person as an engineer for any class of service, shall, in accordance with its FRA-approved program determine in writing that:

(1) The individual meets the eligibility requirements of §§ 240.15, 240.117 and 240.119; and

(2) The individual meets the vision and hearing acuity standards of § 240.121;

(3) The individual has the necessary knowledge, as demonstrated by successfully completing a test that meets the requirements of § 240.125;

(4) The individual has the necessary applied knowledge and operating performance skills, as demonstrated by successfully completing an operational performance test that meets the requirements of § 240.127; and

(5) Where a person has not previously been certified, that the person has completed a training program that meets the requirements of § 240.123.

(b) A railroad may certify a person as a student engineer after determining that the person meets the vision and hearing acuity standards of § 240.121. A railroad may subsequently certify that student engineer as either a locomotive servicing engineer or a train service engineer without further review of his or her acuity status provided it determines that:

(1) The person successfully completed a training program that complies with § 240.123;

(2) The person meets the eligibility requirements of §§ 240.109 and 240.119; and

(3) A period of not more than twenty-four months has elapsed since the student engineer certification was issued.

§ 240.205 Procedures for determining eligibility base on prior safety conduct.

(a) After the pertinent date specified in paragraph (e), (f), or (g) of § 240.201, each railroad, prior to initially certifying or recertifying any person as an engineer for any class of service, shall determine that the person meets the eligibility requirements of § 240.115 involving prior conduct as a motor vehicle operator, § 240.117 involving prior conduct as a railroad worker, and § 240.119 involving substance abuse disorders and alcohol/drug rules compliance.

(b) In order to make the determination required under paragraph (a) of this section, a railroad shall have on file documents pertinent to the determinations referred to in paragraph (a) of this section, including a written document from its EAP Counselor either a document reflecting his or her professional opinion that the person has been evaluated as not currently affected by a substance abuse disorder or that the person has been evaluated as affected by an active substance abuse disorder and is ineligible for certification.

§ 240.207 Procedures for making the determination on vision and hearing acuity.

(a) After the pertinent date specified in paragraph (e), (f), or (g) of § 240.201, each railroad, prior to initially certifying or recertifying any person as an engineer for any class of service, shall determine that the person meets the standards for visual acuity and hearing acuity prescribed in § 240.121.

(b) In order to make the determination required under paragraph (a), a railroad shall have on file either:

(1) a medical examiner's certificate that the individual has been medically examined and meets these acuity standards; or

(2) a written document from its medical examiner documenting his or her professional opinion that the person does not meet one or both acuity standards and stating the basis for his or her determination that

(i) The person can nevertheless be certified under certain conditions or

(ii) The person's acuity is such that he or she cannot safely operate a locomotive even with conditions attached.

(c) Any examination required for compliance with this section shall be performed by or under the supervision of a medical examiner or a licensed physician's assistant such that:

(1) A licensed optometrist or a technician responsible to that person may perform the portion of the examination that pertains to visual acuity; and

(2) A licensed or certified audiologist or a technician responsible to that person may perform the portion of the examination that pertains to hearing acuity.

(d) If the examination required under this section discloses that the person needs corrective lenses or a hearing aid, or both, either to meet the threshold acuity levels established in § 240.121 or to meet a lower threshold determined by the railroad's medical examiner to be sufficient to safely operate a locomotive or train on that railroad, that fact shall be noted on the certificate issued in accordance with the provisions of this part.

(e) Any person with such a certificate notation shall use the relevant corrective device(s) while operating a locomotive in locomotive or train service unless the railroad's medical examiner subsequently determines in writing that the person can safely operate without using the device.

§ 240.209 Procedures for making the determination on knowledge.

(a) After the pertinent date specified in paragraph (e), (f), or (g) of § 240.201, each railroad, prior to initially certifying or recertifying any person as an engineer for any class of train or locomotive service, shall determine that the person has, in accordance with the requirements of § 240.125 of this Part, demonstrated sufficient knowledge of the railroad's rules and practices for the safe operation of trains.

(b) In order to make the determination required by paragraph (a) a railroad shall have written documentation showing that the person either

(i) Exhibited his or her knowledge by achieving a passing grade in testing that complies with this Part or

(ii) Did not achieve a passing grade in such testing.

(c) If a person fails to achieve a passing score under the testing procedures required by this Part no railroad shall permit or require that person to operate a locomotive as a locomotive or train service engineer prior to that person's achieving a passing score during a reexamination of his or her knowledge.

§ 240.211 Procedures for making the determination on performance skills.

(a) After the pertinent date specified in paragraph (e), (f), or (g) of § 240.201, each railroad, prior to initially certifying or recertifying any person as an engineer for any class of train or locomotive service, shall determine that the person has demonstrated, in accordance with the requirements of § 240.127 of this Part, the skills to safely operate locomotives or locomotives and trains, including the proper application of the railroad's rules and practices for the safe operation of locomotives or trains, in the most demanding class or type of service that the person will be permitted to perform.

(b) In order to make this determination, a railroad shall have written documentation showing the person either

(i) Exhibited his or her knowledge by achieving a passing grade in testing that complies with this part or

(ii) Did not achieve a passing grade in such testing.

(c) If a person fails to achieve a passing score under the testing and evaluation procedures required by this part, no railroad shall permit or require that person to operate a locomotive as a locomotive or train service engineer prior to that person's achieving a passing score during a reexamination of his or her performance skills.

(d) No railroad shall permit a designated supervisor of locomotive engineers to test, examine or evaluate his or her own performance skills when complying with this section.

§ 240.213 Procedures for making the determination on completion of training program.

(a) After the pertinent date specified in paragraph (e), (f), or (g) of § 240.201, each railroad, prior to the initial issuance of a certificate to any person as a train or locomotive service engineer, shall determine that the person has, in accordance with the requirements of § 240.123 of this Part, the knowledge and skills to safely operate a locomotive or train in the most demanding class or type of service that the person will be permitted to perform.

(b) In making this determination, a railroad shall have written documentation showing that:

(1) The person completed a training program that complies with § 240.123 of this part;

(2) The person demonstrated his or her knowledge and skills by achieving a passing grade under the testing and evaluation procedures of that training program; and

(3) The person is familiar with the physical characteristics of the railroad or its pertinent segments.

§ 240.215 Retaining information supporting determinations.

(a) After the pertinent date in paragraphs (e), (f) or (g) of § 240.201, a railroad that issues, denies, or revokes a certificate after making the determinations required under § 240.203 shall maintain a record for each certified engineer or applicant for certification that contains the information the railroad relied on in making the determinations.

(b) The information concerning eligibility that the railroad shall retain includes:

(1) Any relevant data from the railroad's records concerning the person's prior safety conduct;

(2) Any relevant data furnished by another railroad;

(3) Any relevant data furnished by a governmental agency concerning the person's motor vehicle driving record; and

(4) Any relevant data furnished by the person seeking certification concerning his or her eligibility.

(c) The information concerning vision and hearing acuity that the railroad shall retain includes:

(1) The relevant test results data concerning acuity; and,

(2) If applicable, the relevant data concerning the professional opinion of the railroad's medical examiner on the adequacy of the person's acuity.

(d) The information concerning demonstrated knowledge that the railroad shall retain includes:

(1) Any relevant data from the railroad's records concerning the person's success or failure of the passage of knowledge test(s); and

(2) A sample copy of the written knowledge test or tests administered.

(e) The information concerning demonstrated performance skills that the railroad shall retain includes:

(1) The relevant data from the railroad's records concerning the person's success or failure on the performance skills test(s) that documents the relevant operating facts on which the evaluation is based including the observations and evaluation of the designated supervisor of locomotive engineers;

(2) if a railroad relies on the use of a locomotive operations simulator to conduct the performance skills testing required under this part, the relevant data from the railroad's records concerning the person's success or failure on the performance skills test(s) that documents the relevant operating facts on which the determination was based including the observations and evaluation of the designated supervisor of locomotive engineers; and;

(3) the relevant data from the railroad's records concerning the person's success or failure on tests the railroad performed to monitor the engineer's operating performance in accordance with § 240.129.

(f) If a railroad is relying on successful completion of an approved training program conducted by another entity, the relying railroad shall maintain a record for each certified engineer that contains the relevant data furnished by the training entity concerning the person's demonstration of knowledge and performance skills and relied on by the railroad in making its determinations.

(g) If a railroad is relying on a certification decision initially made by another railroad, the relying railroad shall maintain a record for each certified engineer that contains the relevant data furnished by the other railroad which it relied on in making its determinations.

(h) All records required under this section shall be retained for a period of six years from the date of the certification, recertification, denial or revocation decision and shall be made available to FRA representatives upon request during normal business hours.

(i) It shall be unlawful for any railroad to knowingly or any individual to willfully:

(1) Make, cause to be made, or participate in the making of a false entry on the record(s) required by this section; or

(2) Otherwise falsify such records through material misstatement, omission, or mutilation.

§ 240.217 Time limitations for making determinations.

(a) After the pertinent date in paragraphs (e), (f) or (g) of § 240.201, a railroad shall not certify or recertify a person as a qualified locomotive engineer in any class of train or engine service, if the railroad is making:

(1) A determination concerning eligibility and the eligibility data being relied on were furnished more than 180 days before the date of the railroad's certification decision;

(2) A determination concerning visual and hearing acuity and the medical examination being relied on was conducted more than 180 days before the date of the railroad's certification decision;

(3) A determination concerning demonstrated knowledge and the knowledge examination being relied on was conducted more than 360 days before the date of the railroad's certification decision; or

(4) A determination concerning demonstrated performance skills and the performance skill testing being relied on was conducted more than 360 days before the date of the railroad's certification decision;

(b) The time limitations of paragraph (a) do not apply to a railroad that is making a certification decision in reliance on determinations made by another railroad in accordance with § 240.227 or § 240.229.

(c) Except as provided in § 240.201 concerning implementation dates for initial certification decisions and paragraph (b) of this section, no railroad shall:

(1) Certify a person as a qualified locomotive engineer for an interval of more that 36 months; or

(2) Rely on a certification issued by another railroad that is more than 12 months old.

(d) Except as provided for in § 240.201 concerning initial implementation of the program, a railroad shall issue each person designated as a certified locomotive engineer a certificate that complies with § 240.223 no later than 30 days from the date of its decision to certify or recertify that person.

§ 240.219 Denial of Certification.

(a) A railroad shall notify a candidate for certification or recertification of information known to the railroad that forms the basis for denying the person certification and provide the person a reasonable opportunity to explain or rebut that adverse information in writing prior to denying certification.

(b) This section does not require further opportunity to comment if the railroad's denial is based solely on factors addressed by §§ 240.115, 240.117, and 240.119 and the opportunity to comment afforded by those sections has been provided.

(c) If it denies a person certification or recertification, a railroad shall notify the person of the adverse decision and explain, in writing, the basis for its denial decision. The document explaining the basis for the denial shall be mailed or delivered to the person within 10 days after the railroad's decision and shall give the date of the decision.

§ 240.221 Identification of qualified persons.

(a) After November 1, 1991, a railroad shall maintain a written record identifying each person designated by it as a supervisor of locomotive engineers.

(b) After November 1, 1991, a railroad shall maintain a written record identifying each person designated as a certified locomotive engineer. That listing of certified engineers shall indicate the class of service the railroad determines each person is qualified to perform and date of the railroad's certification decision.

(c) If a railroad is responsible for controlling joint operations territory, the listing shall include person(s) certified in accordance with § 240.229.

(d) The listing required by paragraphs (a), (b), and (c) shall be updated at least annually.

(e) The record required under this section shall be kept at the divisional or regional headquarters of the railroad and shall be available for inspection or copying by FRA during regular business hours.

(f) A railroad may obtain approval from FRA to maintain this record electronically or maintain this record at the railroad's general offices, or both. Requests for such approval shall be filed in writing with the Associate Administrator for Safety and contain sufficient information to explain how FRA will be given access to the data that is fully equivalent to that created by compliance with paragraph (e).

§ 240.223 Criteria for the certificate.

(a) As a minimum, each certificate issued in compliance with this part shall:

(1) Identify the railroad that is issuing it;

(2) Indicate that the railroad, acting in conformity with this part, has determined that the person to whom it is being issued has been determined to be qualified to operate a locomotive;

(3) Identify the person to whom it is being issued (including the person's name, date of birth and employee identification number, and either a physical description or photograph of the person);

(4) Identify any conditions or limitations, including the class of service or conditions to ameliorate vision or hearing acuity deficiencies, that restrict the person's operational authority;

(5) Show the date of its issuance;

(6) Be signed by a supervisor of locomotive engineers or other individual designated in accordance with paragraph (b) of this section;

(7) Show on the date of the person's last operating performance test as required by § 240.129 and § 240.303; and

(8) Be of sufficiently small size to permit being carried in an ordinary pocket wallet.

(b) Each railroad to which this part applies shall designate in writing any person, other than a supervisor of locomotive engineers, that it authorizes to sign the certificates described in this section. The designation can identify such persons by name or job title.

(c) Nothing in paragraph (a) of this section shall prohibit any railroad from including additional information on the certificate or supplementing the certificate through other documents.

(d) It shall be unlawful for any railroad to knowingly or any individual to willfully:

(1) Make, cause to be made, or participate in the making of a false entry on that certificate; or

(2) Otherwise falsify that certificate through material misstatement, omission, or mutilation.

§ 240.225 Reliance on qualification determinations made by other railroads.

After December 31, 1991, any railroad that is considering certification of a person as a qualified engineer may rely on determinations made by another railroad concerning that person's qualifications. A railroad relying on another's certification shall determine that:

(a) The prior certification is still valid in accordance with the provisions of §§ 240.201, 240.217, and 240.307;

(b) The prior certification was for the same classification of locomotive or train service being issued under this section;

(c) The person has received training on and visually observed the physical characteristics of the new territory in accordance with § 240.123;

(d) The person has demonstrated the necessary knowledge concerning its operating rules in accordance with § 240.125.

(e) The person has demonstrated the necessary performance skills concerning its operating rules in accordance with § 240.127.

§ 240.227 Reliance on qualification requirements of other countries.

(a) A railroad that conducts joint operations with a Canadian railroad may certify, for the purposes of compliance with this part, that a person is qualified to be a locomotive or train service engineer provided it determines that:

(1) The person is employed by the Canadian railroad; and

(2) The person meets or exceeds the qualifications standards issued by Transport Canada for such service.

(b) Any Canadian railroad that is required to comply with this regulation may certify that a person is qualified to be a locomotive or train service engineer provided it determines that:

(1) The person is employed by the Canadian railroad; and

(2) The person meets or exceeds the qualifications standards issued by Transport Canada for such service.

§ 240.229 Requirements for joint operations territory.

(a) After December 31, 1991, no railroad that is responsible for controlling the conduct of joint operations with another railroad shall permit or require any person to operate a locomotive in any class of train or engine service unless that person has been certified as a qualified locomotive engineer for the purposes of joint operations and issued a certificate that complies with § 240.223.

(b) Each railroad that is responsible for controlling the conduct of joint operations with another railroad shall certify a person as a qualified locomotive engineer for the purposes of joint operations either by making the determinations required under subpart C of this part or by relying on the certification issued by another railroad under this part.

(c) If the controlling railroad relies on the certification issued by another railroad, the controlling railroad shall determine:

(1) That the person has been certified as a qualified engineer under the provisions of this Part by the railroad which employs that individual;

(2) That the person certified as a locomotive engineer by the other railroad has demonstrated the necessary knowledge concerning the controlling railroad's operating rules, if the rules are different;

(3) That the person certified as a locomotive engineer by the other railroad has the necessary operating skills concerning the joint operations territory; and

(4) That the person certified as a locomotive engineer by the other railroad has the necessary familiarity with the physical characteristics for the joint operations territory.

(d) A railroad that controls joint operations and certifies locomotive engineers from a different railroad may comply with the requirements of paragraph (a) of this section by noting its supplemental certification decision on the original certificate as provided for in § 240.223(c).

(e) A railroad responsible for controlling the conduct of joint operations with another railroad shall be deemed to be in compliance with paragraph (a) of this section when it provides a qualified person to accompany a locomotive engineer who

lacks joint operations certification during that engineer's operations in joint operations territory. As used in this section qualified person means either a designated supervisor of locomotive engineers or a certified train service engineer determined by the controlling railroad to have the necessary knowledge concerning the controlling railroad's operating rules and to have the necessary operating skills including familiarity with its physical characteristics concerning the joint operations territory.

Subpart D—Administration of the Certification Programs

§ 240.301 Replacement of certificates.

A railroad shall have a system for the prompt replacement of lost, stolen or mutilated certificates and that system shall be reasonably accessible to certified locomotive engineers in need of a replacement certificate.

§ 240.303 Operational monitoring requirements.

(a) After December 31, 1991, each railroad to which this part applies shall, prior to FRA approval of its program in accordance with § 240.201, have a program to monitor the conduct of its certified locomotive engineers by performing both operational monitoring observations and by conducting unannounced operating rules compliance tests.

(b) The program shall be conducted so that each locomotive engineer shall be given at least one operational monitoring observation by a qualified supervisor of locomotive engineers in each calendar year.

(c) The program shall be conducted so that each locomotive engineer shall be given at least one unannounced compliance test each calendar year.

(d) The unannounced test program shall:

(1) Test engineer compliance with one or more provisions of the railroad's operating rules that require response to signals that display less than a "clear" aspect, if the railroad operates with a signal system that must comply with part 236 of this chapter;

(2) Test engineer compliance with one or more provisions of the railroad's operating rules, timetable or other mandatory directives that require affirmative response by the locomotive engineer to less favorable conditions than that which existed prior to initiation of the test;

(3) Test engineer compliance with provisions of the railroad's operating rules, timetable or other mandatory directives the violations of which by engineers were cited by the railroad as the cause of train accidents or train incidents in accident reports filed in compliance with part 225 of this chapter for the preceding year;

(4) Be conducted that so that the administration of these tests is effectively distributed throughout whatever portion of a 24-hour day that the railroad conducts its operations;

(5) be conducted so that individual tests are administered without prior notice to the locomotive engineer being tested; and

(6) be conducted so that the results of the test are recorded on the certificate and entered on the record established under § 240.215 within 30 days of the day the test is administered.

§ 240.305 Prohibited conduct by certified engineers.

After December 31, 1991,

(a) It shall be unlawful to:

(1) Operate a locomotive or train at a speed that exceeds the maximum authorized limit by at least 10 miles per hour or exceeds the maximum speed by more than one half of the authorized speed, whichever is less;

(2) Operate a locomotive or train past any signal, without completely stopping the locomotive or train, when that signal requires a complete stop before passing it; or

(3) Fail to comply with any mandatory directive concerning the movement of a locomotive or train by entering a segment of track without authority.

(b) Each locomotive engineer who has received a certificate required under this part shall:

(1) Have that certificate in his or her possession while on duty as an engineer; and

(2) Display that certificate upon the receipt of a request to do so from

(i) A representative of the Federal Railroad Administration,

(ii) An officer of the issuing railroad, or

(iii) An officer of another railroad when operating a locomotive or train in joint operations territory.

(c) Any locomotive engineer who is notified or called to operate a locomotive or train that would cause him or her to exceed the limits set forth in subpart B shall immediately notify the railroad that he or she is not qualified to perform that anticipated service.

(d) During the duration of any certification interval, a locomotive engineer who has a current certificate from more than one railroad shall immediately notify the other certifying railroad(s) if he or she is denied recertification by a railroad or has his or her certification revoked by a railroad.

(e) Nothing in this section shall be deemed to alter a certified locomotive engineer's duty to comply with other provisions of this chapter concerning railroad safety.

§ 240.307 Revocation of certification.

(a) A railroad that issues a person certification or recertification as a qualified locomotive engineer and, during that certification interval, acquires information which convinces the railroad that the person no longer meets the qualification requirements of this part, shall revoke the person's certificate as a qualified locomotive engineer.

(b) Pending a revocation determination under this section, the railroad shall:

(1) Upon receipt of reliable information indicating the person's lack of qualification under this part, immediately suspend the person's certificate;

(2) Prior to or upon suspending the person, provide notice of the reason for this suspension, the pending revocation, and an opportunity for hearing before a presiding officer other than the charging official;

(3) Convene the hearing within ten calendar days of the suspension when so demanded by the person;

(4) Determine, on the record of the hearing, whether the person no longer meets the qualification requirements of this part stating explicitly the basis for the conclusion reached;

(5) When appropriate, impose the pertinent period of revocation provided for in § 240.117 or § 240.119; and

(6) Retain the record of the hearing for 3 years after the date the decision is rendered.

(c) The hearing may be consolidated with any disciplinary or other hearing arising from the same facts but the presiding officer for the hearing shall make separate findings as to the revocation required under this section.

(d) A hearing that conforms procedurally to the applicable collective bargaining agreement shall be deemed to satisfy the procedural requirements of this section.

(e) A railroad that has relied on the certification by another railroad under the provisions of § 240.227 or § 240.229, shall revoke its certification if, during the pendency of that certification interval, the railroad acquires information which convinces it that another railroad has revoked its certification after determining, in accordance with the provisions of this section, that the person no longer meets

the qualification requirements of this part.

(f) The requirement to provide a hearing under this section does not impose a duty on more than one railroad to hold a hearing prior to the revocation by more than one railroad arising from the same facts.

§ 240.309 Railroad oversight responsibilities.

(a) No later than March 31 of each year (beginning in calendar year 1993), each Class I railroad (including the National Railroad Passenger Corporation and a railroad providing commuter service) and Class II railroad shall conduct a formal annual review and analysis concerning the administration of its program for responding to detected instances of poor safety conduct by certified locomotive engineers during the prior calendar year.

(b) Each review and analysis shall involve:

(1) The number and nature of the instances of detected poor safety conduct including the nature of the remedial action taken in response thereto;

(2) The number and nature of FRA reported train accidents attributed to poor safety performance by locomotive engineers;

(3) The number and type of operational monitoring test failures and observations of inadequate skill performance recorded by supervisors of locomotive engineers; and

(4) If it conducts joint operations with another railroad, the number of locomotive engineers employed by such other railroad(s) to which such events were ascribed which the controlling railroad certified for joint operations purposes.

(c) Based on that review and analysis each railroad shall determine what action(s) it will take to improve the safety of train operations to reduce or eliminate future incidents of that nature.

(d) If requested in writing by FRA, the railroad shall provide a report of the findings and conclusions reached during such annual review and analysis effort.

(e) For reporting purposes, the nature of detected poor safety conduct shall be capable of segregation for study and evaluation purposes in the following manner:

(1) Incidents involving noncompliance with part 218;

(2) Incidents involving noncompliance with part 219;

(3) Incidents involving noncompliance with part 232;

(4) Incidents involving noncompliance with the railroad's operating rules involving operation of a locomotive or train to operate at a speed that exceeds the maximum authorized limit;

(5) Incidents involving noncompliance with the railroad's operating rules resulting in operation of a locomotive or train past any signal that requires a complete stop before passing it;

(6) Incidents involving noncompliance with the railroad's operating practices including train handling procedures resulting in improper use of dynamic brakes;

(7) Incidents involving noncompliance with the railroad's operating practices (including train handling procedures) resulting in improper use of automatic brakes;

(8) Incidents involving noncompliance with the railroad's operating practices (including train handling procedures) resulting in improper use of a locomotive's independent brake;

(9) Incidents involving noncompliance with the railroad's operating practices (including train handling procedures) resulting in excessive in-train force levels; and

(10) Incidents involving noncompliance with the railroad's operating practices that require operation of a train at a speed that permits stopping within less than the engineers range of vision.

(e) For reporting purposes each category of detected poor safety conduct identified in paragraph (d) of this section shall be capable of being annotated to reflect the following:

(1) The total number of incidents in that category;

(2) The number of incidents within that total which reflects incidents requiring an FRA accident/incident report; and

(3) The number of incidents within that total which were detected as a result of a scheduled operational monitoring effort.

(f) For reporting purposes each category of detected poor safety conduct identified in paragraph (d) of this section shall be capable of being annotated to reflect the following:

(1) The nature of the remedial action taken and the number of events subdivided so as to reflect which of the following actions was selected:

(i) Imposition of informal discipline;

(ii) Imposition of formal discipline;

(iii) Provision of informal training; or

(iv) Provision of formal training; and

(2) If the nature of the remedial action taken was formal discipline, the number of events further subdivided so as to reflect which of the following punishments was imposed by the hearing officer:

(i) The person was withheld from service;

(ii) The person was dismissed from employment or

(iii) The person was issued demerits. If more than one form of punishment was imposed only that punishment deemed the most severe shall be shown.

(g) For reporting purposes each category of detected poor safety conduct identified in paragraph (d) of this section which resulted in the imposition of formal or informal discipline shall be annotated to reflect the following:

(1) The number of instances in which the railroad's internal appeals process reduced the punishment initially imposed at the conclusion of its hearing; and

(2) The number of instances in which the punishment imposed by the railroad was reduced by any of the following entities: the National Railroad Adjustment Board, a Public Law Board, a Special Board of Adjustment or other body for the resolution of disputes duly constituted under the provisions of the Railway Labor Act.

Subpart E—Dispute Resolution Procedures

§ 240.401 Review board established.

(a) Any person who has been denied certification, denied recertification, or has had his or her certification suspended or revoked and believes that a railroad incorrectly determined that he or she failed to meet the qualification requirements of this regulation when making the decision to deny, suspend, or revoke certification, may petition the Federal Railroad Administrator to review the railroad's decision.

(b) The Federal Railroad Administrator has delegated initial responsibility for adjudicating such disputes to the Locomotive Engineer Review Board.

(c) The Locomotive Engineer Review Board shall be composed of at least three employees of the Federal Railroad Administration selected by the Administrator.

§ 240.403 Petition Requirements.

(a) To obtain review of a railroad's decision to deny certification, deny recertification, or revoke certification, a person shall file a petition for review that complies with this section.

(b) Each petition shall:

(1) Be in writing;

(2) Be submitted in triplicate to the Docket Clerk, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC, 20590;

(3) Contain all available information that the person thinks supports the

person's belief that the railroad acted improperly, including:

(i) The petitioner's full name;

(ii) The petitioner's current mailing address;

(iii) The petitioner's daytime telephone number;

(iv) The name and address of the railroad; and

(v) The facts that the petitioner believes constitute the improper action by the railroad, specifying the locations, dates, and identities of all persons who were present or involved in the railroad's actions (to the degree known by the petitioner);

(4) Explain the nature of the remedial action sought;

(5) Be supplemented by a copy of all written documents in the petitioner's possession that document that railroad's decision; and

(6) Be filed in a timely manner.

(c) A petition seeking review of a railroad's decision to deny certification or recertification filed with FRA more than 180 days after the date of the railroad's denial decision will be denied as untimely.

(d) A petition seeking review of a railroad's decision to revoke certification in accordance with the procedures required by § 240.307 filed with FRA more than 180 days after the date of the railroad's revocation decision will be denied as untimely.

§ 240.405 Processing qualification review petitions.

(a) Each petition shall be acknowledged in writing by FRA and the acknowledgement shall contain the docket number assigned to the petition.

(b) Upon receipt of the petition, FRA will notify the railroad that it has received the petition and provide the railroad with a copy of the petition.

(c) The railroad will be given a period of not to exceed 30 days to submit to FRA any information that the railroad considers pertinent to the petition.

(d) A railroad that submits such information shall:

(1) Identify the petitioner by name and the docket number of the review proceeding;

(2) Provide a copy of the information being submitted to FRA to the petitioner.

(e) Each petition will then be referred to the Locomotive Engineer Review Board for a decision.

(f) The Board will determine whether the denial or revocation of certification or recertification was improper under this regulation (*i.e.,* based on an incorrect determination that the person failed to meet the qualification requirements of this regulation) and grant or deny the petition accordingly. The Board will not otherwise consider the propriety of a railroad's decision, *i.e.,* it will not consider whether the railroad properly applied its own more stringent requirements.

(g) Notice of that decision will be provided in writing to both the petitioner and the railroad. The decision will include findings of fact on which it is based.

§ 240.407 Request for a hearing.

(a) If adversely affected by the decision, either the original petitioner or the railroad involved shall have a right to an administrative hearing concerning that decision.

(b) To exercise that right, the adversely affected party shall file a written request within 20 days of service of the Board's decision on them.

(c) Failure to request a hearing within the period provided in paragraph (b) of this section constitutes a waiver of the right to a hearing.

(d) If a party elects to request a hearing, that person shall submit a written request to the Docket Clerk containing the following:

(1) The name, address, and telephone number of the respondent and the requesting party's designated representative, if any;

(2) The specific facts that the requesting party alleges the Board wrongly determined in making its decision; and

(3) The signature of the requesting party or the requesting party's representative, if any.

(e) Upon receipt of a hearing request complying with paragraph (d) of this section, the Federal Railroad Administration shall schedule a hearing at the earliest practicable date.

§ 240.409 Hearings.

(a) An administrative hearing for review of a locomotive engineer qualification petition shall be conducted by a presiding officer, who can be any person authorized by the FRA Administrator, including an administrative law judge.

(b) The presiding officer may exercise the powers of the Federal Railroad Administrator to regulate the conduct of the hearing for the purpose of achieving a prompt and fair determination of all material issues in controversy.

(c) The presiding officer shall convene and preside over the hearing.

(d) Testimony by witnesses at the hearing shall be given under oath and the hearing shall be recorded verbatim.

(e) The presiding officer shall employ the Federal Rules of Evidence for United States Courts and Magistrates as general guidelines for the introduction of evidence. All relevant and probative evidence shall be received unless the presiding officer determines the evidence to be unduly repetitive or so extensive and lacking in relevancy that its admission would impair the prompt, orderly, and fair resolution of the proceeding.

(f) The presiding officer may:

(1) Administer oaths and affirmations;

(2) Issue subpoenas as provided for in § 209.7 of part 209 in this chapter;

(3) Adopt any needed procedures for the submission of evidence in written form;

(4) Examine witnesses at the hearing;

(5) Convene, recess, adjourn or otherwise regulate the course of the hearing; and

(6) Take any other action authorized by or consistent with the provisions of this part and permitted by law that may expedite the hearing or aid in the disposition of the proceeding.

(g) The party favored by FRA's disposition of the initial petition under this subpart, may participate in the hearing as a third party. Parties may appear and be heard on their own behalf or through designated representatives. Respondents may offer relevant evidence including testimony and may conduct such cross-examination of witnesses as may be required for a full disclosure of the relevant facts.

(h) The record in the proceeding shall be closed at conclusion of the hearing unless the presiding officer allows additional time for the submission of information. In such instances the record shall be left open for such time as the presiding officer grants for that purpose.

(i) At the close of the record, the presiding officer shall prepare a written decision in the proceeding.

(j) The decision:

(1) Shall contain the findings of fact and conclusions of law, as well as the basis therefore, concerning all material issues of fact or law presented on the record;

(2) Shall be served on the respondent and any other directly affected party;

(3) Shall not become final for 35 days after issuance;

(4) Constitutes final agency action unless an aggrieved party files an appeal within 35 days after issuance; and

(5) Is not precedential.

(k) The FRA shall have the burden of proving that its grant or denial of the initial petition was in accordance with law and supported by substantial evidence.

§ 240.411 Appeals.

(a) Any party aggrieved by the presiding officer's decision may file an appeal. The appeal must be filed within 35 days of issuance of the decision with the Federal Railroad Administrator, 400 Seventh Street SW., Washington, DC 20590. A copy of the appeal shall be served on each party. The appeal shall set forth objections to the presiding officer's decision, supported by reference to applicable laws and regulations and with specific reference to the record.

(b) A party may file a reply to the appeal within 25 days of service of the appeal. The reply shall be supported by reference to applicable laws and regulations and with specific reference to the record, if the party relies on evidence contained in the record.

(c) The Administrator may extend the period for filing an appeal or a response for good cause shown, provided that the written request for extension is served before expiration of the applicable period provided in this section.

(d) The Administrator has sole discretion to permit oral argument on the appeal. On the Administrator's own initiative or written motion by any party, the Administrator may grant the parties an opportunity for oral argument

(e) The Administrator may affirm, reverse, alter or modify the decision of the presiding officer and the Administrator's decision constitutes final agency action.

APPENDIX A TO PART 240—SCHEDULE OF CIVIL PENALTIES [1]

Section	Violation	Willful violation
Subpart B—Component Elements		
240.101—Program Failures		
(a) Failure to have program	$5,000	$10,000
(b) Program that fails to address a subject	2,500	5,000
240.103—Failure to:		
(a) follow Appendix B	1,000	2,000
(d) to resubmit, when directed by FRA	1,000	2,000
240.105—Failure to have adequate procedure for selection of supervisors	2,500	5,000
240.107—Classes of Service		
(a) Failure to designate classes of service	2,000	4,000
240.109—Limitations on considering prior conduct records		
(a) Failure to have procedure for determining eligibility	2,500	5,000
(e) Considering excluded data	2,000	4,000
(f,g) Failure to provide timely review opportunity	2,000	4,000
240.111—Furnishing Motor Vehicle Records		
(a) Failure to action required to make information available	1,000	2,000
(b) Failure to request:		
(1) local record	1,000	2,000
(2) NDR record	1,000	2,000
(f) Failure to request additional record	1,000	2,000
(e) Failure to notify of absence of license	750	1,500
(h) Failure to submit request in timely manner	750	1,500
240.113—Furnishing prior employment information		
(a) Failure to take action required to make information available	1,000	2,000
(b) Failure to request record	1,000	2,000
240.115—Criteria for considering prior motor vehicle conduct		
(b) Considering excluded data	2,000	4,000
(c) Failure to		
(1) consider data	5,000	7,500
(3,4) properly act in response to data	2,500	5,000
240.117—Consideration of operational rules compliance records		
(a) Failure to have program and procedures	5,000	10,000
(b–d) Failure to have adequate program or procedure	2,500	5,000
240.119—Consideration of substance abuse /rules compliance records		
(a) Failure to have program and procedures	5,000	10,000
(b–e) Failure to have adequate program or procedure	2,500	5,000
240.121—Failure to have adequate procedure for determining acuity	2,500	5,000
240.123—Failure to have		
(a) adequate procedures for continuing education	2,500	5,000
(b) adequate procedures for training new engineers	2,500	5,000
240.125—Failure to have		
(a) adequate procedures for testing knowledge	2,500	5,000
(d) adequate procedures for documenting testing	2,500	5,000
240.127—Failure to have		
(a) adequate procedures for evaluating skill performance	2,500	5,000
(c) adequate procedures for documenting skills testing	2,500	5,000
240.129—Failure to have		
(a–b) adequate procedures for monitoring performance	2,500	5,000
Subpart C—Implementation of the Process		
240.201—Schedule for Implementation		
(a) Failure to select supervisors by specified date	1,000	2,000
(b) Failure to identify grandfathered engineers	2,000	4,000
(c) Failure to issue certificate to engineer	1,000	2,000
(d) Allowing uncertified person to operate	5,000	10,000
(e–g) Certifying without complying with subpart C	2,500	5,000
(h–i) Failure to issue certificate to engineer	1,000	2,000
(j) Allowing person to continue to operate after 12/31/92 without testing or evaluation	2,500	5,000
240.203 (a) Designating a person as a supervisor without determining that		
(1) person knows and understands this part;	2,500	5,000
(2) person can test and evaluate engineers;	5,000	7,500
(3) person has experience to prescribe remedies	2,500	5,000

Section	Violation	Willful violation
(b) Certifying a person without determining that		
(1) person meets the eligibility criteria;	5,000	7,500
(2) person meets the medical criteria;	2,500	5,000
(3) person has demonstrated knowledge	2,500	5,000
(4) person has demonstrated skills	2,500	5,000
(c) Certifying a person without determining that		
(1) person has completed training program	2,500	5,000
(2) person meets the eligibility criteria	2,500	5,000
(3) time has elapsed	2,500	5,000
240.205—Procedures for determining eligibility based on prior safety conduct		
(a) Selecting person lacking eligibility	5,000	7,500
(d) Failure to have basis for taking action	2,500	5,000
240.207—Ineligibility based on medical condition		
(a) Selecting person lacking proper acuity	2,000	4,000
(b) Failure to have basis for finding of proper acuity	1,000	2,000
(c) Acuity examinations performed by unauthorized person	1,000	2,000
(d) Failure to note need for device to achieve acuity	1,000	2,000
(e) Failure to use device needed for proper acuity	1,000	2,000
240.209—Demonstrating knowledge		
(b) Failure to properly determine knowledge	2,500	5,000
(c) Improper test procedure	2,000	4,000
(d) Failure to document test results	1,000	2,000
(e) Allowing person to operate despite test failure	2,500	5,000
240.211—Demonstrating skills		
(b) Failure to properly determine knowledge	2,500	5,000
(c) Improper test procedure	2,000	4,000
(d) Failure to document test results	1,000	2,000
(e) Allowing person to operate despite test failure	2,500	5,000
240.213—Completion of approved training program		
(a) Failure to properly determine	2,500	5,000
(b) Failure to document successful program completion	2,000	4,000
240.215—Supporting information		
(a, f–h) Failure to have a record	1,000	2,000
(b) Failure to have complete record	500	1,000
(i) Falsification of record	(–)	10,000
240.217—Time limits for making determinations		
(a, c) Exceeding time limit	2,000	4,000
240.219—Denial of certification		
(a) Failure to notify or provide opportunity for comment	2,000	4,000
(c) Failure to notify, provide data, or untimely notification	2,000	4,000
240.221—Identification of persons		
(a–b) Failure to have record	2,000	4,000
(c) Failure to update record	2,000	4,000
(b) Failure to issue certificate	1,000	2,000
(e–f) Failure to make record available	1,000	2,000
240.223—Certificate criteria		
(a) Improper certificate	500	1,000
(b) Failure to designate those with signatory authority	500	1,000
(d) Falsification of certificate	(–)	10,000
240.225—Railroad Relying on Determination of Another		
(a) Reliance on expired certification	2,500	5,000
(b) Reliance on wrong class of service	2,500	5,000
(c) Failure to familiarize person with new operational territory	2,000	4,000
(d) Failure to determine knowledge	2,000	4,000
240.227—Railroad Relying on Requirements of a Different Country		
(a) Joint operator reliance		
(1) on person not employed	1,000	2,000
(2) on person who fails to meet Canadian requirements	1,000	2,000
(b) Canadian railroad reliance		
(1) on person not employed	1,000	2,000
(2) on person who fails to meet Canadian requirements	1,000	2,000
240.229—Railroad Controlling Joint Operation Territory		
(a) Allowing uncertified person to operate	2,000	4,000
(b) Certifying without making determinations or relying on another railroad	2,500	5,000
(c) Certifying without determining:		
(1) certification status	2,500	5,000
(2) knowledge	2,500	5,000
(3) skills	2,500	5,000
(4) familiarity with physical characteristics	2,000	4,000
(d) Failure to provide qualified person	2,000	4,000
Subpart D—Program Administration		
240.301—Failure to have system for certificate replacement	2,000	4,000
240.303—Monitoring operations		
(a) Failure to have program	5,000	10,000
(b) Failure to observe each person annually	1,000	2,000
(c) Failure to test each person annually	1,000	2,000
(d) Failure to test properly	1,000	2,000
240.305—Certified engineer conduct		
(a) Failure of engineer to		
(1) properly control speed	2,500	5,000
(2) stop at signal	2,500	5,000

Section	Violation	Willful violation
(3) obey rules for track occupancy authority	2,500	5,000
(b) Failure of engineer to		
(1) carry certificate	1,000	2,000
(2) display certificate when requested	1,000	2,000
(c–d) Failure of engineer to notify railroad of limitations, revocation or denial	4,000	8,000
240.309—Revocation of certification		
(a) Failure to withdraw person from service	2,500	5,000
(b) Failure to notify, provide hearing opportunity, or untimely procedures	2,000	4,000
240.307—Oversight responsibility report		
(a) Failure to report or to report on time	500	1,000
(b–f) Incomplete or inaccurate report	2,000	4,000

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $20,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A.

Appendix B to Part 240—Procedures for Submission and Approval of Locomotive Engineer Qualification Programs

This appendix establishes procedures for the submission and approval of a railroad's program concerning the training, testing, and evaluating of persons seeking certification or recertification as a locomotive engineer in accordance with the requirements of this part (see §§ 240.101, 240.103, 240.105, 240.107, 240.123, 240.125, 240.127 and 240.129). It also contains guidance on how FRA will exercise its review and approval responsibilities.

Submission by a Railroad

As provided for in § 240.101, each railroad must have a program for determining the qualifications of each person it permits or requires to operate a locomotive. In designing its program a railroad must take into account the trackage and terrain over which it operates, the system(s) for train control that are employed, the operational design characteristics of the track and equipment being operated including train length, train makeup, and train speeds. Each railroad must submit its individual program to FRA for approval as provided for in § 240.103. Each program must be accompanied by a request for approval organized in accordance with this appendix. Requests for approval must contain appropriate references to the relevant portion of the program being discussed. Requests should be submitted in writing on standard sized paper (8-1/2 x 11) and can be in letter or narrative format. The railroad's submission shall be sent to the Associate Administrator for Safety, FRA. The mailing address for FRA is 400 Seventh Street, SW., Washington, DC 20590.

Organization of the Submission

Each request should be organized to present the required information in the following standardized manner. Each section must begin by giving the name, title, telephone number, and mailing address of the person to be contacted concerning the matters addressed by that section. If a person is identified in a prior section, it is sufficient to merely repeat the person's name in a subsequent section.

Section 1 of the Submission: General Information and Elections

The first section of the request must contain the name of the railroad, the person to be contacted concerning the request (including the person's name, title, telephone number, and mailing address) and a statement electing either to accept responsibility for educating previously untrained persons to be qualified locomotive engineers or recertify only engineers previously certified by other railroads (see § 240.103(b)).

If a railroad elects not to conduct the training of persons not previously trained to be a locomotive engineer, the railroad is not obligated to submit information on how the previously untrained will be trained. A railroad that makes this election will be limited to recertifying persons initially certified by another railroad. A railroad that initially elects not to accept responsibility for training its own locomotive engineers can rescind its initial election by obtaining FRA approval of a modification of its program (see § 240.103(e)).

If a railroad elects to accept responsibility for conducting the education of persons not previously trained to be locomotive engineers, the railroad is obligated to submit information on how such persons will be trained but has no duty to actually conduct such training. A railroad that elects to accept the responsibility for the training of such persons may authorize another railroad or a non-railroad entity to perform the actual training effort. The electing railroad remains responsible for assuring that such other training providers adhere to the training program the railroad submits.

This section must also state which class or classes of service the railroad will employ. (See § 240.107).

Section 2 of the Submission: Selection of Supervisors of Locomotive Engineers

The second section of the request must contain information concerning the railroad's procedure for selecting the person or persons it will rely on to evaluate the knowledge, skill, and ability of persons seeking certification or recertification. As provided for in § 240.105 each railroad must have a procedure for selecting supervisors of locomotive engineers which assures that persons so designated can appropriately test and evaluate the knowledge, skill, and ability of individuals seeking certification or recertification.

Section 240.105 provides a railroad latitude to select the criteria and evaluation methodology it will rely on to determine which person or persons have the required capacity to perform as a supervisor of locomotive engineers. The railroad must describe in this section how it will use that latitude and evaluate those it designates as supervisors of locomotive engineers so as to comply with the performance standard set forth in § 240.105(b). The railroad must identify, in sufficient detail to permit effective review by FRA, the criteria for evaluation it has selected. For example, if a railroad intends to rely on one or more of the following, a minimum level of prior experience as an engineer, successful completion of a course of study, or successful passage of a standardized testing program, the submission must state which criteria it will employ.

Section 3 of the Submission: Training Persons Previously Certified

The third section of the request must contain information concerning the railroad's program for training previously certified locomotive engineers. As provided for in § 240.123(b) each railroad must have a program for the ongoing education of its locomotive engineers to assure that they maintain the necessary knowledge concerning personal safety, operating rules and practices, mechanical condition of equipment, methods of safe train handling (including familiarity with physical characteristics), and relevant Federal safety rules.

Section 240.123(b) provides a railroad latitude to select the specific subject matter to be covered, duration of the training, method of presenting the information, and the frequency with which the training will be provided. The railroad must describe in this section how it will use that latitude to assure that its engineers remain knowledgeable concerning the safe discharge of their train operation responsibilities so as to comply with the performance standard set forth in § 240.123(b). This section must contain sufficient detail to permit effective evaluation of the railroad's training program in terms of the subject matter covered, the frequency and duration of the training sessions, the training environment employed (for example, and use of classroom, use of computer based training, use of simulators, use of film or slide presentations, use of on-job-training) and which aspects of the program are voluntary or mandatory.

Safe train handling involves both abstract knowledge about the appropriate use of engine controls and the application of that

knowledge to trains of differing composition traversing varying terrain. Time and circumstances have the capacity to diminish both abstract knowledge and the proper application of that knowledge to discrete events. Time and circumstances also have the capacity to alter the value of previously obtained knowledge and the application of that knowledge. In formulating how it will use the discretion being afforded, each railroad must design its program to address both loss of retention of knowledge and changed circumstances, and this section of the submission to FRA must address these matters.

For example, locomotive engineers need to have their fundamental knowledge of train operations refreshed periodically. Each railroad needs to advise FRA how that need is satisfied in terms of the interval between attendance at such training, the nature of the training being provided, and methods for conducting the training. A matter of particular concern to FRA is how each railroad acts to assure that engineers remain knowledgeable about safe train handling procedures if the territory over which a locomotive engineer is authorized to operate is territory from which the engineer has been absent. The railroad must have a plan for the familiarization training that addresses the question of how long a person can be absent before needing more education and, once that threshold is reached, how the person will acquire the needed education. Similarly, the program must address how the railroad responds to changes such as the introduction of new technology, new operating rule books, or significant changes in operations including alteration in the territory engineers are authorized to operate over.

Section 4 of the Submission: Testing and Evaluating Persons Previously Certified

The fourth section of the request must contain information concerning the railroad's program for testing and evaluating previously certified locomotive engineers. As provided for in § 240.125 and § 240.127, each railroad must have a program for the ongoing testing and evaluating of its locomotive engineers to assure that they have the necessary knowledge and skills concerning personal safety, operating rules and practices, mechanical condition of equipment, methods of safe train handling (including familiarity with physical characteristics), and relevant Federal safety rules. Similarly, each railroad must have a program for ongoing testing and evaluating to assure that its locomotive engineers have the necessary vision and hearing acuity as provided for in § 240.121.

Sections 240.125 and 240.127 require that a railroad rely on written procedures for determining that each person can demonstrate his or her knowledge of the railroad's rules and practices and skill at applying those rules and practices for the safe operation of a locomotive or train. Section 240.125 directs that, when seeking a demonstration of the person's knowledge, a railroad must employ a written test that contains objective questions and answers and covers the following subject matters: (i) Personal safety practices; (ii) operating practices; (iii) equipment inspection practices; (iv) train handling practices (including familiarity with the physical characteristics of the territory); and (v) compliance with relevant Federal safety rules. The test must accurately measure the person's knowledge of all of these areas.

Section 240.125 provides a railroad latitude in selecting the design of its own testing policies (including the number of questions each test will contain, how each required subject matter will be covered, weighting (if any) to be given to particular subject matter responses, selection of passing scores, and the manner of presenting the test information). The railroad must describe in this section how it will use that latitude to assure that its engineers will demonstrate their knowledge concerning the safe discharge of their train operation responsibilities so as to comply with the performance standard set forth in § 240.125.

Section 240.127 directs that, when seeking a demonstration of the person's skill, a railroad must employ a test and evaluation procedure conducted by a designated supervisor of locomotive engineers that contains an objective evaluation of the person's skills at applying the railroad's rules and practices for the safe operation of trains. The test and evaluation procedure must examine the person's skills in terms of all of the following subject matters: (i) Operating practices; (ii) equipment inspection practices; (iii) train handling practices (including familiarity with the physical characteristics of the territory); and (iv) compliance with relevant Federal safety rules. The test must be sufficient to effectively examine the person's skills while operating a train in the most demanding type of service which the person is likely to encounter in the normal course of events once he or she is deemed qualified.

Section 240.127 provides a railroad latitude in selecting the design of its own testing and evaluation procedures (including the duration of the evaluation process, how each required subject matter will be covered, weighing (if any) to be given to particular subject matter response, selection of passing scores, and the manner of presenting the test information). The section should provide information concerning the procedures which the railroad will follow that achieve the objectives described in FRA's recommended practices (see appendix E) for conducting skill performance testing. The section also gives a railroad the latitude to employ either a Type 1 or a Type 2 simulator (properly programmed) to conduct the test and evaluation procedure. A railroad must describe in this section how it will use that latitude to assure that its engineers will demonstrate their skills concerning the safe discharge of their train operation responsibilities so as to comply with the performance standard set forth in § 240.127.

Section 240.121 provides a railroad latitude to rely on the professional medical opinion of the railroad's medical examiner concerning the ability of a person with substandard acuity to safely operate a locomotive. The railroad must describe in this section how it will assure that its medical examiner has sufficient information concerning the railroad's operations to effectively form appropriate conclusions about the ability of a particular individual to safely operate a train.

Section 5 of the Submission: Training, Testing, and Evaluating Persons Not Previously Certified

Unless a railroad has made an election not to accept responsibility for conducting the initial training of persons to be locomotive engineers, the fifth section of the request must contain information concerning the railroad's program for educating, testing, and evaluating persons not previously trained as locomotive engineers. As provided for in § 240.123(c), a railroad that is issuing an initial certification to a person to be a locomotive engineer must have a program for the training, testing, and evaluating of its locomotive engineers to assure that they acquire the necessary knowledge and skills concerning personal safety, operating rules and practices, mechanical condition of equipment, methods of safe train handling (including familiarity with physical characteristics), and relevant Federal safety rules.

Section 240.123 establishes a performance standard and gives a railroad latitude in selecting how it will meet that standard. A railroad must describe in this section how it will use that latitude to assure that its engineers will acquire sufficient knowledge and skill and demonstrate their knowledge and skills concerning the safe discharge of their train operation responsibilities. This section must contain the same level of detail concerning initial training programs as that described for each of the components of the overall program contained in sections 2 through 4 of this appendix. A railroad that plans to accept responsibility for the initial training of locomotive engineers may authorize another railroad or a non-railroad entity to perform the actual training effort. The authorizing railroad may submit a training program developed by that authorized trainer but the authorizing railroad remains responsible for assuring that such other training providers adhere to the training program submitted. Railroads that elect to rely on other entities, to conduct training away from the railroad's own trackage, must indicate how the student will be provided with the required familiarization with the physical characteristics for its trackage.

Section 6 of the Submission: Monitoring Operational Performance by Certified Engineers

The final section of the request must contain information concerning the railroad's program for monitoring the operation of its certified locomotive engineers. As provided for in § 240.129, each railroad must have a program for the ongoing monitoring of its locomotive engineers to assure that they operate their locomotives in conformity with the railroad's operating rules and practices including methods of safe train handling and relevant Federal safety rules.

Section 240.129 requires that a railroad annually observe each locomotive engineer demonstrating his or her knowledge of the railroad's rules and practices and skill at applying those rules and practices for the safe operation of a locomotive or train. Section 240.129 directs that the observation

be conducted by a designated supervisor of locomotive engineers but provides a railroad latitude in selecting the design of its own observation procedures (including the duration of the observation process, reliance on tapes that record the specifics of train operation, and the specific aspects of the engineer's performance to be covered). The section also gives a railroad the latitude to employ either a Type 1 or a Type 2 simulator (properly programmed) to conduct monitoring observations. A railroad must describe in this section how it will use that latitude to assure that the railroad is monitoring that its engineers demonstrate their skills concerning the safe discharge of their train operation responsibilities. A railroad that intends to employ train operation event recorder tapes to comply with this monitoring requirement shall indicate in this section how it anticipates determining what person was at the controls and what signal indications or other operational constraints, if any, were applicable to the train's movement.

Section 7 of the Submission: Procedures for Routine Administration of the Engineer Certification Program

The final section of the request must contain a summary of how the railroad's program and procedures will implement the various specific aspects of the regulatory provisions that relate to routine administration of its certification program for locomotive engineers. At a minimum this section needs to address the procedural aspects of the rule's provisions identified in the following paragraph.

Section 240.109 provides that each railroad must have procedures for review and comment on adverse prior safety conduct, but allows the railroad to devise its own system within generalized parameters. Sections 240.115, 240.117 and 240.119 require a railroad to have procedures for evaluating data concerning prior safety conduct as a motor vehicle operator and as railroad workers, yet leave selection of many details to the railroad. Sections 240.203, 240.217, and 240.219 place a duty on the railroad to make a series of determinations but allow the railroad to select what procedures it will employ to assure that all of the necessary determinations have been made in a timely fashion; who will be authorized to conclude that person is or is not qualified; and how it will communicate adverse decisions. Documentation of the factual basis the railroad relied on in making determinations under §§ 240.205, 240.207, 240.209, 240.211, and 240.213 is required, but these sections permit the railroad to select the procedures it will employ to accomplish compliance with these provisions. Sections 240.225 and 240.227 permit reliance on qualification determinations made by other entities and permit a railroad latitude in selecting the procedures it will employ to assure compliance with these provisions. Similarly, § 240.229 permits use of railroad selected procedures to meet the requirements for certification of engineers performing service in joint operations territory. Sections 240.301 and 240.307 allow a railroad a certain degree of discretion in complying with the requirements for replacing lost certificates or the conduct of certification revocation proceedings.

This section of the request should outline in summary fashion the manner in which the railroad will implement its program so as to comply with the specific aspects of each of the rule's provisions described in preceding paragraph.

FRA Review

The submissions made in conformity with this appendix will be deemed approved within 30 days after the required filing date or the actual filing date whichever is later. No formal approval document will be issued by FRA. The brief interval for review reflects FRA's judgment that railroads generally already have existing programs that will meet the requirements of this part. FRA has taken the responsibility for notifying a railroad when it detects problems with the railroad's program. FRA retains the right to disapprove a program that has obtained approval due to the passage of time as provided for in section § 240.103.

FRA initially proposed specifying the details for most aspects of the programs being submitted under this appendix. The proposed rule contained a distillation of the essential elements of pre-existing training, testing, evaluating, and monitoring programs that appear to result in railroads having locomotive engineers who operate locomotives and trains safely. The proposal contained very specific details for each aspect of the program that appeared to contribute to that result. Those details included such things as the duration of classes intended to teach operating rules as well as the interval and methodology for acquiring familiarization with physical characteristics of an engineer's operational territory. Railroads commenting on the proposed rule did not question the validity of the FRA's views concerning the essential elements of an effective program but did convince FRA that they should be given more discretion to formulate the design of their individual programs.

Rather than establish rigid requirements for each element of the program as initially proposed, FRA has given railroads discretion to select the design of their individual programs within a specified context for each element. The proposed rule, however, provides a good guide to the considerations that should be addressed in designing a program that will meet the performance standards of this final rule. In reviewing program submissions, FRA will focus on the degree to which a particular program deviates from the norms identified in its proposed rule. To the degree that a particular program submission materially deviates from the norms set out in its proposed rule which was published in the **Federal Register** on December 11, 1989 (54 FR 50890), FRA's review and approval process will be focused on determining the validity of the reasoning relied on by a railroad for selecting its alternative approach and the degree to which the alternative approach is likely to be effective in producing locomotive engineers who have the knowledge, skill, and ability to safely operate trains.

Appendix C to Part 240—Procedures for Obtaining and Evaluating Motor Vehicle Driving Record Data

The purpose of this Appendix is to outline the procedures available to individuals and railroads for complying with the requirements of section 4(a) of the Railroad Safety Improvement Act of 1988 and §§ 240.109, 240.111 and 240.205 of this part. Those provisions require that railroads consider the motor vehicle driving record of each person prior to issuing him or her certification or recertification as a qualified locomotive engineer.

To fulfill that obligation, a railroad must review a certification candidate's recent motor vehicle driving record. Generally, that will be a single record on file with the state agency that issued the candidate's current license. However, it can include multiple records if the candidate has been issued a motor vehicle driving license by more than one state agency. In addition, the railroad must determine whether the certification candidate is listed in the National Driver Register and, if so listed, to review the data that caused the candidate to be so listed.

Access to State Motor Vehicle Driving Record Data

The right of railroad workers, their employers, or prospective employers to have access to a state motor vehicle licensing agency's data concerning an individual's driving record is controlled by state law. Although many states have mechanisms through which employers and prospective employers such as railroads can obtain such data, there are some states in which privacy concerns make such access very difficult or impossible. Since individuals generally are entitled to obtain access to driving record data that will be relied on by a state motor vehicle licensing agency when that agency is taking action concerning their driving privileges, FRA places responsibility on individuals, who want to serve as locomotive engineers to request that their current state drivers licensing agency or agencies furnish such data directly to the railroad considering certifying them as a locomotive operator. Depending on the procedures adopted by a particular state agency, this will involve the candidate's either sending the state agency a brief letter requesting such action or executing a state agency form that accomplishes the same effect. It will normally involve payment of a nominal fee established by the state agency for such a records check. In rare instances, when a certification candidate has been issued multiple licenses, it may require more than a single request.

The National Driver Register

In addition to seeking an individual state's data, each engineer candidate is required to request that a search and retrieval be performed of any relevant information concerning his or her driving record contained in the National Driver Register. The National Driver Register (NDR) is a system of information created by Congress in 1960. In essence it is a nationwide repository of information on problem drivers that was created in an effort to protect motorists. It is

a voluntary State/Federal cooperative program that assists motor vehicle driver licensing agencies in gaining access to data about actions taken by other state agencies concerning an individual's motor vehicle driving record. The NDR is designed to address the problem that occurs when chronic traffic law violators, after losing their license in one State travel to and receive licenses in another State. Currently the NDR is maintained by the National Highway Traffic Safety Administration (NHTSA) of the Department of Transportation under the provisions of the National Driver Register Act (23 U.S.C. 401 note). Under that statute, state motor vehicle licensing authorities voluntarily notify NHTSA when they take action to deny, suspend, revoke or cancel a person's motor vehicle driver's license and, under the provisions of a 1982 change to the statute, states are also authorized to notify NHTSA concerning convictions for operation of a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance, and for traffic violations arising in connection with a fatal traffic accident, reckless driving or racing on the highway even if these convictions do not result in an immediate loss of driving privileges.

The information submitted to NHTSA contains, at a minimum, three specific pieces of data: the identification of the state authority providing the information, the name of the person whose license is being affected, and the date of birth of that person. It may be supplemented by data concerning the person's height, weight, color of eyes, and social security account number, if a State collects such data.

Access to NDR Data

Essentially only individuals and state licensing agencies can obtain access to the NDR data. Since railroads have no direct access to the NDR data, FRA requires that individuals seeking certification as a locomotive engineer request that an NDR search be performed and direct that the results be furnished to the railroad. FRA requires that each person request the NDR information directly from NHTSA unless the prospective operator has a motor vehicle driver license issued by a state motor vehicle licensing agency that is "participating" under the provisions of the National Driver Register Act of 1982. Participating states can directly access the NDR data on behalf of the prospective engineer. The state agencies that currently are authorized to access NDR data in that manner are identified in appendix D of this regulation.

Requesting NHTSA to Perform the NDR Check

The procedures for requesting NHTSA performance of an NDR check are as follows:

1. Each person shall submit a written request to National Highway Traffic Safety Administration at the following address: Chief, National Driver Register, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

2. The request must contain:

(a) The full legal name;

(b) Any other names used by the person (*e.g.*, nickname or professional name);

(c) The date of birth;

(d) Sex;

(e) Height;

(f) Weight;

(g) Color of eyes;

(h) Driver's license number (unless that is not available).

3. The request must authorize NHTSA to perform the NDR check and to furnish the results of the search directly to the railroad.

4. The request must identify the railroad to which the results are to be furnished, including the proper name of the railroad, and the proper mailing address of the railroad.

5. The person seeking to become a certified locomotive engineer shall sign the request, and that signature must be notarized.

FRA requires that the request be in writing and contain as much detail as is available to improve the reliability of the data search. Any person may supply additional information to that being mandated by FRA. Furnishing additional information, such as the person's Social Security account number, will help to more positively identify any records that may exist concerning the requester. Although no fee is charged for such NDR checks, a minimal cost may be incurred in having the request notarized. The requirement for notarization is designed to ensure that each person's right to privacy is being respected and that records are only being disclosed to legally authorized parties.

Requesting a State Agency to Perform the NDR Check

As discussed earlier in connection with obtaining data compiled by the state agency itself, a person can either write a letter to that agency asking for the NDR check or can use the agency's forms for making such a request. If a request is made by letter the individual must follow the same procedures required when directly seeking the data from NHTSA. At present there are only a limited number of state licensing agencies that have the capacity to make a direct NDR inquiry of this nature. It is anticipated that the number of states with such capability will increase in the near future; therefore, FRA will continue to update the identification of such states by revising Appendix D to this regulation to identify such state agencies. Since it would be more efficient for a prospective locomotive engineer to make a single request for both aspects of the information required under this rule, FRA anticipates that state agency inquiry will eventually become the predominant method for making these NDR checks. Requests to state agencies may involve payment of a nominal fee established by the state agency for such a records check.

State agencies normally will respond in approximately 30 days or less and advise whether there is or is not a listing for a person with that name and date of birth. If there is a potential match and the inquiry state was not responsible for causing that entry, the agency normally will indicate in writing the existence of a probable match and will identify the state licensing agency that suspended, revoked or canceled the relevant license or convicted the person of one of the violations referenced earlier in this appendix.

Actions When a Probable NDR Match Occurs

The response provided after performance of an NDR check is limited to either a notification that no potential record match was identified or a notification that a potential record match was identified. If the latter event occurs, the notification will include the identification of the state motor vehicle licensing authority which possesses the relevant record. If the NDR check results indicate a potential match and that the state with the relevant data is the same state which furnished detailed data (because it had issued the person a driving license), no further action is required to obtain additional data. If the NDR check results indicate a potential match and the state with the relevant data is different from the state which furnished detailed data, it then is necessary to contact the individual state motor vehicle licensing authority that furnished the NDR information to obtain the relevant record. FRA places responsibility on the railroad to notify the engineer candidate and on the candidate to contact the state with the relevant information. FRA requires the certification candidate to write to the state licensing agency and request that the agency inform the railroad concerning the person's driving record. If required by the state agency, the person may have to pay a nominal fee for providing such data and may have to furnish written evidence that the prospective operator consents to the release of the data to the railroad. FRA does not require that a railroad or a certification candidate go beyond these efforts to obtain the information in the control of such a state agency, and a railroad may act upon the pending certification without the data if an individual state aqency fails or refuses to supply the records.

If the non-issuing state licensing agency does provide the railroad with the available records, the railroad must verify that the record pertains to the person being considered for certification. It is necessary to perform this verification because in some instances only limited identification information is furnished for use in the NDR and this might result in data about a different person being supplied to the railroad. Among the available means for verifying that the additional state record pertains to the certification candidate are physical description, photographs and handwriting comparisons.

Once the railroad has obtained the motor vehicle driving record which, depending on the circumstance, may consist of more than two documents, the railroad must afford the prospective engineer an opportunity to review that record and respond in writing to its contents in accordance with the provisions of § 240.219. The review opportunity must occur before the railroad evaluates that record. The railroad's required evaluation and subsequent decision making must be done in compliance with the provisions of this part.

Appendix D to Part 240—Identification of State Agencies That Perform National Driver Register Checks

Under the provisions of § 240.111 of this part, each person seeking certification or recertification as a locomotive operator must request that a check of the National Driver Register (NDR) be conducted and that the resulting information be furnished to his or her employer or prospective employer. Under the provisions of paragraphs (d) and (e) of § 240.111, each person seeking certification or recertification as a locomotive engineer must request that National Highway Traffic Safety Administration conduct the NDR check, unless he or she was issued a motor vehicle driver license by one of the state agencies identified in this appendix. If the certification candidate received a license from one of the designated state agencies, he or she must request the state agency to perform the NDR check. The state motor vehicle licensing agencies listed in this appendix participate in a program that authorizes these state agencies, in accordance with the National Driver Register Act of 1982, to obtain information from the NDR on behalf of individuals seeking data about themselves. Since these state agencies can more efficiently supply the desired data and, in some instances, can provide a higher quality of information, FRA requires that certification candidates make use of this method in preference to directly contacting NHTSA.

Although the number of state agencies that participate in this manner is limited, FRA anticipates that an increasing number of states will do so in the future. This appendix will be revised periodically to reflect current participation in the program. As of December 31, 1989, the motor vehicle licensing agencies of the following states participate under the provisions of the 1982 changes to the NDR Act: North Dakota, Ohio, Virginia, and Washington.

Appendix E to Part 240—Recommended Procedures for Conducting Skill Performance Tests

FRA requires (see § 240.127 and § 240.211) that locomotive engineers be given a skill performance test prior to certification or recertification and establishes certain criteria for the conduct of that test. Railroads are given discretion concerning the manner in which to administer the required testing. FRA has afforded railroads this discretion to allow individual railroad companies latitude to tailor their testing procedures to the specific operational realities. This appendix contains FRA's recommendations for the administration of skill performance testing that occurs during operation of an actual train. It can be modified to serve in instances where a locomotive simulator is employed for testing purposes. These recommended practices, if followed, will ensure a more thorough and systematic assessment of locomotive engineer performance.

The Need for a Systematic Approach

There are numerous criteria that should be monitored when a designated supervisor of locomotive engineers is observing a person to determine whether that individual should be certified or recertified as a qualified locomotive engineer. The details of those criteria will vary for the different classes of service, types of railroads, and terrain over which trains are being operated. At a minimum, the attention of a designated supervisor of locomotive engineers should concentrate on several general areas during any appraisal. Compliance with the railroad's operating rules, including its safety directives and train handling rules, and compliance with Federal regulations should be carefully monitored. But, in order to effectively evaluate employees, it is necessary to have something against which to compare their performance. In order to hold a locomotive engineer accountable for compliance, a railroad must have adequate operating, safety and train handling rules. Any railroad that fails to have adequate operating, safety, or train handling rules will experience difficulty in establishing a objective method of measuring an individual's skill level. Any railroad that requires the evaluation of an individual's performance relative to its train handling rules needs to have established preferred operating ranges for throttle use, brake application, and train speed. The absence of such criteria results in the lack of a meaningful yardstick for the designated supervisor of locomotive engineers to use in measuring the performance of locomotive engineers. It also is essential to have a definite standard so that the engineer and any reviewing body can know what the certification candidate is being measured against.

Evaluating the performance of certain train operation skills will tend to occur in all situations. For example, it would be rare for a designated supervisor of locomotive engineers to observe any operator for a reasonable period of time and not have some opportunity to review that engineer's compliance with some basic safety rules, compliance with basic operating rules, and performance of a brake test. As the complexity of the operation increases, so does the number of items that the operator must comply with. Higher speeds, mountainous terrain, and various signal systems place increased emphasis on the need for operator compliance with more safety, operating, and train handling rules. Accounting for such variables in any universal monitoring scheme immediately results in a fairly complex system.

FRA therefore recommends that designated supervisors of locomotive engineers employ a written aid to help record events and procedures that as a minimum should be observed for when conducting a skills performance test. FRA is providing the following information to assist railroads in developing such a written aid so as to ensure meaningful testing. When conducting a skills performance test, a designated supervisor of locomotive engineers should be alert to the following:

—Does the employee have the necessary books (Operating Rules, Safety Rules, Timetable, etc.)?
—Are predeparture inspections properly conducted (Radio, Air Brake Tests, Locomotive, etc.)?
—Does the employee comply with applicable safety rules?
—Does the employee read the bulletins, general orders, etc.?

Enroute, does the employee:
—Comply with applicable Federal Rules?
—Monitor gauges?
—Properly use the horn, whistle, headlight?
—Couple to cars at a safe speed?
—Properly control in train slack and buff forces?
—Properly use the train braking systems?
—Comply with speed restrictions?
—Display familiarity with the physical characteristics?
—Comply with signal indications?
—Respond properly to unusual conditions?

At the conclusion of the trip, does the employee:
—Apply a hand brake to the locomotives?
—Properly report locomotive defects?

Obviously, the less sophisticated the railroad's operations are, the fewer the number of identified practices that would be relevant. Hence, this list should modified accordingly.

The Need for Objectivity, Use of Observation Form

It is essential that railroads conduct the performance skills testing in the most objective manner possible, whether this testing is the locomotive engineer's initial qualification testing or periodic retesting. There will always be some potential for the subjective views, held by the designated supervisor of locomotive engineers conducting the testing, to enter into evaluations concerning the competency of a particular individual to handle the position of locomotive engineer. Steps can be taken, and need to be taken, to minimize the risk that personality factors adversely influence the testing procedure.

One way to reduce the entry of subjective matters into the qualification procedures is through the use of a document that specifies those criteria that the designated supervisor of locomotive engineers is to place emphasis on. The use of an observation form will reduce but not eliminate subjectivity. Any skill performance test will contain some amount of subjectivity. While compliance with the operating rules or the safety rules is clear in most cases, with few opportunities for deviation, train handling offers many options with few absolute right answers. The fact that an engineer applies the train air brakes at one location rather than a few yards away does not necessarily indicate a failure but a question of judgment. The use of dynamic braking versus air brakes at a particular location may be a question of judgment unless the carrier has previously specified the use of a preferred braking method. In any case the engineer's judgment, to apply or not apply a braking system at a given location, is subject to the opinion of the designated supervisor of locomotive engineers.

A railroad should attempt to reduce or eliminate such subjectivity through use of some type of observation or evaluation. For railroads developing any evaluation form, the areas of concern identified earlier will not be relevant in all instances. Railroads that do not have sophisticated operations would only

need a short list of subjects. For example, most smaller railroads would not require line items pertaining to compliance with signal rule compliance or the use of dynamic brakes. Conversely, in all instances the observation forms should include the time and location that the observer started and ended the observation. FRA believes that there shou d be a minimum duration for all performance skills examinations. FRA allows railroads to select a duration appropriate for their individual circumstances, requiring only that the period be "of sufficient length to effectively evaluate the person." In exercising its discretion FRA suggests that the minimums selected by a railroad be stated in terms of a distance since the examination has to be of a sufficient duration to adequately monitor the operator's skills in a variety of situations. FRA also suggests that the format for the observation form include a space for recording the observer's comments. Provision for comments ideally would allow for the inclusion of "constructive criticism" without altering the import of the evaluation and would permit subjective comments where merited.

Issued in Washington, DC on June 11, 1991.

Gilbert E. Carmichael,

Administrator.

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Part III

Department of Education

Children and Youth With Serious Emotional Disturbance Program; Grant Priorities and Selection Criteria; Notices

DEPARTMENT OF EDUCATION

Grants; Children and Youth With Serious Emotional Disturbance Program

AGENCY: Department of Education.

ACTION: Notice of proposed priorities and selection criteria.

SUMMARY: The Secretary proposes to establish annual funding priorities and selection criteria for the new Program for Children and Youth with Serious Emotional Disturbance to ensure effective use of program funds and to direct funds to areas of identified need during fiscal year 1991.

DATES: Comments must be received on or before July 19, 1991.

ADDRESSES: All comments concerning these proposed priorities should be addressed to: 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.

FOR FURTHER INFORMATION CONTACT: Linda Glidewell, telephone: (202) 732–1099. (TDD: (202) 732–6153.)

SUPPLEMENTARY INFORMATION: The Program for Children and Youth with Serious Emotional Disturbance provides assistance for projects designed to improve special education and related services to children and youth with serious emotional disturbance (SED).

Proposed Priorities and Selection Criteria

The Secretary proposes to establish the following priorities and selection criteria for the Program for Children and Youth with Serious Emotional Disturbance, CFDA 84.237. In accordance with the Education Department General Administrative Regulations (EDGAR, 34 CFR 75.105(c)(3)), the Secretary proposes to give an absolute preference under this program to applications that respond to the following priorities; that is, the Secretary proposes to select for funding only those applications proposing projects that meet one of these priorities.

Priority 1: Analyzing the Professional Knowledge Base for Students With Serious Emotional Disturbance (CFDA 84.237)

Issue

Children and youth with serious emotional disturbance represent a large group of unserved and underserved students with disabilities. Students experiencing serious emotional disturbance provide a complex and multi-faceted problem in the delivery of appropriate educational programs. They have one of the highest probabilities of failure in school, work and the community. To improve outcomes for these students the educational community must participate in the development of a plan to identify the most critical areas for improving curricula, instruction, service delivery, and professional development.

Over the past several years, a considerable knowledge base regarding the provision of educational services to individuals with serious emotional disturbance has accumulated. This knowledge base contains programs demonstrated to be effective in obtaining desired student outcomes; research relating to the identification, assessment, instruction, and service delivery system; and the experiences of successful and non-successful instructional personnel. The development of a plan requires an ordering, formatting, and mapping of the knowledge base to identify the critical features that must be addressed.

Background

The Department has been engaging practitioners, researchers, parents, and professional associations in describing current practice and research needs. Current efforts include evaluating outcomes for students with serious emotional disturbance, analyzing definition issues, and compiling information on effective intervention strategies. However, additional information is needed on personnel preparation and placement procedures for students with serious emotional disturbance.

The current efforts in educational reform have highlighted many issues related to teacher preparation. Issues such as teacher competencies, credentialling procedures, and retention are critical to the overall educational reform movement and particularly critical to programs for students with serious emotional disturbance. Research has indicated that teachers in programs for students with serious emotional disturbance have the highest attrition of any teaching group. Yet, little is known regarding their preparation for the teaching profession. There is a critical need to assess our professional knowledge base relative to the structure and content of personnel preparation programs.

Students with serious emotional disturbance provide a unique challenge and place unique demands on service delivery. These students constitute a heterogenous group in terms of academic, social, and emotional needs. As a result of this diversity, a wide range of placement options are required to best address the needs of these students. The extent to which the service delivery system attempts to meet the needs of these students in alternative placements and the process, rationale, and procedures for placement decisions are largely unknown. There is a critical need to address not only the extent to which these students needs are being addressed outside the traditional educational system, but how these students are reintroduced into the system if they have been removed for service.

Purpose

The purpose of this priority is to provide information to support the development of plans for improving outcomes for children with serious emotional disturbance. This priority supports activities designed to identify, organize, interpret, and disseminate the knowledge bases related to personnel preparation and student placement. One award will be funded in each area for up to 24 months duration.

Focus

Each project funded under this priority must develop procedures for: (a) Identifying and organizing the current state of knowledge; (b) interpreting the current state of knowledge to draw implications for research and practice; and (c) disseminating the project's findings and interpretations to policy makers practitioners, parents, and researchers.

Personnel Preparation. It is anticipated that one cooperative agreement will be awarded dealing with the preparation of teachers to work with students with serious emotional disturbance. The project must determine the current status of personnel preparation from at least three perspectives. First, the project must review each State's requirements for teacher licensure and approving programs for training teachers of students with serious emotional disturbance, and prepare a compendium of these extant data materials. Based on this review of State licensure and approval criteria, the project must develop a conceptual framework that is comprehensive and reflects the complexity contributing to State variations. This comprehensive conceptual framework must be used to select a representative sample of States for subsequent analysis. The comprehensive conceptual framework

must be used as the basis for defining the sampling frames for selecting States. Each sampling frame derived from the comprehensive conceptual framework must include at least two or three representative States consistent with that particular frame. The selection of these States must allow for testing for the replication of findings across State entities. The project must provide a comprehensive profile of approaches to State program approval; examples of course sequences and content associated with those sequences; and examples of the knowledge, skills, and competencies required by the States in licensing teachers of children and youth with serious emotional disturbance. This must provide a comprehensive comparison of the various approaches along relevant dimensions identified in the applicant's organizational framework.

Second, the project must compare the accrediting agency (e.g., National Council Accreditation Teacher Education (N.C.A.T.E.)) standards in relation to teacher training for children and youth with serious emotional disturbance. This comparison must include course requirements, and field experiences that impact the design and structure of training programs. However, the comparison need not be limited to these factors and may include other factors that impact the design and structure of training programs deemed relevant by the project. The diversity of approaches currently employed by institutions of higher education to meet accrediting agency standards across States and institutions must be highlighted.

Third, the project must classify approaches to personnel preparation programs for preparing teachers to work with children and youth with serious emotional disturbance. For example, personnel preparation programs might be classified according to the primary roles for which they train personnel such as case managers of instructional services; designers and providers of specially designed instruction; or crisis managers of student behavior. The project must provide a method of classification that will identify the major approaches as a framework for communicating the critical content and process features of personnel preparation programs. This information must be prepared for use by policy makers, researchers, teacher trainers, and other consumers. The project must provide a synthesis of information, gathered from the literature, practitioners, and administrators, that highlights the critical issues related to personnel preparation including the quality of the work environment, alternative career opportunities, and salary studies.

Student Placement Issues. A second cooperative agreement will be awarded for an analysis of placement issues related to children with serious emotional disturbance. In this agreement, the project will address the complex issues relating to placement decisions for children with serious emotional disturbance. Specific attention must be given to the decisions to place children with serious emotional disturbance outside the school system to receive educational services (e.g., private hospitals or out of district residential programs), and decisions to return children to their community and school. Projects must provide information on the rationale, procedures, participants, and contexts for those decisions.

Activities

Identification of Knowledge Sources. Projects must provide an initial identification of the source and nature of information to be considered. These information sources may include, but are not limited to: (1) Research literature; (2) professional literature containing program descriptions and evaluations; (3) State legal and policy documents including applicable regulations and policies; (4) practitioners (including teachers and administrators) involved in the delivery or management of programs for students with serious emotional disturbance; and (5) parents of students with serious emotional disturbance. Information sources may be readily available (e.g., extant data bases or documents) or sources that require that the project access potential sources using a range of methodologies in order to access useful information.

Organization of Knowledge Base. Projects must develop an initial framework for organizing information along relevant dimensions. This framework must provide a map of what is known in the areas of personnel preparation and student placement as it relates to children and youth with serious emotional disturbance. This framework must be developed with input from potential consumers of the information (e.g., policy makers, parents, practitioners, and researchers) so as to ensure the usability and validity of project efforts.

Interpretation of Knowledge Base. Projects must develop detailed descriptions of procedures for analyzing and interpreting information that will provide implications for developing plans for improving outcomes for children and youth with serious emotional disturbance. Procedures must be appropriate for the nature of information collected.

Coordination/Collaboration. Each project must cooperate with the Department to ensure non-duplicative efforts with other projects and maximize efficiency in identifying and obtaining information. Recipients of awards will be required to meet in Washington, DC after award to coordinate project activities. Projects must have access to extant information sources and collaborate with relevant stakeholders in the respective areas. Information must also be shared between relevant projects to ensure that resulting implications for research and practice are as current and complete as possible.

Dissemination Activities. Projects must make available to relevant national, professional, and parent organizations their methods, findings, and interpretations.

National Dissemination and Exchange Forum. Each project must provide draft copies of their findings and interpretations to participants invited to attend a national forum. Project directors must present the results of their activities at the national forum, and participate in discussions with representatives from professional associations, the research community, policy makers, parents, and other parties having significant involvement with children and youth with serious emotional disturbance. It is anticipated that the final drafts of findings and interpretations will be based on the feedback from this forum.

Selection Criteria

The following selection criteria will be used to evaluate applications for projects submitted under this priority.

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary looks for—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national

origin, gender, age, or disabling condition.

(3) The Secretary reviews each application to determine the quality of the evaluation plan for the project, and considers the extent to which the methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

Cross Reference

34 CFR 75.590, *Evaluation by the grantee.*

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel that the applicant plans to use on the project.

(2) The Secretary considers—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the project and other evidence that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application to determine if the project has an adequate budget and is cost effective.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application to determine if the applicant plans to devote adequate resources to the project.

(2) The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(e) *Importance.* (15 points) The Secretary reviews each application to determine the importance of the project in leading to the understanding of, remediation of, or compensation for, the problem or issue that relates to the early intervention with or special education of infants, toddlers, children, and youth with disabilities.

(f) *Impact.* (15 points) The Secretary reviews each application to determine the probable impact of the proposed research products on infants, toddlers, children, and youth with disabilities, or personnel responsible for their education.

(g) *Organizational capability.* (5 points) The Secretary considers—

(1) The applicant's experience in special education; and,

(2) The ability of the applicant to disseminate the findings of the project to appropriate groups to ensure that the findings can be used effectively.

(h) *Technical soundness.* (35 points) The Secretary reviews each application to determine the technical soundness of the research or evaluation plan, including—

(1) The design;

(2) The proposed sample;

(3) The instrumentation; and

(4) The data analysis procedures.

Priority 2: Designing and Implementing a Comprehensive System of Education and Support for Children With Serious Emotional Disturbance (CFDA 84.237)

Issue

Although public school programming for children with serious emotional disturbance has expanded significantly since passage of Public Law 94–142, these children remain an under-identified and underserved population. The Eleventh and Twelfth Annual Reports to Congress on the Implementation of the Education of the Handicapped Act included reported data and findings from the National Longitudinal Study that suggested the inadequacy of current efforts to meet the complex needs of these children. School dropout rates, course failure, and post-school arrest rates of adolescents and young adults with serious emotional disturbance provide clear evidence of the need to provide early and more effective family, school, community, mental health, and social service practices.

The problems of children with serious emotional disturbance are evidenced not only in school settings but also at home and in the community. Children with serious emotional disturbance and their families are likely to become involved with multiple service systems (e.g. education, mental health, juvenile justice, social service, and the child welfare systems). Services are often fragmented due to a lack of coordination between service systems. Effective identification and treatment of children with serious emotional disturbance and their families requires the involvement and expertise of multiple service providers and often of multiple agencies to effect a comprehensive system of services that addresses the child's physical, emotional, social and educational needs.

There have been several promising initiatives to promote comprehensive community based systems of support for children with serious emotional disturbance. However, there remains a critical absence of information on models for integrating school and community assistance and resources to provide the full array of services needed by children with serious emotional disturbance and their families.

Purpose

This priority will support partnership among school districts, communities, and States for projects that: (a) Design and assess the feasibility for providing education and support services, and (b) develop and implement a comprehensive system of education and support for children with serious emotional disturbance. This priority is structured in two phases:

Phase 1—This phase will support approximately 10 projects to design and assess the feasibility for developing and implementing a comprehensive system of education and support for children with serious emotional disturbance. Phase 1 will be for an 18-month period. A broad spectrum of projects reflecting different contexts (i.e. policy, fiscal, inter-agency relationships, geography, ethnic diversity) will be supported in order to accumulate across projects the full range of issues, options, and designs required to provide a comprehensive system of education and support for children with serious emotional disturbance.

Phase 2—This phase will provide continued support for three to four projects from Phase 1 for an additional two-year period in order to implement the system design. Although not all projects will be selected for Phase 2, projects must include a plan for both phases.

The purpose of these projects is to identify the issues and options the school districts, communities, and States must address in order to develop a comprehensive system of education and support for children with serious emotional disturbance and their families. Each project must prove the design feasibility of procedures and structures that if implemented would

have the capacity for efficiently and effectively providing: Early screening and identification, case management, evaluation, comprehensive plan of service (including the Individualized Education Program (IEP)), service continuity, and multi-agency coordination and planning. Projects must design systems to provide education and support services that are available, responsive to diverse and changing needs, coordinated, and provided in a manner assuring continuity in meeting the needs of children with serious emotional disturbance and their families.

Activities

Phase 1: Phase 1 projects must develop a design for a comprehensive education and support system for children with serious emotional disturbance and assess its feasibility for implementation. The Department has substantial interest in these projects being able to collectively contribute to advancing an understanding of the design features and implementation issues and solutions to problems related to developing a comprehensive system of education and support for children with serious emotional disturbance and their families.

School District, Community, and State Site Selection. The project must select a school district, community, and State where two or more public agencies have an historical track record of collaboration, coordination, and resource sharing at the State and community level. Project sites must be selected on the basis of having all or most components of a comprehensive system of education and support for children with serious emotional disturbance. The project sites must be selected where the prerequisite fiscal, administrative commitment, and experience are consistent with designing and implementing system improvements. Each project, at a minimum, must include the active participation of a local school district, a community mental health agency, and a social service agency. Other agencies such as primary health providers and juvenile justice offices should be encouraged, if appropriate, to participate as part of a comprehensive system. Each project must provide letters of commitment to participate in the design of this comprehensive system.

Site. Each project must determine the range, nature, and frequency of educational and other care needs of children with serious emotional disturbance in its school district and community. Based on this analysis and profile of educational and support needs, each project must review current school and community practice related, but not limited to: Early screening and identification, case management and ombudsperson assistance, family participation, evaluation, comprehensive plan of service (including Individualized Education Programs (IEP)), service continuity, and multi-agency coordination and planning. The needs of children with serious emotional disturbance and their families, and the analysis of current practice, provides the template for identifying potential areas for designing system improvement.

Designing System Improvements. For each potential system improvement area identified, projects must determine: (a) The rationale, including support from a review of the literature as well as service provision experience, for giving priority attention to that area; (b) current system limitations; (c) system improvement options considered; (d) criteria for selecting and rejecting various improvement options; and (e) implementation requirements. System improvement options considered must draw on the growing professional knowledge base of effective strategies for:

(1) The appropriate identification and treatment of children with serious emotional disturbance whose families, as a whole, are from racially, ethnically or linguistically diverse populations;

(2) The integration of validated practices into a coordinated system for delivering educational and community services;

(3) The coordinated delivery of a full range of school and community services (e.g, special education, mental health, child welfare, recreation, health, juvenile justice, etc.); and

(4) The successful collaboration between multiple service providers with respect to resources (particularly financial), eligibility criteria, policy and other areas.

The system improvements to be designed must draw from previous special education, mental health, and human services research. Specific interventions may be implemented by educational, related service, or other community service personnel in a range of educational and community based settings, but those personnel and settings must be part of a coordinated system of educational and community services.

Determining Feasibility of System Improvement Design. Each project must determine the capacity and readiness of the school district, community, and State sites to implement each identified potential system improvement in terms of, but not limited to: Policy, fiscal, administrative, personnel, attitude, and timeframe implications. Criteria for determining feasibility shall be documented for each proposed system improvement, the arguments for and against each proposed system improvement described, and evidence provided for each potential system improvement as to the likely feasibility of implementation, effectiveness, and impact. Projects must determine critical coordination issues they identify during implementation such as leadership, staff and parent training, and interagency relationships.

Collaboration. All Phase 1 projects must cooperate with the Department in providing their reviews of literature and rationale for the selection of designs for improving components of their systems. Projects must budget one trip to Washington, DC, to develop a cross-project dissemination product of the rationals for giving priority attention to those areas including support from the reviews of literature. Projects will then be required to use the information derived from this meeting to refine the final development of designs during the last six months of Phase 1.

Phase 2: The selection of up to four projects for the Phase 2 option will be based upon the innovativeness and quality of proposed system improvements, strength of evidence to support feasibility of implementation, contribution to understanding diverse contexts (i.e. geography, inter-agency relationships) thought to affect implementation, evidence of strength of commitment, resources to implement system improvements, realistic timeline for achieving full implementation, and evidence of full participation by parents and advocates.

Implementing System Improvements. Each project selected for Phase 2 implementation must address child and family needs. An implementation schedule must reflect the rationale for sequencing activities, and evidence of critical implementation support. Procedures for ensuring the integrity of the improvements must be implemented. The implementation of system improvements must be achieved and documentation maintained describing the nature and extent of participation of all relevant parties.

Evaluating Comprehensive System of Education and Support. The primary question being tested is the efficacy and effectiveness of a comprehensive system of education and care for children with serious emotional disturbance and their families. Each project must rigorously

study this question. Each project must conduct an evaluation that not only addresses the question of overall efficacy, but the contribution of individual components. The component designs and overall system improvement features must be documented in such a way that others interested in utilizing these designs and system improvement features could evaluate their applicability and potential for implementation in their school district and community. In addition, each project must document and study implementation and exportability of each component as well as the overall model.

Collaboration. The Department has substantial interest in the projects awarded under this priority. This interest includes capturing across projects the full range, nature, and frequency of educational and support needs of children with serious emotional disturbance; current state of school, community, and State services; identification of areas for targeting comprehensive system improvements; and options and rationales for system improvements selected for implementation. This requires each project to cooperate with the Department in designing their studies to permit a cross-project summary of findings. Projects must also cooperate with the Department in working with coalitions of professionals and parent organizations to develop cross-project dissemination materials to be used by those organizations with their respective membership.

Dissemination Activities. Individual projects must make available to relevant national, professional, and parent organizations their methods, findings, and interpretations.

Selection Criteria

The following selection criteria will be used to evaluate applications for projects submitted under this priority.

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary looks for—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition.

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary considers—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the project and other evidence that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application to determine if the project has an adequate budget and is cost effective.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application to determine the quality of the evaluation plan for the project.

Cross Reference

34 CFR 75.590, *Evaluation by the grantee.*

(2) The Secretary considers the extent to which the methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application to determine if the applicant plans to devote adequate resources to the project.

(2) The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Importance.* (10 points) The Secretary reviews each application to determine—

(1) The extent to which the service delivery problem addressed by the proposed project is of concern to others in the Nation; and,

(2) The importance of the project in addressing the problem or issue.

(g) *Innovativeness.* (15 points)

(1) The Secretary reviews each application to determine the innovativeness of the proposed project.

(2) The Secretary looks for a conceptual framework that—

(i) Is founded on previous theory and research; and

(ii) Provides a basis for the unique strategies and approaches to be incorporated into the model.

(h) *Organizational capability.* (10 points) The Secretary considers—

(1) The applicant's experience in special education or early intervention services; and

(2) The applicant's ability to disseminate findings of the project to appropriate groups to ensure that they can be used effectively.

(i) *Technical soundness.* (25 points) The Secretary reviews each application to determine the technical soundness of the plan for the development, implementation, and evaluation of the model with respect to such matters as—

(1) The population to be served;

(2) The model planning process;

(3) Recordkeeping systems;

(4) Coordination with other service providers;

(5) The identification and assessment of students;

(6) Interventions to be used, including proposed curricula;

(7) Individualized educational program planning; and

(8) Parent and family participation.

Intergovernmental Review

The Program for Children and Youth with Serious Emotional Disturbance is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Program Authority: 20 U.S.C. 1426.

(Catalog of Federal Domestic Assistance Number 84.237, Program for Children and Youth with Serious Emotional Disturbance)

Dated: April 25, 1991.

Lamar Alexander,

Secretary of Education.

[FR Doc. 91–14638 Filed 6–18–91; 8:45 am]

BILLING CODE 4000–01–M

federal register

Wednesday
June 19, 1991

Part IV

Department of the Interior

Bureau of Indian Affairs

Grant Availability to Federally Recognized Indian Tribes for Projects Implementing Traffic Safety on Indian Reservations; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Grant Availability to Federally Recognized Indian Tribes for Projects Implementing Traffic Safety on Indian Reservations

June 11, 1991.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of a grant program.

SUMMARY: The Bureau of Indian Affairs (BIA) intends to make funds available to Federally-Recognized Indian tribes on an annual basis for the purpose of financing highway traffic safety projects which are designed to reduce the high number of traffic accidents and their resulting fatalities, injuries, and property damage within Indian reservations. Due to the limited funding available for this program, all projects will be reviewed and selected on a competitive basis. This notice is intended to inform Indian tribes on the availability of the grant monies and the process in which the projects are selected.

DATES: Applications must be received by July 1 of each program year.

ADDRESSES: Each tribe must submit its application to the BIA Agency or Area Office serving the area in which the tribe is located. The application will be addressed to the attention of: "Indian Highway Safety Program Coordinator". Application packets will be distributed on May 1 of each program year to the tribal address as shown on the latest Tribal Leaders' List whch is compiled by the Bureau of Indian Affairs' Tribal Government Services, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tribes should direct all questions concerning the grant program and applications to the Area Indian Highway Safety Program Coordinator having responsibilities for the applicant tribe. More general inquiries on the National Indian Highway Safety Program may be directed to Charles L. Jaynes, Program Administrator, Bureau of Indian Affairs, P.O. Box 2006, Albuquerque, New Mexico 87103. Telephone: (505) 766–2181.

SUPPLEMENTARY INFORMATION:

Background

The Federal-Aid Highway Act of 1973 (Pub. L. 93–87) provides for U.S. Department of Transportation funding to assist Indian tribes in financing highway safety projects. These projects are designed to reduce the number of traffic crashes and their resulting fatalities, injuries, and property damage within Indian reservations. All Federally-recognized Indian tribes on Indian reservations are eligible to receive this assistance, and at such time as highway safety projects are approved, the tribal governing bodies will carry out and administer the programs. All tribes which avail themselves of this assistance are reimbursed for costs incurred under the terms of a Federal/Reservation agreement. The Department of Transportation pays from 75% to 100% of all costs of highway safety projects approved for funding under provisions of the Highway Safety Act.

Responsibilities

For purposes of application of the Act, Indian reservations are collectively considered a "State" and the Secretary, U.S. Department of the Interior (DOI), is considered the "Governor of a State". The Secretary, DOI, delegated the authority to administer the programs throughout all the Indian reservations in the United States to the Commissioner, Bureau of Indian Affairs.

The Commissioner of the BIA further delegated the responsibility for primary administration of the Indian Highway Safety Program to the Central Office Division of Safety Management (DSM), located in Albuquerque, New Mexico. The Chief, DSM, as program administrator of the Indian Highway Safety Program, has one full-time staff member to assist in program matters and provide technical assistance to the Indian tribes. It is at this level that contacts with the U.S. Department of Transportation are made with respect to program approval, funding of projects and technical assistance. The U.S. Department of Transportation, through the National Highway Traffic Safety Administration (NHTSA) and the Federal Highway Administration (FHWA), is responsible for assuring that the Indian Highway Safety Program is carried out in accordance with 23 U.S.C. 402 and other applicable Federal regulations.

The National Highway Traffic Safety Administration is responsible for the apportionment of funds to the Secretary of the Interior, review and approval of the highway safety plan involving NHTSA highway safety areas of responsibilities, and technical guidance and assistance to BIA field offices and tribal coordinators by NHTSA regional offices in the general administration of the program.

The Federal Highway Administration is responsible for review and approval of highway safety plan involving FHWA highway safety areas of responsibilities and technical guidance and assistance to BIA field offices and tribal coordinators by FHWA division offices.

Program Areas

The Department of Transportation, at the direction of Congress, in the Omnibus Budget Reconciliation Act of 1981, conducted a major review to determine which state and local highway safety programs have been most effective in reducing traffic crashes, injuries and fatalities. The six most effective NHTSA and FHWA highway safety programs are: (1) Alcohol and other drugs Countermeasures; (2) Police Traffics; (3) Occupant Protection; (4) Traffic Records; (5) Emergency Medical Services, and; (6) Roadway Safety and Motorcycle Safety.

Funding Criteria

The Bureau of Indian Affairs will reimburse for costs associated with the following:

(1) Alcohol and other drugs Countermeasures—Salary (DWI) enforcement/education/rehabilitation); (DWI) training; breath-testing equipment; community/school alcohol traffic safety education; (DWI) offender education/rehabilitation, and vehicle expenses.

(2) Police Traffic Services—Salary (traffic enforcement/education); traffic enforcement training; speed enforcement equipment; community/school education, and vehicle expenses.

(3) Occupant Protection—(A) Child Car Seat Program—child car seats; car seat transportation/storage; education materials, and; office expenses. (B) Community Seat Belt Program—Salary; educational/promotional materials; office expenses; and training.

(4) Traffic Records—salary; computerized equipment.

(5) Emergency Medical Services—training is the only allowable cost for funding.

(6) Roadway Safety and Motorcycle Safety—Traffic signs (warning, regulatory, work zone); hardware and sign posts.

Project Application

Application packets will be forwarded to the tribes on May 1 of each program year. Upon receipt of the application packet, each tribe should prepare a proposed project application based upon the following guidelines:

A. *Program Planning.* Program planning shall be based upon the highway safety problems identified and countermeasures selected by the tribe for the purpose of reducing traffic crash factors.

B. *Problem Identification.* Highway traffic safety problems shall be identified from the best data available.

The data may be found in tribal enforcement records on traffic crashes. Other sources of data include ambulance records, court and police arrest records. The problem identification process may be aided by using professional opinions of personnel in law enforcement, Indian Health Service, driver education, road engineers, etc.

Impact problems will be identified during the identification process. An impact problem is a highway safety problem that contributes to car crashes, fatalities and/or injuries, and one which may be corrected by the application of countermeasures. Impact problems can be identified from analysis of statewide and/or tribal traffic records. The analyses should consider, as a minimum: Pedestrian, motorcycle, pedalcycle, passenger car, school bus, and truck accidents; records on problem drivers, roadside and roadway hazards, alcohol involvement, youth involvement, defective vehicle involvement, suspended or revoked driver involvement, speed involvement and safety belt usage.

C. *Countermeasure Selection.* When tribal highway traffic safety problems are identified, appropriate countermeasures shall be developed by the tribe to solve or reduce the problems. The development of these countermeasures should take into account the overall cost of the countermeasure versus its possible effects on the problem.

D. *Objectives/Performance Indicators.* After countermeasure selection, the objective(s) of the project must be expressed in clearly defined, time-framed and measurable terms.

E. *Budget Format.* The activities to be funded shall be outlined according to BIA object groups, i.e., personal services, travel, supplies and materials, equipment, contracts, training, etc. Each object group shall be quantified, i.e., personal activities should show number to be employed, hours to be employed, hourly rate of pay, etc. Each object group shall have sufficient detail to show what is to be procured, unit cost, quarter in which the procurement is to be made and the total cost, including any tribal contribution to the project.

F. *Evaluation Plan.* Evaluation is the process of determining whether a highway safety activity should be undertaken, if it is being properly conducted and if it has accomplished its objective. A plan explaining how the evaluation will be accomplished and identifying the criteria to be used in measuring performance shall be included in the grant application.

G. *Technical Assistance.* Bureau of Indian Affairs personnel will be available to tribes for technical assistance in the preparation of tribal project applications.

H. *Section 402 Project Length.* Section 402 funds shall not be used to fund the same project at one location or jurisdiction for more than three years.

Submission Deadline

Each tribe must submit its application to the BIA Agency or Area Office serving the area in which the tribe is located. The application will be sent to the attention of: Indian Highway Safety Program Coordinator. The application must be received by July 1 of each program year. Request for extension to this deadline will not be granted.

Selection Criteria

Project application will be reviewed and evaluated by the Indian Highway Safety Program Office and applications will be ranked by assigning points to four areas of consideration. Those areas of consideration and their respective point values are listed below:

Magnitude of Problem—50 Points

1. Does a highway safety problem exist?
2. Is the problem significant?
3. Does the project contribute to the solution of the problem identified?
4. Number of traffic crashes last three years? Alcohol related?
5. Number of reported fatalities last three years? Alcohol related?

Countermeasure Selection—40 Points

1. Are the countermeasures selected the most effective?
2. Are they cost effective?
3. Have objectives been stated in realistic performance terms and are they attainable?
4. Are the objectives time-framed and are the time-frames realistic and attainable?

Tribal Leadership and Community Support—10 Points

1. Are tribal resources used in this project? Tribal Resolution?
2. Does the project have community support? Support Letters?

Past Performance + or − —10 Points

1. Reporting (Financial & Programmatic).
2. Accomplishments.

Notification of Selection

The tribes selected to participate will be notified by letter. Each tribe will be requested to submit a Certification Regarding Drug-Free Workplace Requirements. Indian tribes receiving highway safety grants through the Indian Highway Safety Program must certify that they will maintain a drug-free workplace. The certification must be signed by an individual authorized to sign for the tribe. The certification must be received by the BIA and U.S. Department of Transportation prior to the release of grant funds for the tribe.

Notification of Non-Selection

The program Administrator will notify each tribe not selected. The tribe will be advised of the reason for non-selection.

Uniform Administrative Requirements for Grants-in-Aid

Uniform grant administration practices have been established on a national basis for all grant-in-aid programs by OMB Circular A–102, "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments". Cost principles applicable to grants and contracts with State and local governments have been established by OMB Circular A–87 and NHTSA Order 462–13A. It is the responsibility of the Program Administrator, Area Coordinators, and Contracting/Grants Officers to establish operating procedures consistent with the applicable provisions of those circulars.

Standards for Financial Management System

Tribal financial management systems must provide for:

1. Accurate, current, and complete disclosure of financial results of the highway safety project.
2. Adequate recordkeeping.
3. Control over and accountability for all funds and assets.
4. Comparison of actual with budgeted amounts.
5. Documentation of accounting records.
6. Appropriate auditing. Highway safety projects will be included in the tribal A–128 Single Audit.

Tribal programs will provide a monthly financial status report to the Department of Transportation. This report of expenditures will be submitted to the Program Administrator no later than 15 days beyond the reporting month.

Project Monitoring

During the program year, it is the responsibility of the BIA to maintain a degree of project oversight, provide technical assistance as needed to assist the tribe in fulfilling its objectives, and assure that grant provisions are complied with.

Project Evaluation

A performance evaluation will be conducted for each highway safety project by the Bureau of Indian Affairs. The evaluation will measure the actual accomplishments to the planned activity.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 91–14644 Filed 6–18–91; 8:45 am]

BILLING CODE 4310–02–M

federal register

Wednesday
June 19, 1991

Part V

Department of Housing and Urban Development

Office of Assistant Secretary

Public and Indian Housing Drug Elimination Program; Notice of Funding Availability

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-91-3268; FR-3052-N-01]

NOFA for the Public and Indian Housing Drug Elimination Program—FY 1991

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of funding availability (NOFA) for FY 1991.

DATES: Applications are due on or before 5:15 p.m. local time, on July 26, 1991. An original and two copies of the application must be received by this deadline at the local HUD field office with jurisdiction over Public Housing Agency (PHA) applicants or, in the case of Indian Housing Authority (IHA) applicants, in the local HUD Office of Indian Programs, Attention: Assisted Housing Management Branch Director, or Office of Indian Programs Director.

SUMMARY: This NOFA announces HUD's FY 1991 funding of $140,775,000 for the Drug Elimination Program (DEP). In the body of this document is information concerning the purpose of the NOFA, applicant eligibility, available amounts, selection criteria, and application processing, including how to apply and how selections will be made.

FOR FURTHER INFORMATION CONTACT: Malcolm E. Main, Drug-Free Neighborhoods Division, Office of Resident Initiatives, Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–1197 or 708–3502. A telecommunications device for deaf persons (TDD) is available at (202) 708–0850. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION: .

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. Expedited review has been requested with a twenty day public comment period, so that the application process described in this notice may be carried out after approval of the described collections of information.

Pending approval of these collections of information by OMB and the assignment of an OMB control number, no person may be subjected to a penalty for failure to comply with these information collection requirements. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register.**

The public reporting burden for this collection of information is estimated to include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the documents making up the collection of information. Information on the estimated public reporting burden is provided below:

Section of NOFA affected	No. of respondents	No. of respondents per response	Total annual responses	Hours per response	Total hours
I(c)(f)	300	1	300	6	1,800
III (entire)	500	1	500	70	35,000
Total annual reporting burden					36,800

Send comments regarding this burden estimate, or any other aspect of this collection of information, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., room 10276, Washington, DC 20410; and to the Paperwork Reduction Project, Office of Management and Budget, Washington, DC 20503.

I. Purpose and Substantive Description

(a) Authority

This program is authorized under chapter 2, subtitle C, title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 *et seq.*), as amended by section 581 of the National Affordable Housing Act of 1990 (NAHA), approved November 28, 1990, Pub. L. 101–625. Before the NAHA amendments to the Drug Elimination Program, a final rule implementing DEP, codified as 24 CFR part 961, was issued by HUD at 55 FR 27598 (July 3, 1990). Because of the amendments made by NAHA, a revised rule for the Drug Elimination Program is being proposed that will amend 24 CFR part 961. However, the requirements of this NOFA will provide guidance for applicants that will implement the NAHA changes for this year's program funding while the rulemaking is pending.

HUD has determined that Congress intended the Drug Elimination Program as amended by NAHA to apply to the FY 1991 program funding. The NAHA amendments specifically authorize the appropriation of program funding for FY 1991, indicating a clear intent to carry out the Drug Elimination Program as amended by NAHA. While HUD is issuing a proposed rule for public comment to implement the NAHA amendments, a final rule could not take effect for at least ninety days at the very earliest, allowing for a sixty day comment period on the proposed rule and a thirty day waiting period after publication of the final rule, in keeping with the Department's rulemaking policy and procedure at 24 CFR part 10. The existing regulation at 24 CFR part 961 only implements the Drug Elimination Program as it existed before amendment by NAHA, and in some respects, the existing regulation frustrates the changes that Congress saw fit to enact. For example, NAHA permits the funding of drug treatment programs, the existing rule does not; the existing rule requires programs designed to reduce the use of drugs in and around public housing projects to be "innovative," but NAHA removes the requirement of innovation. Accordingly, HUD considers those portions of 24 CFR part 961 that conflict with NAHA no longer to be valid. Rather, the guidance provided in this NOFA is to be followed by program applicants.

Besides implementing NAHA, the additional information provided in this NOFA will be responsive to program applicants who, in HUD's experience in implementing DEP so far, have demonstrated a need for more detailed guidance in the preparation of applications.

(b) Allocation Amounts

The amount available for funding under this NOFA in FY 1991 is $140,775,000. The Departments of Veterans Affairs and Housing and

Urban Development, and Independent Agencies Appropriations Act 1991, approved November 5, 1990, Public Law 101–507, appropriated $150 million for the Drug Elimination Program and for drug information clearinghouse services for FY 1991. Of this amount, $1 million is to be used for technical assistance and training. The clearinghouse services have been allocated $725,000. In addition, section 520 of NAHA set aside five percent of funds appropriated for the Drug Elimination Program for the Youth Sports Program, a total figure of $7.5 million for FY 1991. The remaining $140,775,000 is the funding available for this program.

HUD is distributing grant funds under this NOFA to each of its 10 regional offices on the basis of a formula allocation. The formula has been re-computed for FY 1991 to achieve a more equitable distribution of funds. The formula allocation is based upon the relationship of the number of public/Indian housing units per region and the level of drug-related crime within each region, based upon statistics compiled by the U.S. Department of Justice, Federal Bureau of Investigation, ("Uniform Crime Reports for Drug Abuse Violations—1989").

Maximum grant award amounts under this NOFA are based upon a sliding scale, using either an overall cap to the grant award or a maximum per unit cap, depending upon the number of units in a housing authority. HUD's rationale for using this sliding scale is that larger PHAs have more efficient economies of scale. Under the schedule listed below, a housing authority with 20,000 units could apply for a maximum grant award of $3,000,000, i.e. 20,000 units x $150 per unit = $3,000,000, which is greater than the maximum flat grant award of $1,000,000. The maximum grant awards under this NOFA are as follows, although HUD has discretion to determine the amount of any grant award:

(i) For housing authorities with 1–499 units: the maximum grant award is either a maximum cap of $500 per unit or a maximum grant award of $50,000, whichever is greater;

(ii) For housing authorities with 500–4,999 units: the maximum grant award is either a maximum cap of $200 per unit or a maximum grant award of $250,000, whichever is greater;

(iii) For housing authorities with 5,000–44,999 units: the maximum grant award is either a maximum cap of $150 per unit or a maximum grant award of $1,000,000, whichever is greater;

(iv) For housing authorities with 45,000 or more units: the maximum grant award is a maximum cap of $100 per unit.

Any grant funds under this NOFA that are allocated to a region, but that are not reserved for obligation for specific grantees within the time period to be specified in the application package by the Secretary for this fiscal year, must be returned to HUD Headquarters for reallocation to other regions. The reallocation of these funds to the regions will be based upon the formula allocation method described in this NOFA, except that HUD will omit from the formula allocation those figures representing the extent of drug-related crime and the number of public housing units for the region that returned the grant funds. Regions that receive reallocated funds will use those funds to award grants to eligible applicants that did not get funded under the initial competition held under this NOFA. These grants will be awarded by each HUD regional office to the highest-ranked remaining applicants in the region that scored at least 80 points under the selection criteria. HUD is distributing grant funds under this NOFA to its 10 regional offices, in accordance with the following schedule:

HUD Region	Allocation
Region I	$7,515,690
Region II	25,495,134
Region III	14,809,144
Region IV	37,052,317
Region V	23,243,902
Region VI	14,746,201
Region VII	3,876,817
Region VIII	2,602,734
Region IX	8,478,498
Region X	2,954,563

(c) Eligibility

Eligible Applicants

Although section 581 of the National Affordable Housing Act of 1990 (NAHA), approved November 28, 1990, Public Law 101–625, expanded this program to include assisted housing, the appropriation for the program in the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act 1991, approved November 5, 1990, Public Law 101–507, did not include any funds for assisted housing. Hence, funding under his NOFA is available only for PHAs and IHAs authorized under the United States Housing Act of 1937 (other than under section 8). Assisted housing is not funded under this NOFA. Public Housing Agencies and Indian Housing Authorities are eligible to apply for Drug Elimination grants for drug elimination activities in public and Indian housing projects.

Eligible Activities

Grant funds may be used as indicated for one or more of the following activities designed to eliminate drug-related crime:

(a) *Security personnel.* (1) Employment of security personnel in public and Indian housing projects is permitted under this program. Security personnel employed under this section shall be required as a condition of employment to meet all relevant State, tribal or local insurance, training, licensing, or other similar requirements.

(2) Security personnel shall not be employed under this section to provide any services except those over and above what the local government is contractually obligated to provide under its Cooperation Agreement with the PHA or IHA (as required by the grantee's Annual Contributions Contract).

(b) *Additional security and protective services.* (1) Reimbursement of local/tribal law enforcement agencies for the cost of providing additional security and protective services for public and Indian housing projects is permitted under this program. The security and protective services provided must be either:

(i) A service that no local/tribal law enforcement agency (or agencies) provided for public or Indian housing projects administered by the grantee within the six months immediately preceding the publication of this Notice of Funding Availability (NOFA) allocating assistance under this program, except for services funded under this program; or

(ii) A quantifiable increase in the level of an ongoing service above that which the local/tribal law enforcement agency (or agencies) provided for public or Indian housing projects administered by the grantee, within the six months immediately preceding the publication of this NOFA allocating assistance under this program, except for services funded under this program.

(2) Additional security and protective services to be funded under this program must be over and above those that the local/tribal government where the proposed project is located is contractually obligated to provide under its Cooperation Agreement with the PHA or IHA (as required by the grantee's Annual Contributions Contract). Grant funds shall only be used to pay for the cost of additional law enforcement services over and above those for which the local/tribal government is already contractually

obligated to provide under the Cooperation Agreement. The additional services shall be verifiable through time sheets and written work assignments.

(3) Communications equipment, computers accessing local, tribal, State and national security networks and databases, facsimile machines, telephone equipment, bicycles, and scooters may be eligible items as incidental costs if used primarily in connection with the provision of additional services, such as the establishment of a law enforcement substation on the funded premises of the grantee. Acquisition procedures for equipment purchased with funding under this section must be in compliance with all HUD requirements and must remain the property of the grantee. For PHAs and IHAs, the procurement standards to be followed are found at 24 CFR 85.36.

(4) Funding is not permitted for the purchase of controlled substances for any purpose, including sting operations; or for the purchase, contract for or maintenance of security dogs for use by local/tribal law enforcement agencies.

(5) Funding is not permitted for compensating informants or confidential informants.

(6) Funding is not permitted under this section for the purchase or leasing of police cars, vans, buses, motorcycles, or motor bikes.

(7) Funding is not permitted to purchase or lease any clothing or equipment that would be normally provided by the law enforcement agency, i.e., uniforms, weapons, protective vests, etc.

(8) Funding under this section is only permitted if the grantee has executed an agreement for such additional law enforcement services.

(c) *Physical Improvements to Enhance Security.* (1) Physical improvements that are specifically designed to enhance security are permitted under this program. These improvements may include (but are not limited to) the installation of lighting systems, fences, bolts, locks; the landscaping or reconfiguration of common areas so as to discourage drug-related crime; and other physical improvements in public and Indian housing projects that are designed to enhance security and discourage drug-related activities.

(2) An activity or project that is funded under any other HUD program, such as the modernization program at 24 CFR Part 968 or 24 CFR Part 905, shall not also be funded by the program under this section.

(3) Funding is not permitted for physical improvements that involve the demolition of any units in a project.

(4) Funding is not permitted for any physical improvements that would result in the displacement of persons.

(5) Funding is not permitted for the acquisition of real property.

(d) *Employment of investigators.* (1) Employment of one or more individuals is permitted under this program to:

(i) Investigate drug-related crime in or around the real property comprising any public or Indian housing project; and

(ii) Provide evidence relating to any such crime in any administrative or judicial proceedings.

(2) Investigators employed under this program are required as a condition of employment to meet all relevant State, tribal, or local training, insurance, licensing, or other similar requirements.

(3) Funding is not permitted for the purchase of controlled substances for any purpose, including use in sting operations.

(4) Funding is not permitted for compensating informants or confidential informants.

(e) *Voluntary tenant patrols.* (1) The provision of training, communitions equipment, and other related equipment (including uniforms), for use by voluntary tenant patrols acting in cooperation with officials of local/ tribal law enforcement agencies is permitted under this program. Members must be volunteers and must be tenants of the project that the tenant patrol represents. Patrols established under this program are expected to undertake surveillance for drug-related criminal activity in the projects proposed for assistance, and to report such activities to the cooperating local law enforcement agency. Grantees are required to obtain liability insurance to protect themselves and the members of the voluntary tenant patrol against potential liability for the activities of the patrol under this program. The cost of this insurance will be considered an eligible program expense.

(2) The applicant, cooperating local law enforcement agency and the members of the tenant patrol are required, prior to putting the tenant patrol into effect, to enter into and execute a written agreement that describes the following:

(i) The nature of the activities to be performed by the tenant patrol, and the patrol's scope of authority;

(ii) The types of activities that a tenant patrol is expressly prohibited from undertaking, to include but not limited to, the carrying or use of firearms or other weapons, nightsticks, clubs, handcuffs, or mace in the course of their duties under this program;

(iii) The type of initial tenant patrol training and continuing training the members receive from the local law enforcement agency (training by the local law enforcement agency is required prior to putting the tenant patrol into effect);

(iv) Tenant patrol members must be advised that they may be subject to individual or collective liability for any actions undertaken outside the scope of their authority and that such acts are not covered under a PHA's or IHA's liability insurance.

(3) Tenant patrols established under this program are required to meet all relevant State, local or tribal training, insurance, licensing, or other similar, requirements.

(4) Communication equipment eligible for funding under this program shall be equipment that is reasonably related to the operation of the tenant patrol and that is otherwise permissible under State, local or tribal law.

(5) Related equipment eligible for funding under this program shall be equipment that is reasonably related to the operation of the tenant patrol and that is otherwise permissible under State, local or tribal law.

(6) Funding is not permitted to obtain ammunition, firearms or other weapons. Tenant patrols are expressly prohibited from carrying or using firearms or other weapons, nightsticks, clubs, handcuffs, or mace in the course of their duties under this program.

(7) Under this program, bicycles and uniforms (caps and other clothing items that identify voluntary tenant patrol members, including patrol t-shirts and jackets) to be used by the members of the tenant patrol may be eligible items.

(8) Funding is not permitted for the purchase of controlled substances for any purpose, including sting operations; or for the purchase, contract for, or maintenance of security dogs for use by local law enforcement agencies.

(9) Funding is not permitted under this program for the purchase or leasing of police cars, vans, buses, motorcycles or motor bikes, bullet-proof vests, etc.

(10) Funding is not permitted for compensating informants or confidential informants.

(11) Drug Elimination Program funds may not be used for any type of compensation for voluntary tenant patrol participants.

(f) *Programs to reduce the use of drugs.* Programs that reduce the use of drugs in and around the premises of public and Indian housing projects, including drug abuse prevention, intervention, referral and treatment programs are permitted under this program.

(1) *Drug Prevention.* Programs that will be considered for funding under this

program must provide a comprehensive drug prevention approach for public and Indian housing residents that will address the individual resident and his or her relationship to family, peers, and the community. Prevention programs must include activities designed to identify and change the factors present in public or Indian housing that lead to drug-related problems, and thereby lower the risk of drug usage. Many components of a comprehensive approach, such as refusal and restraint skills training programs or drug-related family counseling, may already be available in the community of which the housing project of the applicant is a part, and the applicant must act to bring those available program components onto the premises. The salary of a coordinator whose responsibilities would include finding out what community resources are already available and bringing these resources onto the premises, or providing residents referrals to them, as components of a comprehensive drug prevention program is an eligible activity under this paragraph. Activities that should be included in these programs are:

(i) Drug education opportunities for public and Indian housing residents. The causes and effects of illegal drug usage must be discussed in a formal setting to provide both young people and adults the working knowledge and skills they need to make informed decisions to confront the potential and immediate dangers of illegal drugs. Grantees may contract with drug education professionals to provide appropriate training or workshops. The drug education professionals contracted to provide these services shall be required to base their services upon the needs assessment and program plan of the grantee. These educational opportunities may be a part of resident meetings, youth activities, or other gatherings of public and Indian housing residents.

(ii) Family and other support services. Drug prevention programs must demonstrate that they will provide directly or otherwise make available services designed to distribute drug education information, to foster effective parenting skills, and to provide referrals for treatment and other available support services in the project or the community for public and Indian housing facilies.

(iii) Youth services. Drug prevention programs must demonstrate that they have included groups composed of young people as a part of their prevention programs. These groups must be coordinated by adults with the active participation of youth to organize youth leadership, sports, recreational, cultural and other activities involving public and Indian housing youth. The dissemination of drug education information, the development of peer leadership skills and other drug prevention activities must be a component of youth services. Activities or services funded under this program may not also be funded under the Youth Sports Program.

(iv) Economic/educational opportunities for residents and youth. Drug prevention programs should demonstrate a capacity to provide public and Indian housing residents the opportunities for interaction with or referral to established higher education or vocational institutions with the goal of developing or building on the residents' skills to pursue educational, vocational and economic goals. The program must also demonstrate the ability to provide public and Indian housing residents the opportunity to interact with private sector businesses in their immedate community for the same desired goals.

(2) *Intervention.* The aim of intervention is to identify and refer public and Indian housing resident drug users and to assist them in modifying their behavior or, if necessary, to obtain early treatment. The applicant must establish a program with the goal of preventing drug problems from continuing once detected. The training of housing staff and residents for this purpose is an eligible activity under this paragraph, as is the employment of a coordinator to establish and implement the program.

(3) *Drug Treatment.* Drug treatment programs designed to reduce use of drugs in and around public and Indian housing are made eligible under this program. The cost of leasing, acquiring, constructing or rehabilitating the facility space for a drug treatment program is not an eligible expense, but the costs of staffing and reasonable expenses for furnishing and equipping a facility are eligible expenses.

(i) Treatment funded under this program shall be in or around the premises of housing projects to provide tenants more effective treatment. For the purposes of this program, "in or around" means within, or immediately adjacent to, the physical boundaries of a public or Indian housing project.

(ii) Treatment professionals hired under this program are required to meet all relevant State, tribal, or local training or continuing training, insurance, licensing, or other similar requirements.

(iii) Funds awarded under this program are targeted towards the development and implementation of new treatment programs, or the improvement of, or expansion of existing programs on-site in public and Indian housing developments.

(iv) Each proposed drug treatment program should address the following goals:

(A) Increase resident accessibility to drug treatment services,

(B) Decrease criminal activity in and around public and Indian housing projects by reducing illicit drug use among public and Indian housing residents, and

(C) Provide services designed for youth and/or maternal drug abusers, i.e., prenatal/post partum care, specialized counseling in women's issues, parenting classes.

(v) Treatment programs should meet the following criteria:

(A) Applicants must be able to demonstrate the ability to provide comprehensive drug treatment programs which may include drug-free housing units specially set asite for residents in treatment and their families, if any, who normally reside with them, and intensive outpatient and aftercare components, all of which must be on-side. Grant funds may also be used to provide necessary treatment-related services to residents and their families in their existing units. Applicants may provide the service of formal referral arrangements to other treatment programs not in or around the assisted projects in instances where the resident is able to obtain treatment costs from sources other than this program.

(B) Family/collateral counseling.

(C) Linkages to educational/vocational counseling.

(D) Therapeutic approaches which have proven effective with similar populations will be considered, e.g., therapeutic community approaches, cognitive restructuring approaches which empover residents cognitive restructuring approaches which empower residents to address their recovery, behavioral approaches with emphaisis on educational and vocational accomplishments.

(E) Coordination of services to appropriate local drug, HIV-related service agencies, state mental health and public health programs.

(vi) Applicants must demonstrate a working partnership with the Single State Agency or current state licensure provider, to coordinate, develop and implement the drug treatment proposal.

(vii) The Single State Agency or State licensure provider must certify that the drug treatment provider(s) has provided drug treatment services to similar

populations, identified in the application, for two prior years.

(viii) The Single State Agency must certify that the drug treatment proposal is consistent with the State treatment plan; and that the treatment provider(s) meets all State licensing requirements.

(4) Funding is not permitted for treatment of residents at long-term, in-patient treatment programs, or any programs not in or around the premises of the grantee's housing projects.

(5) Funding is not permitted for insurance for residents for drug treatment.

(6) Funding is not permitted for detoxification procedures, short term or long term, designed to reduce or eliminate the presence of toxic substances in the body tissues of a patient.

(7) Funding is not permitted for the leasing, acquisition, construction or rehabilitation of drug treatment facilities.

(8) Funding is not permitted for maintenance drug programs. Maintenance drugs are medications that are prescribed regularly for a long period of supportive therapy (e.g., methadone maintenance), rather than for immediate control of a disorder.

(9) Funding is not permitted to subgrantees until they obtain required insurance coverage.

(10) Funding is not permitted for T-shirts, caps, (except tenant patrol uniforms) buttons, advertising campaigns, rallies, marches, or community celebrations.

(11) The administrative costs related to screening or evicting residents for drug-related crimes are not permitted.

(12) Funding is not permitted for the purchase of vehicles for youth activities.

(13) Funding is permitted for the leasing of vehicles for youth activities.

(g) *RMCs and RCs.* Funding under this program is permitted for PHAs and IHAs to contract with RMCs and incorporated RCs to develop security and drug abuse prevention programs involving site residents. Such programs may include (but are not limited to) voluntary tenant patrol activities, drug education, drug intervention, referral, and outreach efforts.

(d) Selection Criteria and Ranking Factors: Selection Criteria.

Each application for funding under this NOFA must include a plan as described below for addressing the problem of drug-related crime on the premises of the public or Indian housing for which the application is being submitted. Each application submitted by a PHA or IHA for a grant under this NOFA will be evaluated on the basis of the following selection criteria:

(1) *Factor 1: The extent of the drug-related crime problem in the public or Indian housing project or projects proposed for assistance.* (Maximum points: 35) In assessing this criterion, HUD will consider the following factors:

(i) The severity of the drug-related crime problem, as reflected by:

(A) Crime statistics and other data as described in this paragraph or paragraph (B), submitted in the applicant's plan that is prepared in accordance with Section III(c)(2) of this NOFA. Information under this paragraph would consist of the best available objective data on the nature, source, and extent of the problem of drug-related crime, and the problems associated with drug-related crime. These data may include (but not necessarily be limited to) crime statistics from Federal, State, tribal or local law enforcement agencies, or information from the applicant's records on the types and sources of drug-related crime in the projects proposed for assistance; descriptive data as to the types of offenders committing drug-related crime in the applicant's projects (e.g., age, residence, etc.); the number of lease terminations or evictions for drug-related criminal activity; the number of emergency room admissions for drug use or drug-related crime; the number of police calls for drug-related criminal activity; the number of residents placed in treatment for substance abuse; and the school drop-out rate and level of absenteeism for youth. If crime statistics are not available at the project or precinct level, the applicant may use other reliable, objective data including those derived from its records or those of RMCs or RCs. The crime statistics should be reported both in real numbers, and as a percentage of the residents in each project (e.g., 20 arrests for distribution of heroin in a project with 100 residents reflects a 20% occurrence rate). The data should cover the past one-year period and, to the extent feasible, should indicate whether these data reflect a percentage increase or decrease in drug-related crime over the past several years. Applicants must address in their assessment how these crimes have affected the PHA's or IHA's targeted projects, and how the applicant's overall plan and strategy is specifically tailored to address these drug-related crime problems.

(B) To the extent that data in accordance with paragraph (A), above, are not available, HUD will consider other relevant information. Examples of such information include: Resident/staff surveys on drug-related issues or on-site reviews to determine drug activity; the use of local government or scholarly studies or other research conducted in the past year that analyze drug activity in the targeted projects; vandalism costs and related vacancies attributable to drug-related crime; information from schools, health service providers, residents and police; and the opinions and observations of individuals having direct knowledge of drug-related crime problems concerning the nature and extent of those problems in the projects proposed for assistance. (These individuals may include law enforcement officials, resident or community leaders, school officials, community medical officials, drug treatment or counseling professionals, or other social service providers.)

(C) In awarding points under paragraphs (1)(i)(A) and (B) of this section, HUD will evaluate the extent to which the applicant has provided data that reflects a severe drug-related crime problem, both in terms of the frequency and nature of the drug-related crime incidents and the problems associated with drug-related crime in the projects proposed for funding; the extent to which such data are meaningfully grouped by the variables listed under paragraphs (1)(i)(A) and (B) of this section; and the extent to which such data reflect an increase in drug-related crime over a period of time in the projects proposed for assistance. However, a reduction in drug-related crime in the housing of an applicant for years during which the applicant had in place a program under this part will not be considered to the disadvantage of the applicant. (Maximum points under paragraphs (A) and (B) of this section: 20.)

(ii) The relative severity of the drug-related crime in the applicant's projects, as reflected by the statistics submitted under paragraphs (1)(i)(A) and (B) of this section, in comparison to other applications submitted for funding under this program. However, a reduction in drug-related crime in the housing of an applicant for years during which the applicant had in place a Drug Elimination Program will not be considered to the disadvantage of the applicant. (Maximum points: 5)

(iii) The extent to which the applicant has analyzed the data compiled under paragraphs (1)(i)(A) and (B) of this section, and has clearly articulated its needs for reducing drug-related crime in the projects proposed for assistance. (Maximum points: 10)

(2) *FACTOR 2: The quality of the plan to address the crime problem in the public or Indian housing projects*

proposed for assistance, including the extent to which the plan includes initiatives that can be sustained over a period of several years. (Maximum points: 35) The portion of this criterion dealing with initiatives that can be sustained over a period of years has been added by NAHA. In assessing this criterion, HUD will consider the following factors:

(i) The extent to which the applicant establishes a relationship between its drug-related crime problem (as identified in its plan assessment and its strategy for eliminating drug-related crime under the plan; the extent to which the applicant has considered and articulated its strategy goals and objectives; the extent to which the applicant's strategy provides for a comprehensive approach to eliminating drug-related crime in its projects (e.g., the strategy includes management practices, enforcement/security techniques, and a combination of intervention, referral, treatment and prevention programs); and the extent to which funding under this program will be targeted to the applicant's identified needs. (Maximum points: 15)

(ii) The extent to which the applicant's strategy is realistic, given the amount of funding requested under this program in relation to the overall strategy, and the timetable indicated by the applicant for beginning and completing each component of the strategy; the extent to which the applicant provides a cost analysis for each component of its strategy and describes the financial and other resources (as applied for under this NOFA and from other sources) that may reasonably be expected to be available to carry out each component; the extent to which the applicant describes the activities to be funded under this NOFA and indicates how such activities will be coordinated with, and complemented by, current services; and the extent to which the applicant describes how funding decisions were reached. (Maximum points: 5)

(iii) The extent to which the applicant has developed an evaluation process that includes measures it believes to be critical in evaluating the success of the plan; the extent to which the applicant has described in its plan the information to be gathered, and the method to be used to gather this information; and the extent to which the applicant relates the evaluation process to its assessment of the drug-related crime problem in the targeted projects (e.g., tracking of changes in identified crime statistics). (Maximum points: 10)

(iv) The extent to which the plan identifies non-HUD resources that the applicant reasonably expects to be available for the continuation of the program at the end of the grant term and the extent to which the applicant identifies initiatives that can be sustained over a period of years beyond the grant term. (Maximum points: 5)

(3) *FACTOR 3: The capability of the applicant to carry out the plan.* (Maximum points: 25) In assessing this criterion, HUD will consider the following factors:

(i) The extent of the applicant's administrative capability to manage its projects, as measured by its performance with respect to operative HUD requirements under the ACC and 24 CFR Chapter IX. In evaluating administrative capability under this factor, HUD will also consider whether there are any unresolved findings from prior HUD reviews or audits undertaken by the Inspector General, the General Accounting Office, or Independent Public Accountants; whether the applicant is operating under court order; and, if applicable, the progress made by a Troubled PHA in achieving goals established under a Memorandum of Agreement executed with HUD. (Maximum points: 10)

(ii) The extent to which the applicant has implemented effective screening procedures to determine an individual's suitability for public or Indian housing (consistent with the requirements of 42 U.S.C. 3604(f) and 24 CFR 100.202, and 29 U.S.C. 794 and 24 CFR 8.4 which deal with individuals with disabilities); implemented a plan to reduce vacancies; implemented eviction procedures in accordance with 24 CFR part 966, subpart B, and section 503 of NAHA; or undertaken other management practices to eliminate drug-related crime in its projects. (Maximum points: 5)

(iii) The extent of, and degree of, success reflected by the applicant's prior track record in implementing and managing HUD grant programs (including funding under this program or other grant programs such as CIAP, youth sports, child care, resident management, etc.), and other Federal drug-related grant programs. (Maximum points: 5)

(iv) The extent to which the applicant has already undertaken successful anti-drug related crime efforts that will serve as the foundation for the proposed grant under this program. (Maximum point: 5)

(4) *Factor 4: The extent to which tenants, the local government and the local community support and participate in the design and implementation of the activities proposed to be funded under the application.* (Maximum points: 30) Prior to amendment by NAHA, the statutory wording of this criterion read, "the extent to which the local government and local community support the anti-crime activities of the public housing agency." In assessing this criterion, HUD will consider the following factors:

(i) The extent to which the local community, as represented by local organizations, businesses, and residents, and local government, through its agencies and officials, participate in the design and implementation of the applicant's plan; and the extent to which the applicant has leveraged funds and other resources from other public and private sources, as evidenced by letters of commitment to provide funding, staff, or in-kind resources. (Maximum points: 10)

(ii) The extent to which the relevant governmental jurisdiction has met its law enforcement obligations under the Cooperation Agreement with the applicant (as required by the grantee's Annual Contributions Contract with HUD). (Maximum points: 10)

(iii) The extent to which project tenants, and an RMC or RC, where they exist, are involved in the planning and development of the grant application and plan strategy, and support and participate in the design and implementation of the activities proposed to be funded under the application as reflected by information provided by the applicant, augmented with information concerning tenants, the applicant's response to tenant and RMC/RC comments, and the certification of resident involvement. (Maximum points: 10)

Ranking Factors

Each application for a grant award that is submitted in a timely manner to the local HUD field office or, in the case of IHAs, to the appropriate HUD Office of Indian Programs, and that otherwise meets the requirements of this NOFA, will be evaluated in accordance with the selection criteria specified above. Applications from PHAs will be jointly evaluated and scored by the HUD field and regional offices with jurisdiction over the public housing authority. Applications from IHAs will be jointly evaluated and scored by the HUD Office of Indian Programs and the regional office with jurisdiction over the housing authority. *An application must receive a minimum score of 80 points out of the maximum of 125 points awardable under this competition to be eligible for funding.* Each HUD regional office will rank the eligible applications for its region based upon their overall rating scores. Grants will be awarded by each HUD regional office to the highest-ranked applications within its region.

II. Application Process

(a) To apply for a grant, PHAs must request an application package from the local HUD field office with jurisdiction over their agency. Indian Housing Authorities (IHAs) must request an application package from the HUD Office of Indian Programs with jurisdiction over their authority. Application packages are also available through the Drug Information Strategy Clearinghouse, by calling 1–800–245–2691. (See the appendix to this NOFA for a list of HUD field offices, and HUD Offices of Indian Programs.)

(b) PHAs must submit an original plus two copies of their completed grant application by the submission deadline to the local HUD field office with jurisdiction over their agency. IHAs must submit their completed grant application by the submission deadline to the HUD Office of Indian Programs with jurisdiction over their authority. (A complete listing of HUD regional and field offices, including HUD Offices of Indian Programs, is provided in the appendix to this NOFA).

(c) The deadline for the submission of grant applications under this NOFA is 5:15 p.m. local time, on July 26, 1991. Applications (original and two copies) must be physically received by the deadline at the local HUD field office or, in the case of IHAs, in the local HUD Office of Indian Programs, with jurisdiction over the PHA or IHA, Attention: Assisted Housing Management Branch Director, or Office of Indian Programs Director. It is not sufficient for an application to bear a postage date within the submission time period. Applications submitted by facsimile are not acceptable.

III. Checklist of Application Submission Requirements

The application requirements consist of the following procedures:

(a) An application package may be obtained from the local HUD field office or Office of Indian Programs having jurisdiction over the PHA or Indian housing authority making an application, or by calling HUD's Drug Information and Strategy Clearinghouse, telephone 800–245–2691. The application package contains information on all exhibits and certifications required under this NOFA.

(b) For assistance in completing the application or information on training/workshops, the PHA or Indian housing authority may contact the local HUD field office, or Office of Indian Programs, or Drug-Free Neighborhoods Division, Office of Resident Initiatives, Public and Indian Housing, Department of Housing and Urban Development, telephone 202–708–3502 or 202–708–3503.

(c) To qualify for a grant under this program, an applicant must submit an application to HUD that contains the following:

(1) Standard Grant Application Form SF–424 and SF–424A with narrative describing each major program and its related cost;

(2) A plan for addressing the problem of drug-related crime on the premises of the housing for which the application is being submitted that provides the following information:

(i) An assessment of the severity of the drug-related crime problem, as reflected by crime statistics or other information prepared in accordance with section I(d)(1) (A) and (B), above, of this NOFA;

(A) The assessment provided under paragraph (i) can be accomplished through a variety of methods, using more than one existing source of information, including: surveys; on-site reviews/management reviews; statistical indicators (such as type of crimes, area where the offenders reside, age of offenders, school attendance, health service referrals, grade point averages, vandalism costs, vacancy rates, unemployment rates, library check out records, etc.); research or studies conducted by local officials; and analysis and critique of a particular drug-related crime problem;

(ii) The applicant must specify the measures that it believes to be important in evaluating the success of the plan, including goals that relate back to the assessment data provided under paragraph (i); discuss the types of information the applicant will need to measure the plan's success; and indicate the method by which the applicant will gather and analyze this information;

(iii) The plan must include a narrative discussion of the applicant's current activities, if any, to eliminate drug-related crime in its targeted projects, including its efforts to implement screening procedures to determine an applicant's suitability for public housing (consistent with the requirements of 42 U.S.C. 3604(f) and 24 CFR 100.202, and 29 U.S.C. 794 and 24 CFR 8.4 which deal with individuals with disabilities); its efforts to implement eviction procedures in accordance with 24 CFR part 966, subpart B, and section 503 of NAHA; its efforts to implement a plan to reduce vacancies; or its other management practices to eliminate drug-related crime in the applicant's projects; the applicant should also describe its experience, if any, in implementing and managing other HUD grant programs (e.g., CIAP, youth sports, child care, etc.), and other Federal anti-drug-related crime programs; describe the current activities, if any, being undertaken by community and governmental entities, project residents, or RMCs or RCs, to address the problem of drug-related crime in the projects proposed for assistance; and provide a listing of the names of agencies or other entities (including the applicant), if any, currently providing assistance to address the drug-related crime problem in the targeted projects and describe what assistance they are providing;

(iv) A narrative discussion of the applicant's strategy for addressing the problem of drug-related crime in each of the projects proposed for assistance must be included in the plan; at a minimum, the discussion must include the following information for each of the projects proposed for assistance:

(A) A narrative describing each major activity in the applicant's strategy and how these components interrelate; the applicant should specifically address whether it plans to implement a comprehensive drug elimination strategy that involves management practices, enforcement/security techniques, and a combination of drug abuse prevention, intervention, referral, and treatment programs; the applicant should indicate how its proposed activities will complement, and be coordinated with, current services;

(B) The anticipated cost of each component of the strategy, and the financial and other resources (including funding under this program, and from other resources) that may reasonably be expected to be available to carry out each component;

(C) A timetable for beginning and completing each component of the strategy;

(D) The role of residents, and RMCs and RCs where they exist, in planning and developing the grant application and strategy, and in implementing the applicant's plan; the applicant must provide the name of the RMC or incorporated RC that will develop any security and drug abuse prevention programs involving site residents; the applicant must describe the role of any other entities (e.g., local and State governments and community organizations) in planning and carrying out the strategy;

(E) The resources that the applicant may reasonably expect to be available at the end of the grant term to continue the anti-drug related effort and how they will be allocated to plan components that can be sustained over a period of years;

(F) If grant amounts are to be used for physical improvements, a statement as to how these improvements will be coordinated with the applicant's modernization program under 24 CFR part 968 or 24 CFR part 905;

(G) If grant amounts are to be used for prevention, intervention or treatment programs to reduce the use of drugs in and around the premises of public or Indian housing projects, a statement by the applicant as to the nature of the program, a discussion of how the program represents a prevention, intervention or treatment strategy, and how the program will further the PHA's or IHA's strategy to eliminate drug-related crime in the projects proposed for assistance;

(3) Summary of any written resident and resident organization comments submitted to the applicant on the design and implementation of the plan;

(4) A certification by the applicant that:

(i) The applicant's assessment of its drug-related crime problem is based upon the best available objective data; and that the description of current activities being undertaken by the applicant to address the problem of drug-related crime in its projects, and the information regarding the applicant's strategy for addressing the problem of drug-related crime in its projects are both accurate and complete;

(ii) The applicant will maintain a drug-free workplace in accordance with the requirements of the Drug-Free Workplace Act of 1988, 24 CFR part 24, subpart F (Applicants may submit a copy of their most recent drug-free workplace certification, which must be dated within the past year.);

(iii) The applicant will comply with the requirements of section 319 of the Department of the Interior Appropriations Act (Pub. L. 101–121, approved October 23, 1989), as implemented in HUD's interim final rule published in the **Federal Register** on February 26, 1990 (55 FR 6736) (This statute generally prohibits recipients and subrecipients of Federal contracts, grants, cooperative agreements 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.);

(5) A certification by the chief executive officer of a State or a unit of general local government (including an Indian tribe), in which the projects proposed for assistance are located that:

(i) Grant funds provided under this part will not substitute for activities currently being undertaken by the jurisdiction to address the problem of drug-related crime in these projects;

(ii) Any additional security and protective services to be provided under this program meet the requirements of this program as indicated in this NOFA;

(iii) The relevant governmental jurisdiction will take the actions described in the applicant's strategy under its plan;

(iv) That the locality is meeting its obligations under the Cooperation Agreement with the PHA or IHA, particularly with regard to law enforcement services (Whether or not a locality is meeting its obligations under the Cooperation Agreement with the applicant, the CEO for the locality must describe the current level of law enforcement services being provided to the projects proposed for assistance. If the jurisdiction is not meeting its obligations under the Cooperation Agreement, the CEO should identify any special circumstances relating to its failure to do so.);

(6) If applying for voluntary tenant patrol funding, a certification from the chief of the local law enforcement agency, that the law enforcement agency has entered into, or will enter into, an agreement with the voluntary tenant patrol and the applicant, in accordance with the requirements of this program;

(7) A certification by the RMC or RC, or other involved resident group where an RMC or RC do not exist, that the grant application was jointly prepared with the applicant, and that the applicant's description of the activities that the resident group will implement under the program is accurate and complete;

(8) Letters of commitment from governmental or private entities that describe the financial or other resources (e.g., staff or in-kind resources) that the entity agrees to provide for the applicant's anti-drug related crime efforts under this program;

(9) If applying for treatment program funding, a certification that the applicant has notified and consulted with the relevant Single State Agency or authority with drug program coordination responsibilities concerning its application; that the drug treatment provider(s) has provided drug treatment to a similar population for two prior years; that the proposed drug treatment project is consistent with the State treatment plan; and that the treatment providers meet all State licensing requirements.

IV. Corrections to Deficient Applications

(a) HUD will notify an applicant, in writing, within three working days of the receipt of the application, of any curable technical deficiencies in the application. The applicant must submit corrections in accordance with the information specified in HUD's letter within 14 calendar days from the date of receipt of HUD's letter notifying the applicant of any such deficiency.

(b) Curable technical deficiencies relate to items that:

(1) are not necessary for HUD review under selection criteria/ranking factors; and

(2) cannot be submitted after the application due date has expired, to improve the substantive quality of the proposal. An example of a technical deficiency would be the failure of an applicant to submit a certification with its proposal.

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 at 24 CFR part 50 that implement section 102(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 and copying from 7:30 to 5:30 weekdays in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20401.

(b) *Federalism impact.* The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism,* has determined that the provisions of this NOFA do not have "federalism implications" within the meaning of the Order. The NOFA implements a program that encourages PHAs and IHAs to develop a plan for addressing the problem of drug-related crime, and makes available grants to PHAs and IHAs to help them carry out their plans. As such, the program helps PHAs and IHAs to combat serious drug-related crime problems in their projects, thereby strengthening their role as instrumentalities of the States. Further review under the Order is also unnecessary since the NOFA generally tracks the statute and involves little implementing discretion.

(c) *Family Impact.* The General Counsel, as the Designated Official for Executive Order 12606, the Family, has determined that the provisions of this NOFA have the potential for significant positive impact on family formation, maintenance and general well-being within the meaning of the Order. The NOFA implements a program that encourages PHAs and IHAs to develop a plan for addressing the problem of drug-related crime, and makes available

grants to help PHAs and IHAs to carry out this plan. As such, the program is intended to improve the quality of life of public and Indian housing project residents by reducing the incidence of drug-related crime and should have a strong positive effect on family formation, maintenance and general well-being for PHAs and IHAs selected for funding. Further review under the Order is also not necessary since the NOFA essentially tracks the authorizing legislation and involves little exercise of HUD discretion.

(d) *Section 102 HUD Reform Act.* On March 14, 1991, the Department published in the **Federal Register** a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (24 CFR part 12, 56 FR 11032). Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by the Department.

Since HUD makes assistance under this program available on a competitive basis, Part 12 requires HUD to:

—Ensure that documentation and other information regarding each application submitted to the Department are sufficient to indicate the basis upon which assistance was provided or denied. HUD must make this material available for public inspection for a five-year period. (§ 12.14(b)) HUD will provide further guidance on how this material may be accessed in a later Notice published in the **Federal Register.**

—Publish a Notice in the **Federal Register** at least quarterly indicating the recipients of the assistance. (§ 12.16(a))

Subpart C of the rule requires applicants that seek assistance from HUD for a specific project or activity must make the disclosures required under § 12.32. This subpart will be made effective through later publication of a Notice in the **Federal Register.** Since it will apply to applications solicited on or after the effective date of the Notice, this NOFA is not subject to its provisions.

Authority: Sec. 5127, Public Housing Drug Elimination Act of 1988 (42 U.S.C. 11901 et. seq.); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: June 5, 1991.

Michael B. Janis,

General Deputy Assistant, Secretary for Public and Indian Housing.

Appendix

HUD Field Offices

REGION I

Jurisdiction: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Boston, Massachusetts Regional Office

Harold Thompson, *(Acting) Regional Administrator,* Regional Housing Commissioner, HUD—Boston Regional Office, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Room 375, Boston, Massachusetts 02222–1092, (617) 565–5234, (FTS) 835–5234

Hartford, Connecticut Office

William Hernandez, Jr., Manager, HUD—Hartford Office, 330 Main Street, Hartford, Connecticut 06106–1860, (203) 240–4523, (FTS) 244–4523

Manchester, New Hampshire Office

James Barry, Manager, HUD—Manchester Office, Norris Cotton Federal Building, 275 Chestnut Street, Manchester, New Hampshire 03101–2487, (603) 666–7681, (FTS) 834–7681

Providence, Rhode Island Office

Casimir J. Kolaski, Jr., Manager, HUD—Providence Office, 330 John O. Pastore Federal Building and U.S. Post Office—Kennedy Plaza, Providence, Rhode Island 02903–1745, (401) 528–5351, (FTS) 838–5351

Bangor, Maine Office

Richard Young, Supervisory Appraiser, HUD—Bangor Office, Professional Building, Casco Northern Bank Building, 23 Main Street, Bangor, Maine 04401–4318, (207) 945–0467 (FTS) 833–7534

Burlington, Vermont Office

William Peters, Chief, HUD—Burlington Office, Federal Building—Room B311, 11 Elmwood Avenue, Post Office Box 879, Burlington, Vermont 05402–0879, (802) 951–6290, (FTS) 832–6290

REGION II

Jurisdiction: New York, New Jersey

New York Regional Office

Dr. Anthony Villane, Regional Administrator-Regional Housing Commissioner, HUD—New York Regional Office, 26 Federal Plaza, New York, New York 10278–0068, (212) 264–8068, (FTS) 264–8068

Buffalo, New York Office

Joseph Lynch, Manager, HUD—Buffalo Office, Lafayette Court, 5th Floor, 465 Main Street, Buffalo, New York 14203–1780, (716) 846–5755), (FTS) 437–5733

Camden, New Jersey Office

Elmer Roy, Manager, HUD—Camden Office, 519 Federal Street, Camden, New Jersey 08103–9998, (609) 757–5081, (FTS) 488–5081

Newark, New Jersey Office

Theodore Britton, Jr., Manager, HUD—Newark Office, Military Park Building, 60 Park Place, Newark, New Jersey 07102–5504, (201) 877–1662, (FTS) 349–1814

Albany, New York Office

John Petricco, Manager, HUD—Albany Office, Leo W. O'Brien Federal Building, North Pearl Street and Clinton Avenue, Albany, New York 12207–2395, (518) 472–3567, (FTS) 562–3567

REGION III

Jurisdiction: Pennsylvania, Washington, D.C., Maryland, Delaware, Virginia, West Virginia

Philadelphia, Pennsylvania Regional Office

Harry Staller, Deputy Regional Administrator, HUD—Philadelphia Regional Office, Liberty Square Building, 105 South 7th Street, Philadelphia, Pennsylvania 19106–3392, (215) 597–2560, (FTS) 597–2560

Washington, D.C. Office

I. Toni Thomas, Manager, HUD—Washington, D.C. Office, Union Center Plaza, Phase II, 820 First Street, N.E., Suite 300, Washington, D.C. 20002–4205, (202) 275–9200, (FTS) 275–9206

Baltimore, Maryland Office

Maxine Saunders, Manager, HUD—Baltimore Office, 10 North Calvert Street, 3rd Floor, Baltimore, Maryland 21202–1865, (301) 962–2121, (FTS) 922–3047

Pittsburgh, Pennsylvania Office

William Costello, (Acting) Acting Manager, HUD—Pittsburgh Office, 412 Old Post Office Courthouse Bldg., 7th Ave. & Grant St., Pittsburgh, PA 15219–1906, (412) 644–6428, (FTS) 722–6388)

Richmond, Virginia Office

Mary Ann Wilson, Manager, HUD—Richmond Office, 400 North 8th Street, Richmond, Virginia 23240, (804) 771–2721, (FTS) 925–2721

Charleston, West Virginia Office

Michael Kulick, Manager, HUD—Charleston Office, 405 Capitol Street, Suite 708, Charleston, West Virginia 25301–1795, (304) 347–7000, (FTS) 930–7036

Wilmington, Delaware Office

A. David Sharbaugh, Chief, HUD—Wilmington Office, 844 King Street, Wilmington, Delaware 19801, (302) 573–6300, (FTS) 487–6300

REGION IV

Jurisdiction: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Caribbean, Virgin Islands

Atlanta, Georgia Regional Office

Raymond A. Harris, Regional Administrator-Regional Housing Commissioner, HUD—Atlanta Regional Office, Richard B. Russell Federal Building, 75 Spring Street, S.W., Atlanta, Georgia 30303–3388, (404) 331–5136 (FTS) 841–5136

Birmingham, Alabama Office

Robert E. Lunsford, Manager, HUD—Birmingham Office, 600 Beacon Parkway

West, Suite 300, Birmingham, Alabama 35209–3144, (205) 731–1617, (FTS) 229–1617

Louisville, Kentucky Office

Verna V. Van Ness, Acting Manager, HUD—Louisville Office, 601 West Broadway, Post Office Box 1044, Louisville, Kentucky 40201–1044, (502) 582–5251, (FTS) 352–5251

Jackson, Mississippi

Sandra Freeman, Manager, HUD—Jackson Office, Dr. A.H. McCoy Federal Building, 100 W. Capitol Street, Room 910, Jackson, Mississippi 39269–1096, (601) 965–4702, (FTS) 490–4702

Greensboro, North Carolina

Larry J. Parker, Manager, HUD—Greensboro Office, 415 North Edgeworth Street, Greensboro, North Carolina 27401–2107, (919) 333–5363, (FTS) 699–5361

Caribbean Office

Rosa Villalonga, Acting Manager, HUD—Caribbean Office, San Juan Center, 159 Carlos E. Chardon Avenue, San Juan, Puerto Rico 00918–1804, (809) 766–5201, (FTS) 498–5201

Columbia, South Carolina Office

Ted B. Freeman, Manager, HUD—Columbia Office, Strom Thurmond Federal Building, 1835–45 Assembly Street, Columbia, South Carolina 29201–2480, (803) 765–5592, (FTS) 677–5592

Knoxville, Tennessee Office

Richard B. Barnwell, Manager, HUD—Knoxville Office, John J. Duncan Federal Bldg., 710 Locust Street, S.W., Knoxville, Tennessee 37902–2526 (615) 549–9384, (FTS) 854–9384

Memphis, Tennessee Office

Bob Atkins, Manager, HUD—Memphis Office, 200 Jefferson Avenue, Suite 1200, Memphis, Tennessee 38103–2335, (901) 521–3367, (FTS) 222–3367

Nashville, Tennessee Office

John H. Fisher, Manager, HUD—Nashville Office, 251 Cumberland Bend Drive, Suite 200, Nashville, Tennessee 37228–1803, (615) 736–5213, (FTS) 852–5213

Jacksonville, Florida Office

James T. Chaplin, Manager, HUD—Jacksonville Office, 325 West Adams Street, Jacksonville, Florida 32202–4303, (904) 791–2626, (FTS) 946–2626

Coral Gables, Florida Office

Orlando L. Lorie, Manager, HUD—Coral Gables Office, Gables One Tower, 1320 S. Dixie Hwy., Coral Gables, Florida 33146–2911, (305) 662–4510, (FTS) 350–6010

Orlando, Florida Office

M. Jeannette Porter, Manager, HUD—Orlando Office, Langley Building, 3751 Maguire Boulevard, Suite 270, Orlando, Florida 32803–3032, (302) 648–6441, (FTS) 820–6441

Tampa, Florida Office

George A. Milburn, Jr., Manager, HUD—Tampa Office, Suite 700, Timberlake Federal Bldg. Annex, 501 East Polk Street, Tampa, Florida 33602–3945 (813) 228–2501 (FTS) 826–2501

REGION V

Jurisdiction: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

Chicago, Illinois Regional Office

Gertrude Jordan, Regional Administrator—Regional Housing Commissioner, HUD—Chicago Regional Office, 626 West Jackson Boulevard, Chicago, Illinois 60606, (312) 353–5680, (FTS) 353–5680

Detroit, Michigan Office

Harry I. Sharrott, Manager, HUD—Detroit Office, Patrick V. McNamara Federal Building, 477 Michigan Avenue, Detroit, Michigan 48226–2592, (313) 226–6280, (FTS) 226–7900

Indianapolis, Indiana Office

J. Nicholas Shelley, Manager, HUD—Indianapolis Office, 151 North Delaware Street, Indianapolis, Indiana 46204–2526, (317) 226–6303, (FTS) 331–6303

Grand Rapids, Michigan Office

Choice Edwards, (Acting) Manager, HUD—Grand Rapids Office, 2922 Fuller Avenue, N.E., Grand Rapids, Michigan 49505–3409, (616) 456–2100, (FTS) 372–2182

Minneapolis-St. Paul, Minnesota

Thomas Feeney, Manager, HUD—Minneapolis-St. Paul Office, 220 Second Street, South, Bridge Place Building, Minneapolis, Minnesota 55401–2195, (612) 370–3000, (FTS) 782–3002

Cincinnati, Ohio Office

Steve Havens, (Acting) Manager, HUD—Cincinnati Office, Federal Office Building, Room 9002, 550 Main Street, Cincinnati, Ohio 45202–3253 (513) 684–2884, (FTS) 684–2884

Cleveland, Ohio Office

George L. Engel, Manager, HUD—Cleveland Office, One Playhouse Square, 1375 Euclid Avenue, Room 420, Cleveland, Ohio 44115–1832, (216) 522–4065, (FTS) 942–4065

Columbus, Ohio Office

Robert W. Dolin, Manager, HUD—Columbus Office, 200 North High Street, Columbus, Ohio 43215–2499, (614) 469–5737, (FTS) 943–7345

Milwaukee, Wisconsin Office

Delbert F. Reynolds, Manager, HUD—Milwaukee Office, Henry S. Reuss Federal Plaza, 310 West Wisconsin Avenue, Suite 1380, Milwaukee, Wisconsin 53203–2289, (414) 291–3214, (FTS) 362–1493

Flint, Michigan Office

Gary T. LeVine, Manager, HUD—Flint Office, Gil Sabuco Building, 352 South Saginaw Street, Room 200, Flint, Michigan 48502–1953, (313) 766–5107, (FTS) 378–5107

Springfield, Illinois Office

John Lawler, (Acting) Supervisory Appraiser, HUD—Springfield Office, 524 S 2nd Street, Suite 672, Springfield, Illinois 62701–1774, (217) 492–4085, (FTS) 955–4085

REGION VI

Jurisdiction: Arkansas, Louisiana, New Mexico, Oklahoma, Texas

Fort Worth, Texas Regional Office

Sam R. Moseley, Regional Administrator-Regional Housing Commissioner, HUD—Fort Worth Regional Office, 1600 Throckmorton, Post Office Box 2905, Fort Worth, Texas 76113–2905 (817) 885–5401 (FTS) 728–5401

Dallas, Texas Office

Clarence D. Babers, Manager, HUD—Dallas Office, 555 Griffin Square Building, 525 Griffin Street, Room 106, Dallas, Texas 75202–5007 (214) 767–8308 (FTS) 729–8308

Albuquerque, New Mexico

Michael R. Griego, Manager, HUD—Albuquerque Office, 625 Truman Street, N.E., Albuquerque, New Mexico 87110–6443 (505) 262–6463 (FTS) 474–6463

Houston, Texas Office

William Robertson, Jr., (Acting) Manager, HUD—Houston Office, National Bank of Texas Building, 2211 Norfolk, Suite 300, Houston, Texas 77098–4096 (713) 229–3589 (FTS) 526–7586

Lubbock, Texas Office

Henry E. Whitney, Manager, HUD—Lubbock Office, Federal Building, 1205 Texas Avenue, Lubbock, Texas 79401–4093 (806) 743–7265 (FTS) 738–7265

San Antonio, Texas Office

Cynthia Leon, Manager, HUD—San Antonio Office, Washington Square Building, 800 Dolorosa Street, San Antonio, Texas 78207–4563 (512) 229–6794 (FTS) 730–6806

Little Rock, Arkansas Office

Roger Zachritz, (Acting) Manager, HUD—Little Rock Office, Lafayette Building, 523 Louisiana, Suite 200, Little Rock, Arkansas 72201–3523 (501) 378–5931 (FTS) 740–5401

New Orleans, Louisiana Office

Joe Brinkley, (Acting) Manager, HUD—New Orleans Office, Fisk Federal Building, 1661 Canal Street, P.O. Box 70288, New Orleans, Louisiana 70172–2887 (504) 589–7200 (FTS) 682–7200

Shreveport, Louisiana Office

David E. Gleason, Manager, HUD—Shreveport Office, New Federal Building, 500 Fannin Street, Shreveport, Louisiana 71101–3077 (318) 226–5385 (FTS) 493–5385

Oklahoma City, Oklahoma Office

Troy Grigsby, (Acting) Manager, HUD—Oklahoma City Office, Murrah Federal Building, 200 N.W. 5th Street, Oklahoma City, Oklahoma 73102–3202 (405) 231–4181 (FTS) 736–4891

Tulsa, Oklahoma Office

Robert H. Gardner, Manager, HUD—Tulsa Office, Robert S. Kerr Building, 440 South Houston Avenue, Room 200, Tulsa, Oklahoma 74127–8923 (918) 581–7435 (FTS) 745–7435

REGION VII

Jurisdiction: Iowa, Kansas, Missouri, Nebraska

Kansas City, Missouri Regional Office

William H. Brown, Regional Administrator-Regional Housing Commissioner, HUD—

Kansas City Regional Office, Gateway Tower II, 400 State Avenue, Kansas City, KS 66101–2406 (913) 236–2162 (FTS) 757–2162

Omaha, Nebraska Office

Roger M. Massey, Manager, HUD—Omaha Office, Braiker/Brandeis Building, 210 South 16th Street, Omaha, Nebraska 68102–1622 (402) 221–3703 (FTS) 864–3703

St. Louis, Missouri Office

Kenneth G. Lange, Manager, HUD—St. Louis Office, 210 North Tucker Boulevard, St. Louis, Missouri 63101–1997 (314) 425–4761 (FTS) 279–4761

Des Moines, Iowa Office

William McNarney, Manager, HUD—Des Moines Office, Federal Building, 210 Walnut Street, Room 259, Des Moines, Iowa 50309–2155 (515) 284–4512 (FTS) 862–4512

REGION VIII

Jurisdiction: Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming

Denver, Colorado Regional Office

Michael Chitwood, Regional Administrator—Regional Housing Commissioner, HUD—Denver Regional Office, Executive Tower Building, 1405 Curtis Street, Denver, Colorado 80202–2349, (303) 844–4513, (FTS) 564–4513.

Salt Lake City, Utah Office

Richard Bell, Manager, HUD—Salt Lake City Office, 324 South State Street, Suite 220, Salt Lake City, Utah 84111–2321, (801) 524–5237, (FTS) 588–5237.

Helena, Montana Office

Christian Kafentzis, Manager, HUD—Helena Office, Federal Building, Drawer 10095, 301 S. Park, Room 340, Helena, Montana 59626–0095, (406) 449–5205, (FTS) 585–5205.

Sioux Falls, South Dakota Office

Don Olson, Chief, HUD—Sioux Falls Office, 300 North Dakota Avenue, Suite 116 Courthouse Plaza, Sioux Falls, South Dakota 57102–0311, (605) 330–4223, (FTS) 782–4223.

Fargo, North Dakota Office

Keith Elliott, Chief, HUD—Fargo Office, Federal Building, Post Office Box 2483, 653 2nd Avenue, North–Room 300, Fargo, North Dakota 58108–2483, (701) 239–5136, (FTS) 783–5136.

Casper, Wyoming Office

Lawrence Gosnell, Chief, HUD—Casper Office, 4225 Federal Office Building, 100 East B Street, Post Office Box 580, Casper, Wyoming 82602–1918, (307) 261- 5252, (FTS) 328–5252.

REGION IX

Jurisdiction: Arizona, California, Hawaii, Nevada, Guam, American Samoa

San Francisco, California Regional Office

Robert De Monte, Regional Administrator—Regional Housing Commissioner, HUD—San Francisco Regional Office, Philip Burton Federal Building & U.S. Courthouse, 450 Golden Gate Avenue, P.O. Box 36003, San Francisco, California 94102–3448, (415) 556–4752, (FTS) 556–4752.

Indian Programs Office

C. Raphael Mecham, Director, HUD—Indian Programs Office, One North First Street, Suite 400, Phoenix, Arizona 85004–2360, (602) 261–4156, (FTS) 261–4156.

Honolulu, Hawaii Office

Gordon Y. Furutani, Manager, HUD—Honolulu Office, 300 Ala Moana Boulevard, Room 3318, Honolulu, Hawaii 96850–4991, (808) 546–2136, (FTS) 808–546–2136.

Los Angeles, California Office

Charles Ming, Manager, HUD—Los Angeles Office, 1615 W. Olympic Boulevard, Los Angeles, California 90015–3801, (213) 251–7122, (FTS) 983–7122.

Sacramento, California Office

Anthony A. Randolph, Manager, HUD—Sacramento Office, 777 12th Street, Suite 200, Post Office Box 1978, Sacramento, California 95814–1977, (916) 551–1351, (FTS) 460–1351.

Reno, Nevada Office

Andrew D. Whitten, Jr., Manager, HUD—Reno Office, 1050 Bible Way, Box 4700, Reno, Nevada 89505–4700, (702) 784–5356, (FTS) 470–5356.

San Diego, California Office

Charles J. Wilson, Manager, HUD—San Diego Office, Federal Office Building, 880 Front Street, Room 563, San Diego, California 92188–0100, (619) 557–5310, (FTS) 895–5310.

Las Vegas, Nevada Office

Andrew Robertson, Manager, HUD—Las Vegas Office, 1500 East Tropicana Avenue, 2nd Floor, Las Vegas, Nevada 89119–6516, (702) 388–6500, (FTS) 598–6500.

Phoenix Office

Dwight A. Peterson, Manager, HUD—Phoenix Office, One North First Street, Suite 300, Post Office Box 13468, Phoenix, Arizona 85002–3468 (602) 261–4434 (FTS) 261–3985

Santa Ana, California Office

Harold A. Matzoll, Acting Manager, HUD—Santa Ana Office, 34 Civic Center Plaza, Box 12850, Santa Ana, California 92712–2850 (714) 836–2451 (FTS) 799–2451

Tucson Office

Jean Staley, Manager, HUD—Tucson Office, 100 North Stone Ave., Suite 410, Post Office Box 2648, Tucson, AZ 86701–1467 (602) 629–6237 (FTS) 762–5220

Fresno, California Office

Lily Lee, Manager, HUD—Fresno Office, 1630 E. Shaw Avenue, Suite 138, Fresno, California 93710–8193 (209) 487–5033 (FTS) 467–5036

REGION X

Jurisdiction: Alaska, Idaho, Oregon, Washington

Seattle, Washington Office

Richard Bauer, Regional Administrator-Regional Housing Commissioner, HUD—Seattle Regional Office, Arcade Plaza Building, 1321 Second Avenue, Seattle, Washington 98101–2058 (206) 442–5414 (FTS) 399–5414

Portland, Oregon Office

Richard C. Brinck, Manager, HUD—Portland Office, Cascade Building, 520 SW Sixth Avenue, Portland, Oregon 97204–1596 (503) 221–2561 (FTS) 423–2561

Boise, Idaho Office

Gary Gillespie, Manager, HUD—Boise Office, Federal Building/USCH, 550 West Fort Street, Box 042, Bosie, Idaho 83724–0420 (208) 334–1990 (FTS) 554–1990

Spokane, Washington Office

Keith R. Green, Manager, HUD—Spokane Office, Farm Credit Bank Building, 8th Floor East, West 601 1st Avenue, Spokane, Washington 99204–0317 (509) 456–2624 (FTS) 439–2624

Anchorage, Alaska Office

Arlene Patton, Acting Manager, HUD—Anchorage Office, 222 W. 8th Avenue, #64, Anchorage, Alaska 99513–7537 (907) 271–4170 (FTS) 907–271–4170

Names and Addresses of Indian Field Office Directors

Jerry Leslie, Director, Seattle Office of Indian Programs, 10PI, 1321 Second Avenue, Seattle, Washington 98101–2054 (206) 442–5298/ FTS 399–5298

Raphael Mecham, Director, Indian Programs Office Two Arizona Center, 400 N. First Street, Suite 1650, Phoenix, Arizona 85004 (602) 379–4156/ FTS 261–4156

John Dibella, Director, Denver Office of Indian Programs, 8P, Executive Tower Building, 1405 Curtis Street, Denver, Colorado 80202–2349 (303) 844–2963/ FTS 564–2963

Hugh Johnson, Director, Oklahoma City Indian Programs Division, 6.7P, Murrah Federal Building, 200 N.W. 5th Street, Oklahoma City, Oklahoma 73102

Leon Jacobs, Director, Chicago Office of Indian Programs, 5P, 626 W. Jackson Boulevard, Chicago, Illinois 60606–5601 (312) 353–1282/ FTS 353–1682

Marlin Knight, Director, Anchorage Indian Housing Division, 10.1PI, 701 C Street, Box 64, Anchorage, Alaska 99513 (907) 272–4170/ FTS 271–4170

[FR Doc. 91–14642 Filed 6–18–91; 8:45 am]

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federal register

Wednesday
June 19, 1991

Part VI

Department of Transportation

Office of the Secretary
Federal Highway Administration

49 CFR Part 24

Uniform Relocation Assistance and Real Property Acquisition Regulations for Federal and Federally Assisted Programs; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 24

[FHWA Docket No. 91-14]

RIN 2125 AC75

Uniform Relocation Assistance and Real Property Acquisition Regulation for Federal and Federally Assisted Programs

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposal would amend 49 CFR 24.103(d), which concerns the qualifications of appraisers who value property for Federal and federally assisted projects. The proposed amendment provides that, if a detailed appraisal is necessary, and the agency employs a contract (fee) appraiser to perform the appraisal, such appraiser must be certified in accordance with title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) Public Law 101-73, 103 Stat. 183, 511 (Aug. 9, 1989). The FIRREA requires the establishment of State programs for the licensing and certification of appraisers. Using such certified appraisers for detailed appraisals of property subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act (Uniform Act), 42 U.S.C. 4601-4655, would strengthen the integrity of the acquisition process. If adopted, this proposal would apply to the real property acquisition activities of 17 Federal agencies as well as the Department of Transportation.

DATES: Comments must be received on or before August 19, 1991.

ADDRESSES: Submit signed, written comments to FHWA Docket No. 91-14, Federal Highway Administration, room 4232, HCC-10, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Gerald B. Saunders, Chief, Operations Division, Office of Right-of-Way, HRW-20, (202) 366-0142; or Reid Alsop, Office of the Chief Counsel, HCC-31, (202) 366-1371. The address is Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

The FIRREA established requirements for the licensing and certification of appraisers for thrift institution appraisal work when there is a Federal financial interest in the transaction. These requirements are implemented through laws enacted by the States. Governmentwide regulations implementing the Uniform Act currently contain appraisal criteria in 49 CFR 24.103.

While the FIRREA applies only to transactions which are associated with thrift institutions, there is a similar Federal concern for the integrity of the appraisal process for Federal or federally assisted projects or programs covered by the Uniform Act. The FIRREA requires establishment of a nationwide State-based system for appraiser licensing and certification. Extending this system to projects or programs under the Uniform Act would ensure consistency in the qualifications of contract (fee) appraisers, and thereby enhance acquisition practices.

To carry out this idea, the Office of Management and Budget (OMB) organized an interagency group and charged it with the responsibility to formulate an implementation proposal for applying the system established by FIRREA to Federal and federally assisted programs or projects. The FHWA was a member of that group, along with representatives of several other Federal agencies which have a significant amount of appraisal work for programs covered by the Uniform Act. The implementation proposal developed by the group is described below:

Implementation Proposal

As lead agency for implementation of the Uniform Act, the FHWA is proposing an amendment to 49 CFR part 24, the governmentwide regulations that implement the Uniform Act, which would apply FIRREA principles to certain transactions covered by the Uniform Act.

Section 24.103(a), Standards of Appraisal, currently provides that detailed appraisals are required only for complex appraisal problems, and the agency itself is the decision-maker regarding if or when a detailed appraisal is required. It further provides that "A detailed appraisal shall reflect nationally recognized appraisal standards * * *" This proposal would add a part of the national system for appraisal licensing and certification established by FIRREA, to the appraisal criteria contained in the governmentwide regulations implementing the Uniform Act.

Section 24.103(d), Qualifications of Appraisers, currently provides that each affected agency shall establish appraiser qualifications that are consistent with the level of difficulty of the appraisal. This proposal would amend § 24.103(d) by adding a new paragraph (d)(2) which would provide that when an agency contracts out the appraisal assignment for preparation of a detailed appraisal, the agency must use the services of an appraiser who is certified in accordance with the FIRREA.

The FIRREA provides for two levels of appraiser qualification. The senior level is "certified," and the second level is "licensed." This distinction is reflected in the proposed amendment.

This proposal would not prevent an agency from going beyond the minimum standards (certified appraisers required only for preparation of detailed appraisals for complex acquisitions) in establishing its licensing and certification requirements. This could be mandated by State law, or it could be a policy decision of the agency. Several States extended the applicability of licensing and certification requirements to virtually all appraisal activities in enacting legislation to implement the FIRREA, and State law would control as to federally assisted acquisitions undertaken in such States.

This proposal does not address the use of licensed appraisers, which would be left to the discretion of the agency or the provisions of State law. However, there is no change to the policy statement in § 24.103(d) that "Appraiser qualifications shall be consistent with the level of difficulty of the appraisal assignments."

This proposal does not include agency staff appraisal personnel in the certification requirement, because:

1. The FIRREA does not mandate such coverage, and we desire to parallel FIRREA to the extent practicable;

2. The majority of State laws and/or regulations implementing FIRREA exclude governmental staff;

3. There are provisions elsewhere in 49 CFR part 24, such as the requirement for an independent review of the appraisal and the requirement to establish minimum qualifications for all appraisers, that serve as safeguards against a substandard appraisal product; and

4. The vast majority of acquisitions subject to the Uniform Act are made by agencies with the power of eminent domain, with its inherent checks and balances, including judicial review.

This proposal is not intended to discourage the use of agency staff appraisal personnel when the use of staff personnel is more cost-effective and productive. Further, it should not be interpreted to discourage staff appraisers from taking steps to become licensed or certified. Rather, staff appraisers should be encouraged to become licensed or certified.

It is noted that The Appraisal Standards Board of the Appraisal Foundation has determined that the appraisal criteria in section 24.103 are consistent with the Uniform Standards of Professional Appraisal Practice developed by the Board pursuant to FIRREA and published in the **Federal Register** (55 FR 53609, Dec. 31, 1990).

Cross References

Part 24 of title 49, CFR, constitutes the governmentwide regulation implementing the Uniform Act. The regulations of seventeen other Federal Departments and agencies contain a cross reference to this part in their regulations, and the change proposed in this notice of proposed rulemaking would be directly applicable to the real property acquisition activities of these departments and agencies. Those departments and agencies, and the parts of the Code of Federal Regulations which contain a cross reference to this part, are listed below:

Department of Agriculture

7 CFR Part 21

Department of Commerce

15 CFR Part 11

Department of Defense

32 CFR Part 2509

Department of Education

34 CFR Part 15

Department of Energy

10 CFR Part 1039

Environmental Protection Agency

40 CFR Part 4

Federal Emergency Management Agency

44 CFR Part 25

General Services Administration

41 CFR Part 105–51

Department of Health and Human Services

45 CFR Part 15

Department of Housing and Urban Development

24 CFR Part 42

Department of the Interior

41 CFR Part 114–50

Department of Justice

41 CFR Part 128–16

Department of Labor

29 CFR Part 12

National Aeronautics and Space Administration

14 CFR Part 1208

Pennsylvania Avenue Development Corporation

36 CFR Part 904

Tennessee Valley Authority

18 CFR Part 1306

Veterans Administration

38 CFR Part 25

Consequently, the proposed change in this NPRM would be directly applicable to the real property acquisition activities of those seventeen departments and agencies. The proposed change would also apply to other agencies within DOT that are covered by the Uniform Act.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The FHWA has analyzed the effect of this action and determined that it is not major within the meaning of Executive Order 12291 or significant within the meaning of Department of Transportation regulatory policies and procedures. The rulemaking would not affect the level of funding available in Federal or federally assisted programs covered by the Uniform Act, or otherwise have a significant economic impact, so that neither a preliminary regulatory impact analysis nor a preliminary regulatory evaluation is required.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires that for each rule with a "significant economic impact upon a substantial number of small entities" an analysis be prepared describing the rule's impact on small entities, and identifying any significant alternatives to the rule that would minimize the economic impacts on small entities. The proposed rule would require that there be consistency in the qualifications of contract appraisers when detailed appraisals are required for Federal and federally assisted projects. Based on information available to FHWA at this time and under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Environmental Impacts

The FHWA has also analyzed this action for the purpose of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and has determined that this action would not have any effect on the human environment.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. The current regulation requires that detailed appraisals must reflect nationally recognized appraisal standards and that agencies must establish appraiser qualifications consistent with the level of difficulty of the appraisal. The FIRREA established a new nationwide State-based system for appraiser qualifications, that is applicable to various federally-related transactions. Applying FIRREA to fee appraisers that undertake detailed appraisals on projects covered by the Uniform Act reflects current regulatory requirements and is not considered to have significant federalism impacts.

Paperwork Reduction Act

This proposed rule is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, since it does not require the collection or retention of any new data.

Regulation Identification Number

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 24

Real property acquisition, Relocation assistance, Reporting and recordkeeping requirements, Transportation.

In accordance with the foregoing, the FHWA proposes to amend Part 24 of Title 49, Code of Federal Regulations, as set forth below.

PART 24—[AMENDED]

1. The authority citation for part 24 is revised to read as follows:

Authority: 42 U.S.C. 4601 *et seq.*; 49 CFR 1.48(cc).

2. Section 24.103(d) is amended by designating the text after the heading "Qualifications of appraisers" as paragraph (d)(1) and by adding paragraph (d)(2) to read as follows:

§ 24.103 Criteria for appraisals.

* * * * *

(d) *Qualifications of appraisers.*

(1) * * *

(2) If the appraisal assignment requires the preparation of a detailed appraisal pursuant to § 24.103(a), and the Agency uses a contract (fee) appraiser to perform the appraisal, such appraiser shall be certified in accordance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (12 U.S.C. 1331 *et seq*).

* * * * *

Issued on: June 11, 1991.

T.D. Larson,

Administrator.

[FR Doc. 91–14501 Filed 6–18–91; 8:45 am]

BILLING CODE 4910–22–M

federal register

Wednesday
June 19, 1991

Part VII

Department of the Interior

Bureau of Indian Affairs

Approved Tribal-State Compact; Indian Gaming; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Approved Tribal-State Compact: Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, Notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority has approved a Tribal-State Compact between the Yankton Sioux Tribe and the State of South Dakota executed on April 29, 1991.

DATES: June 19, 1991.

ADDRESSES: Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, MS/MIB 4603, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Joyce Grisham, Bureau of Indian Affairs, Washington, DC (202) 208–7445.

Dated: June 13, 1991.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 91–14645 Filed 6–18–91; 8:45 am]

BILLING CODE 4310–02–M

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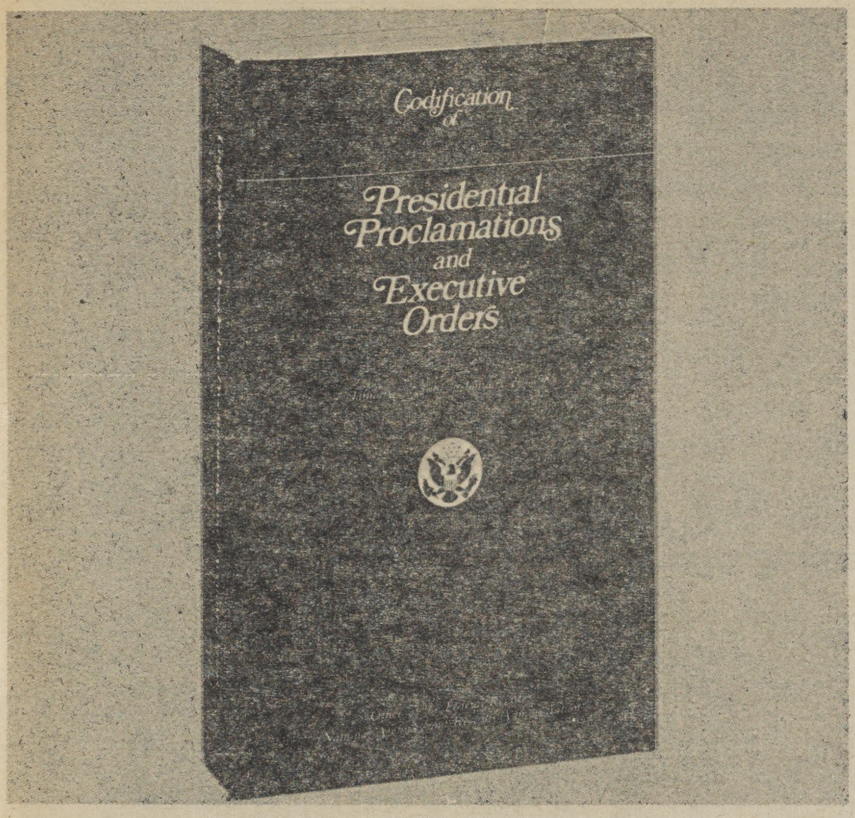
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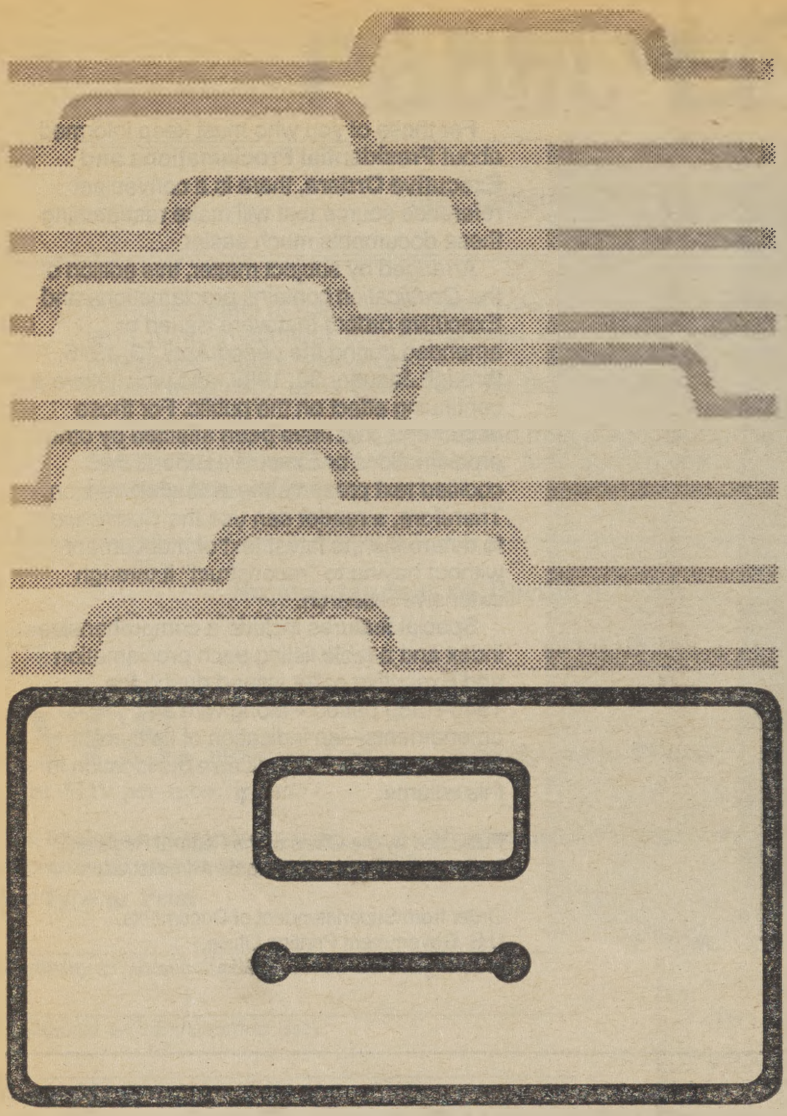
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in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1989
SUPPLEMENT: Revised January 1, 1991

The GUIDE and the SUPPLEMENT should be used together. This useful reference tool, compiled from agency regulations, is designed to assist anyone with Federal recordkeeping obligations.

The various abstracts in the GUIDE tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

The GUIDE is formatted and numbered to parallel the CODE OF FEDERAL REGULATIONS (CFR) for uniformity of citation and easy reference to the source document.

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