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Rules and Regulations

Federal Register

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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

Animal and Plant Health Inspection Service

9 CFR Part 50

[Docket No. 88-170]

Animals Destroyed Because of Tuberculosis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations in 9 CFR part 50 by removing all references to "Deputy Administrator" and replacing them with references to "Administrator." We are also removing certain references to "Veterinary Services" and replacing them with references to "Animal and Plant Health Inspection Service." Additionally, we are removing the definition of veterinarian representative; revising the definitions of accredited veterinarian and veterinarian in charge, and, adding definitions of Administrator, Animal and Plant Health Inspection Service (APHIS), and APHIS representative. These changes are warranted so the regulations will accurately reflect that the Administrator of the agency holds the primary authority and responsibility for various decisions under the regulations.

EFFECTIVE DATE: August 2, 1991.

FOR FURTHER INFORMATION CONTACT: Dr. Mitchell A. Essey, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, room 733, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; 301-436-8715.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 50 (referred to below as the regulations)

concern the destruction of animals because of tuberculosis and the compensation of their owners. Prior to the effective date of this document, these regulations indicated that the Deputy Administrator of the Animal and Plant Health Inspection Service (APHIS) for Veterinary Services was the official responsible for various decisions under these regulations. We are revising 9 CFR part 50 to indicate that the primary authority and responsibility for various decisions under these regulations belongs to the Administrator of the agency. We are making similar revisions in all other APHIS regulations. These revisions will be published in separate Federal Register documents.

We are removing all references to "Deputy Administrator" and replacing them with references to "Administrator," and are removing all references to "Veterinary Services" and replacing them with references to "Animal and Plant Health Inspection Service." With these changes, the terms "Deputy Administrator" and "Veterinary Services representative" no longer appear in the regulations, and the term, "Veterinary Services" no longer appears in the regulations, except in a mailing address. Therefore, we are deleting the definitions of those terms. We are also adding definitions of "Administrator," "Animal and Plant Health Inspection Service," and "APHIS representative." In addition we are revising the definition of "Accredited veterinarian" to make it consistent with the definition in other parts of 9 CFR, and are making nonsubstantive wording changes for clarity.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity to comment are not required, and this rule may be made effective less than 30 days after publication in the Federal Register. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by Public Law 96-354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork

Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

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

List of Subjects in 9 CFR Part 50

Animal diseases, Bison, Cattle, Hogs, Indemnity payments, Reporting and recordkeeping requirements, Tuberculosis.

Accordingly, we are amending 9 CFR part 50 as follows:

PART 50—ANIMALS DESTROYED BECAUSE OF TUBERCULOSIS

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

Authority: 21 U.S.C. 111-113, 114, 114a, 114a-1, 120, 121, 125, 134b; 7 CFR 2.17, 2.51, and 371.2(d).

§ 50.1 [Amended]

2. In § 50.1 the definitions of "Deputy Administrator," "Veterinary Services," and "Veterinary Services representative" are removed, the definitions of "Accredited veterinarian" and "Veterinarian in Charge" are revised, and definitions of "Administrator," "Animal and Plant Health Inspection Service," and "APHIS representative" are added, in alphabetical order, to read as follows:

§ 50.1 Definitions.

* * * * *

Accredited veterinarian: A veterinarian approved by the Administrator in accordance with the provisions of part 161 of this title to perform functions specified in parts 1, 2, 3, and 11 of subchapter A, and subchapters B, C, and D of this chapter, and to perform functions required by cooperative State-Federal disease control and eradication programs.

Administrator: The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

Animal and Plant Health Inspection Service: The Animal and Plant Health

Inspection Service of the United States Department of Agriculture (APHIS).

APHIS representative: A veterinarian or other person employed by APHIS in animal health activities, who is authorized to perform the function involved.

Veterinarian in Charge: The veterinary official of APHIS who is assigned by the Administrator to supervise and perform official animal health work of APHIS in the State concerned.

§ 50.2 [Amended]

3. In § 50.2, remove the words "has been delegated the authority to cooperate" and add, in their place, the word "cooperates", and remove the words "to pay" and add, in their place, the word "pays".

§ 50.9 [Amended]

4. In § 50.9, second sentence, remove the words "at Veterinary Services expense" and add, in their place, the words "at the expense of APHIS".

§§ 50.2, 50.3, 50.4, 50.6, 50.7, 50.9, 50.14, and 50.16 [Amended]

5. In addition to the amendments set forth above, in 9 CFR Part 50 remove the word "Deputy" in the following places:

- (a) Section 50.2;
- (b) Section 50.3(b), both places it appears; (c), both places it appears; and (d);
- (c) Section 50.4(a);
- (d) Section 50.6, introductory text;
- (e) Section 50.7(b);
- (f) Section 50.9;
- (g) Section 50.14(d); and
- (h) Section 50.16(a) and (a)(2).

§§ 50.5, 50.6, 50.7, 50.8, 50.11, and 50.16 [Amended]

6. In addition to the amendments set forth above, in 9 CFR Part 50 remove the words "a Veterinary Services" and add, in their place, the words "an APHIS" in the following places:

- (a) Section 50.5;
- (b) Section 50.6(b).
- (c) Section 50.6(c), both places they appear;
- (d) Section 50.7(a);
- (e) Section 50.8;
- (f) Section 50.11; and
- (g) Section 50.16(a)(2) and (a)(4).

§§ 50.3, 50.5, 50.6, 50.8, 50.9, 50.10, 50.11, 50.12, 50.14, and 50.16 [Amended]

7. In addition to the amendments set forth above, in 9 CFR Part 50 remove the words "Veterinary Services" and add, in their place, the word "APHIS" in the following places:

- (a) Section 50.3 (c) and (d);
- (b) Section 50.5;
- (c) Section 50.6(c);
- (d) Section 50.8;
- (e) Section 50.9;
- (f) Section 50.10, first and fourth sentences;
- (g) Section 50.11;
- (h) Section 50.12, first, second, third, fourth, fifth, and sixth sentences;
- (i) Section 50.14(b), and
- (j) Section 50.16(a), (a)(3), and (a)(4).

§ 50.16 [Amended]

8. In § 50.16, footnote 1 of paragraph (a)(3) is revised to read as follows:

¹ Compliance Agreement forms are available without charge from the Administrator, c/o Veterinary Services, APHIS, USDA, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, and from local offices of Veterinary Services. (Local offices are listed in telephone directories.)

Done in Washington, DC, this 29 day of July 1991.

Robert Melland,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-18366 Filed 8-1-91; 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

Policy and Procedure for Enforcement Actions; Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy Statement: Modification.

SUMMARY: The NRC is publishing a modification to its Enforcement Policy to add an additional example to the Reactor Operations Supplement involving maintenance related violations and to delete the civil penalty adjustment factor for violations involving maintenance deficiencies. This policy is codified as appendix C to 10 CFR part 2.

DATES: Since this action concerns a general statement of policy, no prior notice is required and, hence, this modification of the Enforcement Policy is effective August 2, 1991. Comments submitted by September 3, 1991 will be considered.

ADDRESSES: Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Docketing and Service Branch. Deliver comments to One White Flint

North, 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm, weekdays. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Lower Level, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492-0741.

SUPPLEMENTARY INFORMATION: On March 23, 1988, the Commission issued a Policy Statement on Maintenance of Nuclear Power Plants (53 FR 9430) which stated the Commission's expectations in the area of maintenance and the intention to proceed with a rulemaking on maintenance. Subsequently, on November 28, 1988, the Commission published a Notice of Proposed Rulemaking (53 FR 47822) directed toward improving the effectiveness of maintenance programs. Based on additional information received after publication of the Policy Statement and the Notice of Proposed Rulemaking, the Commission decided to hold rulemaking in abeyance for a period of 18 months from the effective date of the Revised Policy Statement on Maintenance of Nuclear Power Plants which was published December 8, 1989 (54 FR 50611).

In the Revised Policy Statement on the Maintenance of Nuclear Power Plants, the Commission stated its intent in enforcing requirements for power reactors to emphasize maintenance. Consistent with that position, the Enforcement Policy was revised to provide such emphasis by adding maintenance failures as an escalating factor in assessing civil penalties where it has been concluded that the violation involves a significant regulatory concern. 54 FR 50611 (December 8, 1989).

The Commission promulgated the final maintenance rule, Monitoring the Effectiveness of Maintenance at Nuclear Power Plants on July 10, 1991 (56 FR 31306) and is now deleting the maintenance escalation factor and replacing it with a specific example of a Severity Level III violation involving maintenance activities in Supplement I of the Enforcement Policy. This change will continue to emphasize the Commission's intent to enforce existing requirements while at the same time normalize treatment of maintenance in the enforcement process. Previously, maintenance as a root cause was the only functional area with a separate escalation factor. The Commission has concluded that placing an example

concerning maintenance in Supplement I fits more appropriately in the overall structure of the Enforcement Policy and will provide the appropriate flexibility to deal with the various maintenance issues. Significant deficiencies in the performance of maintenance activities that impact plant equipment where a violation is involved may be considered a significant regulatory concern. The added example provides notice consistent with the final rule that appropriate maintenance is expected to be conducted for both safety-related and applicable balance of plant systems.

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Civil penalty, Enforcement, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Violations, and Waste treatment and disposal.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for part 2 continues to read in part as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

2. Appendix C section V.B is amended by removing subsection section V.B.7.

Appendix C supplement I is amended by adding example C.9 after example C.8.

Appendix C—General Statement of Policy and Procedure for NRC Enforcement Actions

Supplement I—Severity Categories

Reactor Operations

C. Severity Level III—Violations involving for example:

9. Equipment failures caused by inadequate or improper maintenance that substantially complicates recovery from a plant transient.

Dated at Rockville, Maryland this 29th day of July 1991.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 91-18369 Filed 8-1-91; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 211, 231 and 241

[Release Nos. FR-37; 33-6906; 34-29495; File No. S7-5-91]

The Acceptability in Financial Statements of an Accounting Standard Permitting the Return of a Nonaccrual Loan to Accrual Status After a Partial Charge-Off

AGENCY: Securities and Exchange Commission.

ACTION: Interpretation.

SUMMARY: The Securities and Exchange Commission (the "SEC" or "Commission") today announced the publication of an interpretive release setting forth the Commission's view that an accounting standard proposed by the Federal Financial Institutions Examination Council (the "FFIEC" or "Council") for use in bank and thrift regulatory reports would not be acceptable in filings with the Commission. The proposed standard, if adopted, would establish criteria under which a depository institution may selectively return certain nonaccrual loans to accrual status even though full recovery of its contractual principal may not be expected. The Commission's staff has been informed, however, that the FFIEC intends to withdraw the proposal.

EFFECTIVE DATE: July 29, 1991.

FOR FURTHER INFORMATION CONTACT: Robert A. Bayless, Office of the Chief Accountant, Division of Corporation Finance at (202) 272-2553; Douglas N. Barton or Michael D. Foley, Office of the Chief Accountant at (202) 272-2130; Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Background

On March 14, 1991, the FFIEC issued a request for public comment (the "FFIEC release") on a proposed accounting rule for use in regulatory reporting to banking and thrift regulators.¹ The proposal was in response to requests for clarification of these regulator's guidelines regarding nonaccrual status of loans. The FFIEC release notes that some had questioned whether the book balance remaining after any partial loan charge-off should be returned to accrual status.² Accordingly, the FFIEC

published for public comment a proposed standard that would permit a nonaccrual loan meeting certain criteria to be returned to accrual status if its recorded amount is reduced by a charge-off to an amount which the lender expects to fully collect based on prudent underwriting standards, including interest at a market rate and a prudent loan-to-value ratio. According to the initial FFIEC release, loans intended to qualify for this accounting method are primarily those which are collateral-dependent, although other loans where the primary source of repayment is a dedicated and readily determinable stream of cash flows may also be eligible. As proposed by the FFIEC, banks and thrifts could elect to use this accounting method, but would not be required to do so. The comment period expired May 2, 1991, and final action on the FFIEC proposal is pending. The Commission's staff has been informed, however, that the FFIEC intends to withdraw the proposal.

On March 13, 1991, the Commission issued a request for public comment concerning whether financial statements of depository institutions applying the accounting method proposed by the FFIEC would be acceptable in filings with the Commission.³ In that release, the Commission noted that conformance of the proposed method with Generally Accepted Accounting Principles (GAAP) was not clear under existing authoritative literature, and that application of the method selectively to some but not all loans meeting the qualifying criteria may depart from acceptable accounting practice.⁴ The Commission received thirty-two letters of comment in response to its request. Commentators included the staff of the Financial Accounting Standards Board (FASB), sixteen financial institutions, five public accounting firms, the American Institute of Certified Public Accountants, the General Accounting Office and various industry, professional and government regulatory organizations.

II. Discussion of Comments

A majority of respondents, including the FASB staff, commented that the proposed method does not conform with

³ Securities Act Release No. 8886 (March 13, 1991) (56 FR 11465).

⁴ Because of the Commission's conclusion concerning the proposal, this release does not discuss certain issues contained in the March 13, 1991 SEC release, such as the appropriate scope of the FFIEC proposal, disclosure requirements, and the preferability of the proposed method. The responses of commentators to these issues, however, are available in File No. S7-5-91 in the Commission's Public Reference Room.

¹ FFIEC, Reporting Standard Concerning the Return of a Loan With a Partial Charge-Off to Accrual Status: Notice of Request for Comment (March 18, 1991) (56 FR 11441).

² *Id.*, 56 FR at 11442.

existing GAAP in various respects, although different respondents objected to different aspects of the proposed method. The most frequent objection cited by commentators, including the FASB staff, relates to the requirement that the partial write-down be recorded based on prudent underwriting standards. Commentators believe that this results in recording a loss exceeding that permitted by FASB Statement No. 5.⁵

Additionally, several commentators objected to the proposed use of a market discount rate to measure the partial charge-off as not being consistent with existing literature or practice. Others observed, however, that while not required by existing GAAP, the use of a market discount rate in the measurement of loan impairment may not be precluded.⁶

As proposed by the FFIEC, institutions adopting the proposed method could choose to apply it only to selected loans meeting the criteria specified in the rule, while continuing to use their customary practices for other similar loans. Most commentators who addressed this issue commented that existing GAAP does not permit a reporting entity to apply different accounting methods to similar transactions. The FASB staff indicated this to be their primary area of concern, stating that providing institutions the option to account for similar loans differently would compromise the comparability of financial information and make it more difficult for users to make meaningful comparisons of financial statements.

A significant number of commentators indicated that the proposal would have limited applicability because of existing authoritative literature on in-substance foreclosures.⁷ That is, many loans meeting the qualifying criteria proposed by the FFIEC may already have been (or may need to be) accounted for as insubstance foreclosed assets because the expectation that future probable cash flows will be less than the contractual obligation may lead to a conclusion that it is unlikely that the

borrower can rebuild equity in the collateral. Hence, the overlap between FFIEC's proposal and existing in-substance foreclosure literature may significantly reduce the population of loans available for the accounting method proposed by FFIEC.

III. Conclusion

In its March 13, 1991 request for comment, the Commission expressed concern about the proposed method's conformance with GAAP, as well as its selective application and other issues. After giving full consideration to the comment letters, the Commission agrees with the views expressed by many of the commentators that the return of a nonaccrual loan to accrual status as proposed in the initial FFIEC release would (i) not be in conformance with GAAP, (ii) raise substantial consistency and comparability issues, and (iii) be of marginal utility due to existing literature regarding in-substance foreclosure accounting. Further, as stated above, the Commission's staff has been informed that the FFIEC intends to withdraw the proposal made in its initial release. Accordingly, the Commission has concluded that the proposed accounting method is not acceptable in filings with the Commission.

List of Subjects in 17 CFR Parts 211, 231 and 241

Accounting, Reporting and recordkeeping requirements, Securities.

PART 211—INTERPRETATIONS RELATING TO FINANCIAL REPORTING MATTERS

PART 231—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES ACT OF 1933 AND GENERAL RULES AND REGULATIONS THEREUNDER

PART 241—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

Parts 211, 231 and 241 of title 17, chapter II of the Code of Federal Regulations are amended by adding each of the following Release Nos. and the release date of July 29, 1991, to the list of interpretive releases in each part: FR-37, 33-6906 34-29495.

Dated: July 29, 1991.

By the Commission.

Jonathan G. Katz,
Secretary.

[FR Doc. 91-18331 Filed 8-1-91; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 635

[FHWA Docket No. 90-4]

RIN 2125-AA18

Contract Procedures

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This final rule prescribes policies, requirements, and procedures relating to Federal-aid highway projects from the time of authorization to proceed to the construction stage, to the time of final acceptance by the FHWA. The regulations are being revised to accommodate several policy changes and to clarify and simplify the regulatory requirements pertaining to the contracting for Federal-aid highway construction.

EFFECTIVE DATE: September 3, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. William A. Weseman, Chief, Construction and Maintenance Division, Office of Engineering, 202-366-0392, or Ms. Michelle Morey, Office of Chief Counsel, 202-366-1374, Federal Highway Administration, 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: The existing regulation on contract procedures is being revised to accommodate several policy changes and clarifications issued by Washington Headquarters to the field during the past several years. Also incorporated are several suggested changes from previous Office of the Inspector General (OIG) reviews. The revisions include but are not limited to the following: (a) When a State highway agency (SHA) employs a consultant to provide construction engineering services, a full time employed State engineer no longer needs to be in direct control of the project at all times; (b) highway relocation provisions are no longer included in this subpart as they are addressed in subpart C; (c) additional guidance is provided on analysis of bids; and (d) only contracts terminated for default are subject to a limitation of Federal participation. In addition, the order of presentation of several of the sections has been rearranged to more closely correspond with the orderly process of a Federal-aid project.

An NPRM was published in the Federal Register on June 4, 1990, at 55 FR

⁵ FASB Statement of Financial Accounting Standards No. 5, Accounting for Contingencies (March 1975), as amended, requires accrual for estimated losses that are "likely to occur" and precludes accrual for losses that are less than likely.

⁶ The FASB currently has a project to consider whether and, if so, in what circumstances creditors should measure impairment of loans with collectibility concerns based on the present value of expected future cash flows related to the loan.

⁷ See Financial Reporting Release No. 28, Accounting for Loan Losses by Registrants Engaged in Lending Activities, December 1, 1986, and AICPA Practice Bulletin No. 7, Criteria for Determining Whether Collateral for a Loan Has Been In-Substance Foreclosed, April 1990.

22812, in which the FHWA requested comments on the proposed regulations.

Discussion of Comments

General

The comment period to the docket for the NPRM closed on August 3, 1990. The docket received 11 responses from SHA's and 4 from other agencies. In addition to the discussion included below, minor editorial changes and other minor changes to improve clarity have been made. A section-by-section discussion of the comments received and how they were addressed follows:

Section 635.102 Definitions.

Several comments were received by the docket concerning this section. In addressing these comments some minor editorial changes were made as well as definitions added for "force account," "secondary road plan" and "formal approval."

A comment from a SHA recommended that the definition of "specialty items" be modified by inserting the phrase "work items identified in the contract which are not normally associated with highway construction." This change has been made to clarify the definition.

A comment from a trade association indicated concern with the proposed definition for unbalanced bids. It noted that unbalancing a bid means different things to different people and that by attempting to define "mathematically" and "materially" unbalanced bids, too much discretion would be introduced into the bidding process. It is FHWA's position that unbalanced bids had been addressed previously in the regulations but needed further clarification; thus changes were made to include the definitions of "mathematically" and "materially" unbalanced bids. These definitions are based on previous Comptroller General rulings. The FHWA believes that these definitions should be defined in the Code of Federal Regulations. This action does not change the operating procedures of contracting agencies in the application of Federal-aid funds.

Section 635.105 Supervising Agency

The NPRM proposed that when a SHA employs a consultant to provide construction engineering services, rather than having a full-time State employed engineer "in responsible charge and direct control of the project at all times," as had been required, the full-time State employed engineer need only be "in responsible charge of the project." Three SHA's and one trade association commented on this item. In response to

these comments, an editorial change was made to clarify that the full-time, State-employed engineer is to be a full-time State employee (not part-time) who is at the jobsite for the time needed to insure that the project receives adequate supervision and inspection to insure that work is accomplished in conformance with approved plans and specifications.

Section 635.106 Use of Publicly Owned Equipment

One comment was received from a SHA expressing disagreement with the concept that contractors can use publicly owned equipment. This comment was considered; however, realizing that it must be shown to be cost effective before publicly owned equipment can be used, no change was made to this section.

Section 635.108 Health and Safety

One comment was received from a trade association indicating its support of the requirement that "the contractor shall provide all safeguards, safety devices, and protective equipment and shall take any such actions reasonably necessary to protect the life and health of persons working at the site of the project and the safety of the public and to protect property in connection with the performance of the work covered by the contract." It recommended that the regulation be revised to stipulate that States may use unit pricing for safety equipment. In response, the FHWA believes that it is unnecessary to address payment methods for safety items. The manner in which this protection is paid for is best left to the SHA's to decide.

Section 635.109 Standardized Changed Condition Clauses

Comments on this section were received from a trade association and from a SHA. The trade association indicated that the term "excluding loss of anticipated profits" was unclear in that it appeared to be a double negative and could mean that anticipated profit would be included under a change in a contract. The trade association believes that anticipated profit should be reimbursable. It is the FHWA's position that Federal-aid funds may not be applied to anticipated profit. To improve clarity, the phrase "loss of anticipated profit" has been changed to "anticipated profit."

The trade association also indicated concern with respect to paragraph (a)(1)(iv). The proposed regulation provides that "no contract adjustment will be allowed under this clause for any effects caused on unchanged work." It was the commenter's position that it

would be better if the adjustment would compensate the contractor for all cost increases caused by the changed condition, including the effects caused on unchanged work (i.e., impact costs). It was also recommended with respect to paragraph (a)(3)(B), that it should be stipulated that: (1) If there is an increase in the amount of quantities of up to 125 percent, the contractor should get paid whether or not a change order has been issued and (2) that the 125 percent be changed to 115 percent. The SHA indicated opposition to the required Standardized Contract clauses because "it breaches the autonomy of a State's contract procedures."

Regarding impact costs, as discussed in the preamble of the final rule implementing this regulation (54 FR 4269, January 30, 1989 Docket No. 87-15), it remains the FHWA's position with respect to paragraph (a)(1), that impact costs may be provided for at the option of the SHA. Concerning the comment on the 125 percent threshold, the threshold of 125 percent has not been changed. The 125 percent was contained in the previous regulation. It is felt to be reasonable and fair and has been used in the 1988 AASHTO Guide Specification for Highway Construction (§ 14.02(c)).

Section 635.110 Licensing and Qualification of Contractors

One comment was received from a trade association indicating that it felt the language was too broadly written and should not include the addition of "bonding and insurance." It believes that States should have the right to consider and require bonding and insurance as a prudent course to insure that the public interest is being well served in today's competitive construction market.

Bonding and insurance have been specifically listed to emphasize that no preaward criteria should operate to restrict competition or to prevent submission or consideration of a bid. The FHWA agrees with the trade association that States have the right to consider and require bonding and insurance if they believe that the public interest is well served by such action; however, bonding and insurance criteria which may restrict competition shall not be permitted.

Section 635.111 Tied Bids

Because of general dissatisfaction with the proposed term "linked," the existing term "tied" has been retained. Three comments were received on this section from SHA's. Clarification was requested concerning who may make

the decision regarding the tying of bids. To clarify this section, FHWA has revised the first sentence of paragraph (a) to clearly indicate that Federal-aid projects or Federal-aid projects and State-financed projects may be tied together by the SHA or the SHA may permit the bidders to submit tied bids when the State has determined that by so doing more favorable bids may be received.

In addition, it was recommended that the wording "lowest overall responsive and responsible bidders' bid" be included as States may have reason to reject the lowest overall bid in order to comply with requirements for responsiveness and responsibility. In response, the FHWA has revised the last sentence of § 635.111 (b) to include the word "responsive" in describing the low bid proposal on which Federal participation shall be based. Also, a sentence has been added to clarify the action to be taken if an unsupported shift of cost liability to the Federal-aid work occurs.

Section 635.112 Advertising for Bids

No comments were received concerning this section; however, FHWA has amended this section in order to improve clarity by changing reference to "advertised specifications and subsequent contracts" and "bid proposal package" to "bidding documents".

Section 635.113 Bid Opening and Bid Tabulation

In the Notice of Proposed Rulemaking (NPRM), the FHWA proposed to require States to submit an engineer's estimate with the bid tabulation. The FHWA has now decided to not make this change because all States are currently voluntarily submitting the engineer's estimate with the bid tabulation without such a requirement.

In response to the proposed requirement, one SHA indicated that by State statute they are exempt from releasing the engineer's estimate under the State's freedom of information regulations. They routinely provide the engineer's estimate to the FHWA Division Administrator; however, they request that FHWA take whatever action is necessary to ensure the security of this information. The FHWA maintains that engineer's estimates are exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552, provided the State considers the engineer's estimate confidential and the estimate has not been released to the public.

In support of the proposed rule, another SHA indicated that they do not

object to including an engineer's estimate with the tabulation of bids nor do they object to not allowing negotiation after bidding and prior to award.

Another SHA commented that negotiations with contractors be permitted when there are errors in the bid so long as the negotiations do not change the total bid amount or when only one bid is received. It has a State law which allows negotiation with a bidder on a one-bid project when the bid amount exceeds the engineer's estimate. It has been and continues to be the FHWA's policy that, based on 23 U.S.C. 112, negotiations prior to award of a contract is inconsistent with the competitive bidding principle.

Section 635.114 Award of Contract and Concurrence in Award

Four comments were received on this proposed section from two SHA's, one trade association and one public transportation agency. One comment recommended that award procedures for FHWA funded projects should be as consistent as possible with those of UMTA funded projects. The FHWA requires that it concur prior to award of contracts while UMTA allows certified grantees to make such awards up to \$1 million without prior concurrence. The FHWA's procedures for award are consistent with the provisions of title 23, U.S.C., and to make the change proposed would violate current statutes.

One SHA commented that FHWA concurrence should not be required for a State to reject all bids. To permit a SHA to reject all bids without FHWA concurrence would not be consistent with the agency's contract letting policy. This policy, based on the requirement of title 23, U.S.C., assures that Federal-aid contracts are awarded to responsible bidders submitting the lowest responsive bids. The suggested change was not made.

Another SHA commented that it should be acceptable to make minor corrections to a bid after receipt of bids, without jeopardizing the integrity of the bidding process. The FHWA agrees that there may be some minor bidding requirements which could be corrected after receipt of bids, without jeopardizing the integrity of the bidding process. This section addresses the requirement that the SHA must identify in the bidding documents those items which must be complied with to make a bid responsive. Therefore, no changes have been made to this section.

One comment recommended that in paragraph (d), the language "if the SHA's specifications permit" should be deleted, ending the sentence after the

word "awarded." The FHWA agreed with this comment and has made the recommended change.

In addition, FHWA has amended this section to improve clarity, by moving paragraph (g) to § 635.112 (h), in that this paragraph is more applicable at the time of advertising for bids.

Section 635.116 Subcontracting

One comment was received from a SHA indicating that the requirements of paragraph (c) were misplaced and recommended that they be included in a separate section. The requirements of paragraph (c) are related to subcontracting; however, a change in the section title to "Subcontracting and contractor responsibilities" has been made in that it better indicates what is included in this section.

Section 635.117 Labor and Employment

For clarification, a cross reference to the applicable Affirmative Action regulations (23 CFR part 230, 41 CFR part 60 and Exec. Order No. 11246 (Sept. 24, 1965), 3 CFR 339 (1964-1965), as amended) has been added.

Section 635.120 Changes and Extra Work

Four comments were received, three from SHA's and one from a trade association. One SHA commenter indicated that there were circumstances which may dictate an exception to approval of changes in contract time at the same time as approval of the extra work. In addition, it believes that this is not a regulatory issue, but rather a matter of construction policy, and that the regulations should remain unchanged in this area.

The FHWA believes that it is sound construction practice to submit changes in contract time at the same time as the respective work change; however, it does recognize that exceptions do occur. For some change orders, the interrelationship between work items is such that it is difficult to realistically indicate the actual change in the time to complete the project concurrent with the work order approval. The FHWA agrees with these comments and has changed the wording from requiring these time changes at the same time as the work change to that of indicating that time changes "should" be submitted at the same time. However, the times when concurrent approval cannot take place should be for only unusual circumstances.

One SHA indicated concern about paragraph (e) in the NPRM which required States to perform and

document an independent cost analysis of each negotiated extra work order. It felt that making such an independent cost analysis would be a repetitive effort. Another SHA indicated that the term "independent" needed clarification. The word "independent" as included in the NPRM has been deleted. The paragraph now indicates that a cost analysis is needed for each negotiated contract change or negotiated extra work order, i.e., documentation is needed to cover the basis of the change, any special conditions and the basis of payment including supporting documentation as applicable.

Another commenter took exception to the proposed NPRM requirement that for contract changes and extra work orders the reason or reasons for the use of "force account" would be subject to the approval of FHWA. The commenter felt this change in procedure could cause very expensive delays for only a minimal benefit. In response to this comment, paragraph (d) has been revised to clarify that the reason or reasons for using force account procedures shall be documented. Such documentation should be available for review by the FHWA at the time of change order or extra work approval.

The trade association indicated that it fully supports the new paragraph (d) under this section which states that "force account procedures shall only be used when strictly necessary." The FHWA believes this change will reduce the amount of force account work by encouraging the SHA's to negotiate prices with the contractors.

Section 635.121 Contract Time and Contract Time Extensions

Two comments were received from SHA's. One SHA indicated no objections to the proposed revision requiring written procedures for determination of contract time.

The other SHA opposed the provision requiring SHA's to have "adequate written procedures" for determining contract time. It also expressed concern about the application of such procedures on a uniform statewide basis. In addition, the SHA recommended that implementation of this requirement be modified to accommodate ongoing studies because this SHA is currently engaged in a major research project to study a rational process for determining work days by project type and other parameters.

The FHWA believes that SHA's need to have adequate "written procedures" as a basis of good contracting practice and to ensure that the public interest is protected. In addressing the application of such procedures on a uniform

statewide basis, FHWA agrees that conditions throughout a State may vary; therefore, the requirement for having "written procedures for the determination of contract time on a uniform statewide basis" has been revised to read "written procedures for the determination of contract time." In this manner differences throughout the State can be accounted for in the State's procedure. Further, the FHWA agrees that the requirement should be modified to accommodate ongoing studies. Therefore, the FHWA has provided the SHA's with a 6-month period after the final rule is effective to phase in this requirement. This phase in period will also permit the SHA's to adequately document their time determination procedures.

Section 635.122 Participation in Progress Payments

Two comments were received from SHA's. Both recommended that paragraph (a)(3) be revised to indicate that the contractor should furnish an invoice or delivery receipt only if requested by the SHA. No change has been made. The FHWA believes that it is a prudent contract administration practice to receive an invoice or delivery receipt when paying for stockpiled materials.

Section 635.124 Participation in Contract Claim Awards and Settlements

One comment was received from a trade association. It recommended that the FHWA not foreclose the possibility of participation in a contract claim award where State law contemplates award of, among other things, anticipated profit.

The FHWA reviews each claim on a case-by-case basis; however, it is FHWA's policy to not participate in anticipated profit. In addition, unlike major changes in work, which require prior approval, the extent of Federal participation in a claim will normally be determined after the work has been completed and a thorough review of the pertinent factors and all supporting documentation has taken place.

In section (d), the current language states, "In those cases where the SHA receives an adverse decision in an amount more than can be justified by the SHA, the FHWA will participate up to the appropriate matching share * * *". Because at times it is more prudent for a SHA to settle a claim than to litigate it, language has been added to this section to address FHWA participation in claim settlements, where the amount involved is more than the SHA can support.

In Paragraph (e), the current language of "acts not consistent within the standards of the profession" is difficult for FHWA to administer because no written or easily ascertainable "standards of the profession" exist that can be applied nationwide. To provide the FHWA with a means of ascertaining acceptable standards of practice for a particular State, as determined on a case-by-case basis, the current language has been changed to "acts not consistent with usual State practices."

Some minor changes have been made to this section to improve clarity and to strengthen the State/FHWA partnership philosophy of the Federal-aid highway program.

Section 635.125 Termination of Contract

No comments were received concerning this section; however, FHWA has amended this section to clarify existing FHWA policy and procedure relative to the termination of construction contracts. The amendment emphasizes the need for states to obtain the prior concurrence of the Division Administrator in the terms of a termination to assure Federal participation in costs involved. Concurrence must be based on the practical and economical completion factors involved in each particular situation. As indicated in existing § 635.125(e), the FHWA objective of limiting total costs in contract termination to the amount which was authorized under the initial approval of plans, specifications and estimates (and normal amendments for change orders) unless unusual justification for increased amounts can be made. The increased amounts should not include costs incurred as a result of gross errors or neglect in contract administration by the State.

Section 635.126 Record of Materials, Supplies, and Labor

Two comments were received from SHA's. One questioned the accuracy of data supplied by the contractors without a viable means for the State to verify the accuracy of such data. The other requested that paragraphs (b)(2) and (b)(3) be rewritten to clarify that only the information to be shown on Form FHWA-47, and not the data which supports that information, be submitted to the SHA.

In response, a requirement has been added that the SHA review the Form FHWA-47 for reasonableness. It is expected that a State employee sufficiently familiar with the project will perform this review. It is not intended

that an audit of contractor records be undertaken. In addition, editorial changes have been made to clarify that only the completed Form FHWA-47 be submitted to the SHA and to clarify when the requirements of this section are applicable.

Rulemaking Analysis and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

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 Department of Transportation. It is anticipated that the regulatory impact of this rulemaking, if any, will be minimal since the amendments revise existing FHWA regulations on contract procedures and delineate acceptable procedures that are consistent with Federal statutes, and 49 CFR part 18.

The revised regulations would impose mandatory standards on State and local governments that we believe are necessary to meet requirements in Federal statutes and provide general procedural direction and recommended criteria. In its entirety, however, the regulation is less prescriptive and allows greater flexibility in administering Federal-aid projects under the authority of title 23, United States Code. 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 rule on small entities. It is anticipated that this rule will have a minimal economic impact. Hence, the FHWA certifies that this rule would 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. It has been determined that this document has federalism implications. However, we believe that the Federalism implications are mitigated by the need to meet requirements mandated by statute, and the agency has allowed the maximum administrative discretion to meet the intent of the statute. Therefore, a federalism assessment has not been prepared.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. 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 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulatory Identification Number

A regulatory 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 23 CFR Part 635

Government contracts, Grant programs—transportation, Highways and roads.

In consideration of the foregoing, the FHWA hereby amends part 635, subpart A of chapter I of title 23, Code of Federal Regulations, as set forth below.

Issued on: July 26, 1991.

T.D. Larson,
Administrator.

PART 635—CONSTRUCTION AND MAINTENANCE

1. The authority citation for part 635 continues to read as follows:

Authority: 23 U.S.C. 112, 113, 114, 117, 128, and 315; 31 U.S.C. 6506; 42 U.S.C. 3334, 4601, *et seq.*; 49 CFR 1.48(b).

2. Subpart A (consisting of §§ 635.101–635.126) of part 635 is revised to read as follows:

Subpart A—Contract Procedures

Sec.

- 635.101 Purpose.
- 635.102 Definitions.
- 635.103 Applicability.
- 635.104 Method of construction.
- 635.105 Supervising agency.

Sec.

- 635.106 Use of publicly owned equipment.
- 635.107 Small and disadvantaged business participation.
- 635.108 Health and safety.
- 635.109 Standardized changed condition clauses.
- 635.110 Licensing and qualification of contractors.
- 635.111 Tied bids.
- 635.112 Advertising for bids.
- 635.113 Bid opening and bid tabulations.
- 635.114 Award of contract and concurrence in award.
- 635.115 Agreement estimate.
- 635.116 Subcontracting and contractor responsibilities.
- 635.117 Labor and employment.
- 635.118 Payroll and weekly statements.
- 635.119 False statements.
- 635.120 Changes and extra work.
- 635.121 Contract time and contract time extensions.
- 635.122 Participation in progress payments.
- 635.123 Determination and documentation of pay quantities.
- 635.124 Participation in contract claim awards and settlements.
- 635.125 Termination of contract.
- 635.126 Record of materials, supplies, and labor.

Subpart A—Contract Procedures

§ 635.101 Purpose.

To prescribe policies, requirements, and procedures relating to Federal-aid highway projects, from the time of authorization to proceed to the construction stage, to the time of final acceptance by the Federal Highway Administration (FHWA).

§ 635.102 Definitions.

As used in this subpart:

Administrator means Federal Highway Administrator.

Certification Acceptance means the alternative procedure which may be used for administering certain highway projects involving Federal funds pursuant to 23 U.S.C. 117.

Division Administrator means the chief FHWA official assigned to conduct business in a particular State. A State is as defined in 23 U.S.C. 101.

Force account means a basis of payment for the direct performance of highway construction work with payment based on the actual cost of labor, equipment, and materials furnished and consideration for overhead and profit.

Formal approval means approval in writing or the electronic transmission of such approval.

Local public agency means any city, county, township, municipality, or other political subdivision that may be empowered to cooperate with the State highway agency in highway matters.

Major change or major extra work means a change which will significantly affect the cost of the project to the Federal Government or alter the termini, character or scope of work.

Materially unbalanced bid means a bid which generates a reasonable doubt that award to the bidder submitting a mathematically unbalanced bid will result in the lowest ultimate cost to the Government.

Mathematically unbalanced bid means a bid containing lump sum or unit bid items which do not reflect reasonable actual costs plus a reasonable proportionate share of the bidder's anticipated profit, overhead costs, and other indirect costs.

Public agency means any organization with administrative or functional responsibilities which are directly or indirectly affiliated with a governmental body of any nation, State, or local jurisdiction.

Publicly owned equipment means equipment previously purchased or otherwise acquired by the public agency involved primarily for use in its own operations.

Secondary Road Plan means the alternative procedure which may be used for the administration of Federal-aid projects on the Federal-aid secondary system pursuant to 23 U.S.C. 117.

Specialty items means work items identified in the contract which are not normally associated with highway construction and require highly specialized knowledge, abilities or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract; in general these items are to be limited to minor components of the overall contract.

State highway agency (SHA) means that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction. The term "State" should be considered equivalent to "State highway agency" if the context so implies.

§ 635.103 Applicability.

The policies, requirements, and procedures prescribed in this subpart shall apply to all Federal-aid highway projects except for those title 23 requirements specifically discharged in an approved certification acceptance plan or secondary road plan, in accordance with 23 U.S.C. 117.

§ 635.104 Method of construction.

(a) Actual construction work shall be performed by contract awarded by competitive bidding; unless, as provided in § 635.104(b), the SHA demonstrates to

the satisfaction of the Division Administrator that some other method is more cost effective or that an emergency exists. The SHA shall assure opportunity for free, open, and competitive bidding, including adequate publicity of the advertisements or calls for bids. The advertising or calling for bids and the award of contracts shall comply with the procedures and requirements set forth in §§ 635.112 and 635.114.

(b) Approval by the Division Administrator for construction by a method other than competitive bidding shall be requested by the State in accordance with subpart B of part 635 of this chapter. Before such finding is made, the SHA shall determine that the organization to undertake the work is so staffed and equipped as to perform such work satisfactorily and cost effectively.

§ 635.105 Supervising agency.

(a) The SHA has responsibility for the construction of all Federal-aid projects, and is not relieved of such responsibility by authorizing performance of the work by a local public agency or other Federal agency. The SHA shall be responsible for insuring that such projects receive adequate supervision and inspection to insure that projects are completed in conformance with approved plans and specifications.

(b) Although the SHA may employ a consultant to provide construction engineering services, such as inspection or survey work on a project, the SHA shall provide a full-time employed State engineer to be in responsible charge of the project.

(c) When a project is located on a street or highway over which the SHA does not have legal jurisdiction, or when special conditions warrant, the SHA, while not relieved of overall project responsibility, may arrange for the local public agency having jurisdiction over such street or highway to perform the work with its own forces or by contract; provided the following conditions are met and the Division Administrator approves the arrangements in advance.

(1) In the case of force account work, there is full compliance with subpart B of this part.

(2) When the work is to be performed under a contract awarded by a local public agency, all Federal requirements including those prescribed in this subpart shall be met.

(3) The local public agency is adequately staffed and suitably equipped to undertake and satisfactorily complete the work; and

(4) In those instances where a local public agency elects to use consultants for construction engineering services,

the local public agency shall provide a full-time employee of the agency to be in responsible charge of the project.

§ 635.106 Use of publicly owned equipment.

(a) Publicly owned equipment should not normally compete with privately owned equipment on a project to be let to contract. There may be exceptional cases, however, in which the use of equipment of the State or local public agency for highway construction purposes may be warranted or justified. A proposal by any SHA for the use of publicly owned equipment on such a project must be supported by a showing that it would clearly be cost effective to do so under the conditions peculiar to the individual project or locality.

(b) Where publicly owned equipment is to be made available in connection with construction work to be let to contract, Federal funds may participate in the cost of such work provided the following conditions are met:

(1) The proposed use of such equipment is clearly set forth in the Plans, Specifications and Estimate (PS&E) submitted to the Division Administrator for approval.

(2) The advertised specifications specify the items of publicly owned equipment available for use by the successful bidder, the rates to be charged, and the points of availability or delivery of the equipment; and

(3) The advertised specifications include a notification that the successful bidder has the option either of renting part or all of such equipment from the State or local public agency or otherwise providing the equipment necessary for the performance of the contract work.

(c) In the rental of publicly owned equipment to contractors, the State or local public agency shall not profit at the expense of Federal funds.

(d) Unforeseeable conditions may make it necessary to provide publicly owned equipment to the contractor at rental rates agreed to between the contractor and the State or local public agency after the work has started. Any such arrangement shall not form the basis for any increase in the cost of the project on which Federal funds are to participate.

(e) When publicly owned equipment is used on projects constructed on a force account basis, costs may be determined by agreed unit prices or on an actual cost basis. When agreed unit prices are applied the equipment need not be itemized nor rental rates shown in the estimate. However, if such work is to be performed on an actual cost basis, the

SHA shall submit to the Division Administrator for approval the schedule of rates proposed to be charged, exclusive of profit, for the publicly owned equipment made available for use.

§ 635.107 Small and disadvantaged business participation.

The SHA shall schedule contract lettings in a balanced program providing contracts of such size and character as to assure an opportunity for all sizes of contracting organizations to compete. In accordance with title VI of the Civil Rights Act of 1964, subsequent Federal-aid Highway Acts, and 49 CFR part 23, the SHA shall affirmatively encourage disadvantaged business enterprise participation in the highway construction program.

§ 635.108 Health and safety.

Contracts for projects shall include provisions designed:

(a) To insure full compliance with all applicable Federal, State, and local laws governing safety, health and sanitation; and

(b) To require that the contractor shall provide all safeguards, safety devices, and protective equipment and shall take any other actions reasonably necessary to protect the life and health of persons working at the site of the project and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

§ 635.109 Standardized changed condition clauses.

(a) Except as provided in paragraph (b) of this section, the following changed conditions contract clauses shall be made part of, and incorporated in, each highway construction project approved under 23 U.S.C. 106:

(1) Differing site conditions.

(i) During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract, are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before the site is disturbed and before the affected work is performed.

(ii) Upon written notification, the engineer will investigate the conditions, and if it is determined that the

conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment, excluding anticipated profits, will be made and the contract modified in writing accordingly. The engineer will notify the contractor of the determination whether or not an adjustment of the contract is warranted.

(iii) No contract adjustment which results in a benefit to the contractor will be allowed unless the contractor has provided the required written notice.

(iv) No contract adjustment will be allowed under this clause for any effects caused on unchanged work. (This provision may be omitted by the SHA's at their option.)

(2) Suspensions of work ordered by the engineer.

(i) If the performance of all or any portion of the work is suspended or delayed by the engineer in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the contractor believes that additional compensation and/or contract time is due as a result of such suspension or delay, the contractor shall submit to the engineer in writing a request for adjustment within 7 calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.

(ii) Upon receipt, the engineer will evaluate the contractor's request. If the engineer agrees that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the engineer will make an adjustment (excluding profit) and modify the contract in writing accordingly. The contractor will be notified of the engineer's determination whether or not an adjustment of the contract is warranted.

(iii) No contract adjustment will be allowed unless the contractor has submitted the request for adjustment within the time prescribed.

(iv) No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided or excluded under any other term or condition of this contract.

(3) Significant changes in the character of work.

(i) The engineer reserves the right to make, in writing, at any time during the

work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project.

Such changes in quantities and alterations shall not invalidate the contract nor release the surety, and the contractor agrees to perform the work as altered.

(ii) If the alterations or changes in quantities significantly change the character of the work under the contract, whether such alterations or changes are in themselves significant changes to the character of the work or by affecting other work cause such other work to become significantly different in character, an adjustment, excluding anticipated profit, will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the contractor in such amount as the engineer may determine to be fair and equitable.

(iii) If the alterations or changes in quantities do not significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract.

(iv) The term "significant change" shall be construed to apply only to the following circumstances:

(A) When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction; or

(B) When a major item of work, as defined elsewhere in the contract, is increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original contract item quantity, or in case of a decrease below 75 percent, to the actual amount of work performed.

(b) The provisions of this section shall be governed by the following:

(1) Where State statute does not permit one or more of the contract clauses included in paragraph (a) of this section, the State statute shall prevail and such clause or clauses need not be made applicable to Federal-aid highway contracts.

(2) Where the State highway agency has developed and implemented one or more of the contract clauses included in paragraph (a) of this section, such clause or clauses, as developed by the State highway agency may be included in Federal-aid highway contracts in lieu of the corresponding clause or clauses in

paragraph (a) of this section. The State's action must be pursuant to a specific State statute requiring differing contract conditions clauses. Such State developed clause or clauses, however, must be in conformance with 23 U.S.C., 23 CFR and other applicable Federal statutes and regulations as appropriate and shall be subject to the Division Administrator's approval as part of the PS&E.

§ 635.110 Licensing and qualification of contractors.

(a) The procedures and requirements a SHA proposes to use for qualifying and licensing contractors, who may bid for, be awarded, or perform Federal-aid highway contracts, shall be submitted to the Division Administrator for advance approval. Only those procedures and requirements so approved shall be effective with respect to Federal-aid highway projects. Any changes in approved procedures and requirements shall likewise be subject to approval by the Division Administrator.

(b) No procedure or requirement for bonding, insurance, prequalification, qualification, or licensing of contractors shall be approved which, in the judgment of the Division Administrator, may operate to restrict competition, to prevent submission of a bid by, or to prohibit the consideration of a bid submitted by, any responsible contractor, whether resident or nonresident of the State wherein the work is to be performed.

(c) No contractor shall be required by law, regulation, or practice to obtain a license before submission of a bid or before the bid may be considered for award of a contract. This, however, is not intended to preclude requirements for the licensing of a contractor upon or subsequent to the award of the contract if such requirements are consistent with competitive bidding. Prequalification of contractors may be required as a condition for submission of a bid or award of contract only if the period between the date of issuing a call for bids and the date of opening of bids affords sufficient time to enable a bidder to obtain the required prequalification rating.

(d) Requirements for the prequalification, qualification or licensing of contractors, that operate to govern the amount of work that may be bid upon by, or may be awarded to, a contractor, shall be approved only if based upon a full and appropriate evaluation of the contractor's capability to perform the work.

(e) Contractors who are currently suspended, debarred or voluntarily excluded under 49 CFR part 29 or

otherwise determined to be ineligible, shall be prohibited from participating in the Federal-aid highway program.

§ 635.111 Tied bids.

(a) The SHA may tie or permit the tying of Federal-aid highway projects or Federal-aid and State-financed highway projects for bidding purposes where it appears that by so doing more favorable bids may be received. To avoid discrimination against contractors desiring to bid upon a lesser amount of work than that included in the tied combinations, provisions should be made to permit bidding separately on the individual projects whenever they are of such character as to be suitable for bidding independently.

(b) When Federal-aid and State-financed highway projects are tied or permitted to be tied together for bidding purposes, the bid schedule shall set forth the quantities separately for the Federal-aid work and the State-financed work. All proposals submitted for the tied projects must contain separate bid prices for each project individually. Federal participation in the cost of the work shall be on the basis of the lowest overall responsive bid proposal unless the analysis of bids reveals that mathematical unbalancing has caused an unsupported shift of cost liability to the Federal-aid work. If such a finding is made, Federal participation shall be based on the unit prices represented in the proposal by the individual contractor who would be the lowest responsive and responsible bidder if only the Federal-aid project were considered.

(c) Federal-aid highway projects and State-financed highway projects may be combined in one contract if the conditions of the projects are so similar that the unit costs on the Federal-aid projects should not be increased by such combinations of projects. In such cases, like quantities should be combined in the proposal to avoid the possibility of unbalancing of bids in favor of either of the projects in the combination.

§ 635.112 Advertising for bids.

(a) No work shall be undertaken on any Federal-aid project, nor shall any project be advertised for bids, prior to authorization by the Division Administrator.

(b) The advertisement and approved plans and specifications shall be available to bidders a minimum of 3 weeks prior to opening of bids except that shorter periods may be approved by the Division Administrator in special cases when justified.

(c) The SHA shall obtain the approval of the Division Administrator prior to

issuing any addenda which contain a major change to the approved plans or specifications during the advertising period. Minor addenda need not receive prior approval but should be identified by the SHA at the time of or prior to requesting FHWA concurrence in award. The SHA shall provide assurance that all bidders have received all issued addenda.

(d) Nondiscriminatory bidding procedures shall be afforded to all qualified bidders regardless of National, State or local boundaries and without regard to race, color, religion, sex, national origin, age, or handicap. If any provisions of State laws, specifications, regulations, or policies may operate in any manner contrary to Federal requirements, including title VI of the Civil Rights Act of 1964, to prevent submission of a bid, or prohibit consideration of a bid submitted by any responsible bidder appropriately qualified in accordance with § 635.110, such provisions shall not be applicable to Federal-aid projects. Where such nonapplicable provisions exist, notices of advertising, specifications, special provisions or other governing documents shall include a positive statement to advise prospective bidders of those provisions that are not applicable.

(e) No public agency shall be permitted to bid in competition or to enter into subcontracts with private contractors.

(f) The SHA shall include a noncollusion provision substantially as follows in the bidding documents:

Each bidder shall file a statement executed by, or on behalf of the person, firm, association, or corporation submitting the bid certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action, in restraint of free competitive bidding in connection with the submitted bid. Failure to submit the executed statement as part of the bidding documents will make the bid nonresponsive and not eligible for award consideration.

(1) The required form for the statement will be provided by the State to each prospective bidder.

(2) The statement shall either be in the form of an affidavit executed and sworn to by the bidder before a person who is authorized by the laws of the State to administer oaths or in the form of an unsworn declaration executed under penalty of perjury of the laws of the United States.

(g) The SHA shall include the lobbying certification requirement pursuant to 49 CFR part 20 and the requirements of 49 CFR part 29

regarding suspension and debarment certification in the bidding documents.

(h) The SHA shall clearly identify in the bidding documents those requirements which the bidder must assure are complied with to make the bid responsive. Failure to comply with these identified bidding requirements shall make the bid nonresponsive and not eligible for award consideration.

§ 635.113 Bid opening and bid tabulations.

(a) All bids received in accordance with the terms of the advertisement shall be publicly opened and announced either item by item or by total amount. If any bid received is not read aloud, the name of the bidder and the reason for not reading the bid aloud shall be publicly announced at the letting. Negotiation with contractors, during the period following the opening of bids and before the award of the contract shall not be permitted.

(b) The SHA shall prepare and forward tabulations of bids to the Division Administrator. These tabulations shall be certified by a responsible SHA official and shall show:

(1) Bid item details for at least the low three acceptable bids and

(2) The total amounts of all other acceptable bids.

§ 635.114 Award of contract and concurrence in award.

(a) Federal-aid contracts shall be awarded only on the basis of the lowest responsive bid submitted by a bidder meeting the criteria of responsibility as may have been established by the SHA in accordance with § 635.110. Award shall be within the time established by the SHA and subject to the prior concurrence of the Division Administrator.

(b) The SHA shall formally request concurrence by the Division Administrator in the award of all Federal-aid contracts. Concurrence in award by the Division Administrator is a prerequisite to Federal participation in construction costs and is considered as authority to proceed with construction, unless specifically stated otherwise. Concurrence in award shall be formally approved and shall only be given after receipt and review of the tabulation of bids.

(c) Following the opening of bids, the SHA shall examine the unit bid prices of the apparent low bid for reasonable conformance with the engineer's estimated prices. A bid with extreme variations from the engineer's estimate, or where obvious unbalancing of unit prices has occurred, shall be thoroughly evaluated.

(d) Where obvious unbalanced bid items exist, the SHA's decision to award or reject a bid shall be supported by written justification. A bid found to be mathematically unbalanced, but not found to be materially unbalanced, may be awarded.

(e) When a low bid is determined to be both mathematically and materially unbalanced, the Division Administrator will take appropriate steps to protect the Federal interest. This action may be concurrence in a SHA decision not to award the contract. If, however, the SHA decides to proceed with the award and requests FHWA concurrence, the Division Administrator's action may range from nonconcurrence to concurrence with contingency conditions limiting Federal participation.

(f) If the SHA determines that the lowest bid is not responsive or the bidder is not responsible, it shall so notify and obtain the Division Administrator's concurrence before making an award to the next lowest bidder.

(g) If the SHA rejects or declines to read or consider a low bid on the grounds that it is not responsive because of noncompliance with a requirement which was not clearly identified in the bidding documents, it shall submit justification for its action. If such justification is not considered by the Division Administrator to be sufficient, concurrence will not be given to award to another bidder on the contract at the same letting.

(h) Any proposal by the SHA to reject all bids received for a Federal-aid contract shall be submitted to the Division Administrator for concurrence, accompanied by adequate justification.

(i) In the event the low bidder selected by the SHA for contract award forfeits the bid guarantee, the SHA may dispose of the amounts of such forfeited guarantees in accordance with its normal practices.

(j) A copy of the executed contract between the SHA and the construction contractor should be furnished to the Division Administrator as soon as practicable after execution.

§ 635.115 Agreement estimate.

(a) Following the award of contract, an agreement estimate based on the contract unit prices and estimated quantities shall be prepared by the SHA and submitted to the Division Administrator as soon as practicable for use in the preparation of the project agreement. The agreement estimate shall also include the actual or best estimated costs of any other items to be included in the project agreement.

(b) An agreement estimate shall be submitted by the SHA for each force account project (see 23 CFR part 635, subpart B) when the plans and specifications are submitted to the Division Administrator for approval. It shall normally be based on the estimated quantities and the unit prices agreed upon in advance between the SHA and the Division Administrator, whether the work is to be done by the SHA or by a local public agency. Such agreed unit prices shall constitute a commitment as the basis for Federal participation in the cost of the project. The unit prices shall be based upon the estimated actual cost of performing the work but shall in no case exceed unit prices currently being obtained by competitive bidding on comparable highway construction work in the same general locality. In special cases involving unusual circumstances, the estimate may be based upon the estimated costs for labor, materials, equipment rentals, and supervision to complete the work rather than upon agreed unit prices. This paragraph shall not be applicable to agreement estimates for railroad and utility force account work.

§ 635.116 Subcontracting and contractor responsibilities.

(a) Contracts for projects shall specify the minimum percentage of work that a contractor must perform with its own organization. This percentage shall be not less than 30 percent of the total original contract price excluding any identified specialty items. Specialty items may be performed by subcontract and the amount of any such specialty items so performed may be deducted from the total original contract before computing the amount of work required to be performed by the contractor's own organization. The contract amount upon which the above requirement is computed includes the cost of materials and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

(b) The SHA shall not permit any of the contract work to be performed under a subcontract, unless such arrangement has been authorized by the SHA in writing. Prior to authorizing a subcontract, the SHA shall assure that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. The Division Administrator may permit the SHA to satisfy the subcontract assurance requirements by concurrence in a SHA process which requires the contractor to certify that each subcontract

arrangement will be in the form of a written agreement containing all the requirements and pertinent provisions of the prime contract. Prior to the Division Administrator's concurrence, the SHA must demonstrate that it has an acceptable plan for monitoring such certifications.

(c) To assure that all work (including subcontract work) is performed in accordance with the contract requirements, the contractor shall be required to furnish:

(1) A competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work), and;

(2) Such other of its own organizational resources (supervision, management, and engineering services) as the SHA contracting officer determines are necessary to assure the performance of the contract.

§ 635.117 Labor and employment.

(a) No construction work shall be performed by convict labor at the work site or within the limits of any Federal-aid highway construction project from the time of award of the contract or the start of work on force account until final acceptance of the work by the SHA unless it is labor performed by convicts who are on parole, supervised release, or probation.

(b) No procedures or requirement shall be imposed by any State which will operate to discriminate against the employment of labor from any other State, possession or territory of the United States, in the construction of a Federal-aid project.

(c) The selection of labor to be employed by the contractor on any Federal-aid project shall be by the contractor without regard to race, color, religion, sex, national origin, age, or handicap and in accordance with 23 CFR part 230, 41 CFR part 60 and Exec. Order No. 11246 (Sept. 24, 1965), 3 CFR 339 (1964-1965), as amended.

(d) Pursuant to 23 U.S.C. 140(d), it is permissible for SHA's to implement procedures or requirements which will extend preferential employment to Indians living on or near a reservation on eligible projects as defined in paragraph (e) of this section. Indian preference shall be applied without regard to tribal affiliation or place of enrollment. In no instance should a contractor be compelled to layoff or terminate a permanent core-crew employee to meet a preference goal.

(e) Projects eligible for Indian employment preference consideration are projects located on roads within or providing access to an Indian reservation or other Indian lands as defined under the term "Indian Reservation Roads" in 23 U.S.C. 101 and regulations issued thereunder. The terminus of a road "providing access to" is that point at which it intersects with a road functionally classified as a collector or higher classification (outside the reservation boundary) in both urban and rural areas. In the case of an Interstate highway, the terminus is the first interchange outside the reservation.

(f) The advertisement or call for bids on any contract for the construction of a project located on the Federal-aid system either shall include the minimum wage rates determined by the Secretary of Labor to be prevailing on the same type of work on similar construction in the immediate locality or shall provide that such rates are set out in the bidding documents and shall further specify that such rates are a part of the contract covering the project.

§ 635.118 Payroll and weekly statements.

For all projects, copies of payrolls and statements of wages paid, filed with the State as set forth in the required contract provisions for the project, are to be retained by the SHA for the time period pursuant to 49 CFR part 18 for review as needed by the Federal Highway Administration, the Department of Labor, the General Accounting Office, or other agencies.

§ 635.119 False statements.

The following notice shall be posted on each Federal-aid highway project in one or more places where it is readily available to and viewable by all personnel concerned with the project: Notice to All Personnel Engaged on Federal-Aid Highway Projects

United States Code, title 18, section 1020, reads as follows:

Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the costs thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction of any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever, knowingly makes any false statement, false representation, false report, or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials

furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever, knowingly makes any false statement or false representation as to a material fact in any statement, certificate, or report submitted pursuant to the provisions of the Federal-aid Road Act approved July 11, 1916 (39 Stat. 355), as amended and supplemented,

Shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

§ 635.120 Changes and extra work.

(a) Following authorization to proceed with a project, all major changes in the plans and contract provisions and all major extra work shall have formal approval by the Division Administrator in advance of their effective dates.

However, when emergency or unusual conditions justify, the Division Administrator may give tentative advance approval orally to such changes or extra work and ratify such approval with formal approval as soon thereafter as practicable.

(b) For non-major changes and non-major extra work, formal approval is necessary but such approval may be given retroactively at the discretion of the Division Administrator. The SHA should establish and document with the Division Administrator's concurrence specific parameters as to what constitutes a non-major change and non-major extra work.

(c) Changes in contract time, as related to contract changes or extra work, should be submitted at the same time as the respective work change for approval by the Division Administrator.

(d) In establishing the method of payment for contract changes or extra work orders, force account procedures shall only be used when strictly necessary, such as when agreement cannot be reached with the contractor on the price of a new work item, or when the extent of work is unknown or is of such character that a price cannot be determined to a reasonable degree of accuracy. The reason or reasons for using force account procedures shall be documented.

(e) The SHA shall perform and adequately document a cost analysis of each negotiated contract change or negotiated extra work order. The method and degree of the cost analysis shall be subject to the approval of the Division Administrator.

(f) Proposed changes and extra work involved in nonparticipating operations that may affect the design or participating construction features of a project, shall be subject to review and

concurrence by the Division Administrator.

§ 635.121 Contract time and contract time extensions.

(a) The SHA should have adequate written procedures for the determination of contract time. These procedures should be submitted for approval to the Division Administrator within 6 months of the effective date of this Final Rule.

(b) Contract time extensions granted by a SHA shall be subject to the concurrence of the Division Administrator and will be considered in determining the amount of Federal participation. Contract time extensions submitted for approval to the Division Administrator, shall be fully justified and adequately documented.

§ 635.122 Participation in progress payments.

(a) Federal funds will participate in the costs to the SHA of construction accomplished as the work progresses, based on a request for reimbursement submitted by State highway agencies. When the contract provisions provide for payment for stockpiled materials, the amount of the reimbursement request upon which participation is based may include the appropriate value of approved specification materials delivered by the contractor at the project site or at another designated location in the vicinity of such construction, provided that:

(1) The material conforms with the requirements of the plans and specifications.

(2) The material is supported by a paid invoice or a receipt for delivery of materials. If supported by a receipt of delivery of materials, the contractor must furnish the paid invoice within a reasonable time after receiving payment from the SHA; and

(3) The quantity of a stockpiled material eligible for Federal participation in any case shall not exceed the total estimated quantity required to complete the project. The value of the stockpiled material shall not exceed the appropriate portion of the value of the contract item or items in which such materials are to be incorporated.

(b) The materials may be stockpiled by the contractor at a location not in the vicinity of the project, if the SHA determines that because of required fabrication at an off-site location, it is not feasible or practicable to stockpile the materials in the vicinity of the project.

§ 635.123 Determination and documentation of pay quantities.

(a) The SHA shall have procedures in effect which will provide adequate assurance that the quantities of completed work are determined accurately and on a uniform basis throughout the State. All such determinations and all related source documents upon which payment is based shall be made a matter of record.

(b) Initial source documents pertaining to the determination of pay quantities are among those records and documents which must be retained pursuant to 49 CFR part 18.

§ 635.124 Participation in contract claim awards and settlements.

(a) The eligibility for and extent of Federal-aid participation up to the Federal statutory share in a contract claim award made by a State to a Federal-aid contractor on the basis of an arbitration or mediation proceeding, administrative board determination, court judgment, negotiated settlement, or other contract claim settlement shall be determined on a case-by-case basis. Federal funds will participate to the extent that any contract adjustments made are supported, and have a basis in terms of the contract and applicable State law, as fairly construed. Further, the basis for the adjustment and contractor compensation shall be in accord with prevailing principles of public contract law.

(b) The FHWA shall be made aware by the SHA of the details of the claim at an early stage so that coordination of efforts can be satisfactorily accomplished. It is expected that SHA's will diligently pursue the satisfactory resolution of claims within a reasonable period of time. Claims arising on projects handled under Certification Acceptance or Secondary Road Plan procedures should be processed in accordance with the State's approved Plan.

(c) When requesting Federal participation, the SHA shall set forth in writing the legal and contractual basis for the claim, together with the cost data and other facts supporting the award or settlement. Federal-aid participation in such instances shall be supported by a SHA audit of the actual costs incurred by the contractor unless waived by the FHWA as unwarranted. Where difficult, complex, or novel legal issues appear in the claim, such that evaluation of legal controversies is critical to consideration of the award or settlement, the SHA shall include in its submission a legal opinion from its counsel setting forth the basis for determining the extent of the liability under local law, with a level of

detail commensurate with the magnitude and complexity of the issues involved.

(d) In those cases where the SHA receives an adverse decision in an amount more than the SHA was able to support prior to the decision or settles a claim in an amount more than the SHA can support, the FHWA will participate up to the appropriate Federal matching share, to the extent that it involves a Federal-aid participating portion of the contract, provided that:

(1) The FHWA was consulted and concurred in the proposed course of action;

(2) All appropriate courses of action had been considered; and

(3) The SHA pursued the case diligently and in a professional manner.

(e) Federal funds will not participate:

(1) If it has been determined that SHA employees, officers, or agents acted with gross negligence, or participated in intentional acts or omissions, fraud, or other acts not consistent with usual State practices in project design, plan preparation, contract administration, or other activities which gave rise to the claim;

(2) In such cost items as consequential or punitive damages, anticipated profit, or any award or payment of attorney's fees paid by a State to an opposing party in litigation; and

(3) In tort, inverse condemnation, or other claims erroneously styled as claims "under a contract."

(f) Payment of interest associated with a claim will be eligible for participation provided that the payment to the contractor for interest is allowable by State statute or specification and the costs are not a result of delays caused by dilatory action of the State or the contractor. The interest rates must not exceed the rate provided for by the State statute or specification.

(g) In cases where SHA's affirmatively recover compensatory damages through contract claims, cross-claims, or counter claims from contractors, subcontractors, or their agents on projects on which there was Federal-aid participation, the Federal share of such recovery shall be equivalent to the Federal share of the project or projects involved. Such recovery shall be credited to the project or projects from which the claim or claims arose.

§ 635.125 Termination of contract.

(a) All contracts exceeding \$10,000 shall contain suitable provisions for termination by the State, including the manner by which the termination will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract

may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(b) The SHA prior to termination of a Federal-aid contract shall consult with and receive the concurrence of the Division Administrator. The extent of Federal-aid participation in contract termination costs, including final settlement, will depend upon the merits of the individual case. However, under no circumstances shall Federal funds participate in anticipated profit on work not performed.

(c) Except as provided for in paragraph (e) of this section, normal Federal-aid plans, specifications, and estimates, advertising, and award procedures are to be followed when a SHA awards the contract for completion of a terminated Federal-aid contract.

(d) When a SHA awards the contract for completion of a Federal-aid contract previously terminated for default, the construction amount eligible for Federal participation on the project should not exceed whichever amount is the lesser, either:

(1) The amount representing the payments made under the original contract plus payments made under the new contract; or

(2) The amount representing what the cost would have been if the construction had been completed as contemplated by the plans and specifications under the original contract.

(e) If the surety awards a contract for completion of a defaulted Federal-aid contract or completes it by some other acceptable means, the FHWA will consider the terms of the original contract to be in effect and that the work will be completed in accordance with the approved plans and specifications included therein. No further FHWA approval or concurrence action will therefore be needed in connection with any defaulted Federal-aid contract awarded by a surety. Under this procedure, the construction amount eligible for Federal participation on the project should not exceed the amount representing what the cost would have been if the construction had been completed as contemplated by the plans and specifications under the original contract.

§ 635.126 Record of materials, supplies, and labor.

(a) The provisions in this section are required to facilitate FHWA's efforts to compile data on Federal-aid contracts for the establishment of highway construction usage factors.

(b) On all Federal-aid construction contracts, except Federal-aid secondary

and off-system projects, those which provide solely for the installation of protective devices at railroad crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than \$1,000,000 the SHA shall require the contractor:

(1) To become familiar with the list of specific materials and supplies including labor-hour and gross earning items contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractors on Highway Construction Involving Federal Funds," prior to the commencement of work under this contract;

(2) To maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown; and

(3) To furnish, upon the completion of the contract, to the SHA on Form FHWA-47 both the data required in paragraph (b)(2) of this section relative to materials and supplies and a final labor summary for all contract work indicating the total hours worked and the gross earnings.

(c) Upon receipt from the contractor, the SHA shall review the Form FHWA-47 for reasonableness and promptly transmit the form to the Division Administrator in accordance with the instructions printed in the form.

[FR Doc. 91-18360 Filed 8-1-91; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Illinois Permanent Regulatory Program; Permit Issuance

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of a proposed amendment to the Illinois permanent regulatory program (hereinafter referred to as the Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment modifies the permit issuance requirements at § 1773.19 in

title 62 of the Illinois Administrative Code (IAC) and at section 2.11(d) of the Illinois Surface Coal Mining Land Conservation and Reclamation Act (State Act). The amendment makes the requirements of the Illinois program no less effective than the Federal program.

EFFECTIVE DATE: August 2, 1991.

FOR FURTHER INFORMATION CONTACT:

Mr. James F. Fulton, Director, Springfield Field Office, Office of Surface Mining Reclamation and Enforcement, 511 West Capitol Avenue, suite 202, Springfield, Illinois 62704, Telephone: (217) 492-4495.

SUPPLEMENTARY INFORMATION:

- I. Background on the Illinois Program.
- II. Submission of Amendments.
- III. Director's Findings.
- IV. Summary and Disposition of Comments.
- V. Director's Decision.
- VI. Procedural Determinations.

I. Background on the Illinois Program

On June 1, 1982, the Secretary of the Interior conditionally approved the Illinois program. Information pertinent to the general background of the Illinois program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval can be found in the June 1, 1982 *Federal Register* (47 FR 23883). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 913.10, 913.15, 913.16, and 913.17.

II. Submission of Amendments

On August 29, 1990, the Illinois General Assembly amended section 2.11(d) of the State Act to make the issuance of coal mine permits in Illinois consistent with the Federal counterpart provisions of section 514(c) of SMCRA. This amendment of the State Act requires that the Illinois regulatory program also be amended. In response to the statutory change and to make the requirements of the Illinois program no less effective than the Federal program, Illinois by letter dated March 5, 1991 (Administrative Record No. IL-1144) submitted proposed changes to its permit issuance regulations at 62 IAC 1773.19.

OSM announced receipt of the proposed amendments in the April 1, 1991 *Federal Register* (56 FR 13300) and in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on May 1, 1991.

Because proposed changes to the State Act were inadvertently omitted from the April 1, 1991 *Federal Register*

notice, OSM reopened the public comment period and provided opportunity for a public hearing in the May 30, 1991 *Federal Register* (56 FR 24359). The comment period closed on July 1, 1991.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.17, are the Director's findings concerning the proposed amendment to the Illinois program submitted on March 5, 1991.

Revisions to Illinois' Regulations That Are Substantively Identical to the Corresponding Federal Regulations

State Regulation—62 IAC 1773.19(b) (1), (2)

Subject—Permit Issuance

Federal Counterpart—30 CFR 773.19(a)

Because the above proposed revisions are identical in meaning to the corresponding Federal regulations, the Director finds that Illinois' proposed rule is no less effective than the Federal rule.

Revisions to Illinois' Statutes That Are Not Substantively Identical to the Corresponding Federal Regulations

Section 2.11(d) of the State Act

Illinois amended section 2.11(d) of the State Act to make permit issuance occur simultaneously with permit application approval by deleting the provision relating to hearings. The deletion of this provision renders section 2.11(d) of the State Act no less stringent than section 514(c) of SMCRA.

IV. Summary and Disposition of Comments

Public Comments

The public comment period and opportunity to request a public hearing announced in the April 1, 1991, *Federal Register* (56 FR 13300) ended on May 1, 1991. No comments were received and the scheduled public hearing was not held as no one requested an opportunity to provide testimony. The public comment period was reopened in the May 30, 1991 *Federal Register* (56 FR 24359). Again, no comments were received and the scheduled public hearing was not held as no one requested an opportunity to provide testimony.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Illinois program. No comments were received.

V. Director's Decision

Based on the above findings, the Director is approving the amendment to the Illinois regulatory program submitted on March 5, 1991. The Federal rules at 30 CFR part 913 concerning the Illinois program are being amended to implement the Director's decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage states to conform their programs to the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of the Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to a State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved programs. In his oversight of the Illinois program, the Director will recognize only the statutes, regulations, and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Illinois of only such provisions.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). Although the Director has determined that this amendment contains no provisions in these categories, the EPA concurred without comment.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA (30 U.S.C. 1292(d)), no environmental impact statement need be prepared on this rulemaking.

Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7,

and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 18, 1991.

Jeffrey Jarrett,

Acting Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 913—ILLINOIS

1. The authority citation for part 913 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 913.15, a new paragraph (m) is added to read as follows:

§ 913.15 Approval of regulatory program amendments.

* * * * *

(m) The following amendment, as submitted to OSM on March 5, 1991, is approved effective August 2, 1991. The amendment consists of the following modifications to the Illinois program:

1. Revisions of the following regulations of chapter I of title 62 of the Illinois Administrative Code:

1773.19(b)(1) Permit Issuance

1773.19(b)(2) Permit Hearings (deleted and replaced with Permit Fees and Reclamation Bonds which was formerly (b)(3)).

2. Revision of the following statute of the Illinois Surface Coal Mining Land Conservation and Reclamation Act: Section 2.11(d) Procedures for Permit Approval.

[FR Doc. 91-18375 Filed 8-1-91; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 914

Indiana Permanent Regulatory Program; Water Replacement

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval with one exception of a proposed amendment to the Indiana permanent regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of proposed changes to the Indiana Surface Mining Rules concerning hydrologic balance; water rights and replacement. The amendment is intended to limit the obligation to replace adversely affected water supplies to be consistent with State water rights laws.

EFFECTIVE DATE: August 2, 1991.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard D. Rieke, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, room 301, Indianapolis, IN 46204, Telephone (317) 226-6166.

SUPPLEMENTARY INFORMATION:

- I. Background on the Indiana Program.
- II. Submission of the Amendment.
- III. Director's Findings.
- IV. Summary and Disposition of Comments.
- V. Director's Decision.
- VI. Procedural Determinations.

I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982 *Federal Register* (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.15 and 914.16.

II. Submission of the Amendment

The Indiana Department of Natural Resources (IDNR) submitted proposed amendments to the Indiana program at 310 Indiana Administrative Code (IAC) 12-5-29 and 310 IAC 12-5-94 (Administrative Record No. IND-0683). OSM announced receipt of the proposed amendments in the November 1, 1989, *Federal Register* (54 FR 46077), and, in

the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on December 1, 1989. The scheduled public hearing was not held as no one requested an opportunity to provide testimony.

By letter dated February 22, 1990 (Administrative Record No. IND-0757), OSM responded to Indiana's proposed rules and requested additional information concerning the proposed rules and Indiana's interpretation of those rules. Indiana responded by letter dated March 28, 1990 (Administrative Record No. IND-0765).

Numerous public and Federal agency comments were received, and on May 8, 1990, a *Federal Register* notice was published which reopened the public comment period (55 FR 19087). The comment period closed on June 7, 1990. The scheduled public hearing was not held as no one requested an opportunity to provide testimony.

By letter dated May 6, 1991 (Administrative Record No. IND-0867), OSM requested clarification and explanation concerning Indiana's implementation of the proposed rules. Indiana responded by letter dated May 29, 1991 (Administrative Record No. IND-0875).

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Indiana program.

1. 310 IAC 12-5-29 Hydrologic balance; water rights and replacement

Indiana proposes to amend this provision by adding the following words to the rule: "pursuant to a lawful order of an agency or court under IC 13-2-2.5 or another state water rights law." In addition, a second sentence would be added to the rule which reads as follows: "Water replacement rights are not determined by this article."

In effect, the existing requirement to replace contaminated, diminished, or interrupted water supplies which have been so affected by surface mining activities shall be subject to a lawful order of an agency or court under Indiana water rights law.

The Federal provisions concerning water rights and replacement, specifically, the SMCRA at sections 717 (a) and (b) (30 U.S.C. sections 1307 (a) and (b)) and the Federal regulations at 30 CFR 816.41(h), have been the subject of litigation.

In *In Re Permanent Surface Mining Litigation II*, Round III, 620 F. Supp. 1519 (D.D.C. 1985), the Court clarified that 30 CFR 816.41(h) and section 717(a) of SMCRA defer to State water law in cases of legitimate water use. This opinion was upheld upon appeal in *National Wildlife Federation v. Hodel*, 839 F.2d 694 (D.C. Cir. 1988).

During the course of litigation before the district court, the Secretary of the Department of the Interior reinterpreted 30 CFR 816.41(h) and stated the following:

The Secretary agrees that section 717(a) requires a deference to state water law on questions of water use, and thus interprets section 717(b) and the rule at issue as not requiring the replacement of water supplies to the extent a surface coal mine operator consumes or legitimately uses the water supply under a senior water right determined under applicable law. 620 F. Supp. at 1525.

Therefore, Indiana's proposal to subjugate its SMCRA-based water rights and replacement provisions to Indiana water rights law is consistent with SMCRA and the Federal regulations. Within the context of this finding, however, the proposed amendment raises specific concerns.

As quoted above, the Secretary of the Interior has determined that 30 CFR 816.41(h) does not require the replacement of water supplies to the extent a person who conducts surface mining activities consumes or legitimately uses a water supply under a senior water right. 30 CFR 816.41(h) does, however, require the replacement of water supplies that have been adversely impacted by contamination, diminution, or interruption proximately resulting from surface mining activities that do not directly involve the legitimate consumption or use of a water supply under a State's water rights laws. The court did not require deference to State water laws in cases where legitimate water use was not involved. For example, if a water supply is contaminated by leachate from a waste pile, such contamination would not be the result of the legitimate use of water under the Indiana water rights laws and would require replacement under 30 CFR 816.41(h). As another example, suppose a person's surface or ground water supplies are interrupted or diminished as a consequence of blasting operations. Such interruption or diminution is not caused by a legitimate water use by a person conducting surface mining activities and would require replacement under 30 CFR

816.41(h). Therefore, to be no less effective than the Federal regulations, under the proposed Indiana amendment, if contamination, diminution, or interruption results from surface mining activities that do not exercise a legitimate use of a water supply, replacement must be required.

The proposed amendments tie replacement of an affected water supply to a lawful order of an agency or court order under IC 13-2-2.5 or another State water rights law. However, neither the proposed amendments nor the cited Indiana water rights laws address water replacement under circumstances which do not involve a legitimate water use by a person who conducts surface mining activities. Consequently, an owner of interest in real property who obtains all or part of a water supply for legitimate use from an underground or surface source has no apparent means to obtain replacement under 310 IAC 12-5-29 where that water supply has been affected by contamination, diminution, or interruption proximately resulting from surface mining activities which do not involve a legitimate water use by the person who conducts surface mining activities.

The Director finds, therefore, that the proposed amendments are no less effective than the Federal regulations at 30 CFR 816.41(h) except to the extent that they would prevent the replacement of affected water supplies under circumstances which do not involve a legitimate water use by the person who conducts surface mining activities. In addition, the Director is requiring that Indiana further amend 310 IAC 12-5-29, or otherwise amend the Indiana program to clearly require the replacement of water supplies which are affected by contamination, diminution, or interruption proximately resulting from surface mining activities which do not involve a legitimate water use by a person who conducts such activities.

2. 310 IAC 12-5-94 Underground mining; hydrologic balance; water rights and replacement

This rule is identical to 310 IAC 12-5-29 with the exception that it pertains to underground mining activities. Indiana proposes to amend this provision by adding language identical to and in the same relative location as that described in Finding 1, above.

Water replacement by underground mining operations is not required by the Federal regulations, and there is no Federal counterpart to the proposed rule. The Director finds, however, that the proposed rule is not inconsistent with SMCRA and the Federal regulations and can be approved.

IV. Summary and Disposition of Comments

Agency Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), comments were solicited from various interested Federal agencies. The U.S. Department of Agriculture, Soil Conservation Service responded that it concurred with the amendment (Administrative Record No. IND-0705). The U.S. Environmental Protection Agency responded that it had no comments on the proposed revisions (Administrative Record No. IND-0708).

The U.S. Fish and Wildlife Service commented and recommended that the proposed changes not be allowed. The commenter stated that the proposed amendments would make it more difficult for the injured party to obtain appropriate compensation from the operator. The commenter also questioned whether the proposed change would allow the Indiana program to be as effective as the Federal regulations at protecting environmental values. As discussed in Finding 1, the Federal provisions concerning water replacement, SMCRA at section 717 (a) and (b), and 30 CFR 816.41(h), have been the subject of litigation. As a consequence of this litigation, the Director has determined that Indiana's proposal to subjugate its SMCRA-based water provisions to Indiana water rights law is consistent with SMCRA and the Federal regulations. The Director also stated in this finding that, to be no less effective than the Federal regulations, if contamination, diminution, or interruption results from surface mining activities that do not exercise a legitimate use of a water supply, replacement must be required.

The Director does not take the position, however, that a person conducting surface mining activities is not responsible for other consequences which may result from that person's legitimate use of its water supply. Such consequences would include, but are not limited to, damage to the hydrologic balance (30 CFR 816.41(a)) and damage to fish and wildlife and related environmental values (30 CFR 816.97(f)).

Public Comments

The public comment period and opportunity to request a public hearing was announced in the November 1, 1989, *Federal Register* (54 FR 46077). The comment period closed on December 1, 1989. The comment period was subsequently reopened in the May 8, 1990, *Federal Register* (55 FR 19087), and closed on June 7, 1990. Since no one requested an opportunity to testify at either of the scheduled public hearings,

no hearings were held. The written comments received are discussed below.

The Indiana Coal Council Inc. (ICC) commented and iterated the history of the proposed Indiana rules and related Federal court decisions. The ICC supports the proposed amendments and asserts that the proposed amendments are wholly in accordance with, as effective as, and consistent with the corresponding Federal SMCRA and regulations. As discussed in Finding 1, the Director is approving the proposed amendments except to the extent that the proposed amendments at 310 IAC 12-5-29 would prevent the replacement of affected water supplies under circumstances which do not involve a legitimate water use by the permittee.

The Hoosier Environmental Council (HEC) commented and objected to the proposed amendments. HEC adopted by reference the objections put forth by counsel for Jack L. Jarrett, et al. Jarrett contends that it could be erroneously interpreted that the proposed amendments would eliminate any requirement under SMCRA for the replacement of groundwater, and that, therefore, the amendments should not be approved. Jarrett also asserts that the coal industry will contend that the Indiana Department of Natural Resources (IDNR) has no authority under SMCRA to regulate any aspects of its use of groundwater. This industry view, Jarrett contends, would be based on their assertion that Indiana SMCRA totally defers to other State law on "water rights" and that Indiana common law gives it an absolute right to make a non-malicious use of groundwater irrespective of consequences to persons or property. As discussed in Finding 1 above, the Director has determined that the addition of the requirement in the proposed rule at 310 IAC 12-5-29 that the replacement of water be conducted pursuant to a lawful order of an agency or court under IC 13-2-2.5 or another state water rights law is consistent with SMCRA and the Federal regulations to the extent that the person conducting surface coal mining activities exercises a legitimate use of the water.

The Director acknowledges that such a deference to state water rights law may result in the contamination, diminution or interruption of water supplies of the citizens of Indiana, or may result in the wasting of Indiana's water resources. Such a deference to State water rights law is, nevertheless, consistent with SMCRA and the Federal regulations as interpreted by the courts. However, as is noted in Finding 1, water replacement is required by the Federal regulations under circumstances where

the contamination, diminution, or interruption is not caused by a legitimate water use. The Director is requiring that Indiana amend 310 IAC 12-5-29 to clearly require the replacement of water supplies affected by surface mining activities which do not involve a legitimate water use by a person conducting surface mining activities. In addition, the commenter may seek to address the issue of water replacement through the Indiana legislature.

The Director does not take the position, however, that a person conducting surface mining activities is not responsible for other consequences which may result from that person's legitimate use of its water supply. Such consequences would include, but are not limited to, damage to the hydrologic balance (30 CFR 816.41(a)) and damage to fish and wildlife and related environmental values (30 CFR 816.97(f)).

The National Coal Association (NCA) commented in support of the proposed amendments. NCA stated that the amendments clarify that the Indiana surface mining law reflects the purpose of section 717(a) of SMCRA; that is, SMCRA does not disturb existing state water rights law. As discussed in Finding 1, the Director notes that SMCRA defers to state water rights law in cases of legitimate water use by a surface mining operation.

V. Director's Decision

As discussed in Finding 1 above, the Director is approving the proposed amendment to 310 IAC 12-5-29 except to the extent that it would prevent the replacement of affected water supplies under circumstances which do not involve a legitimate water use by a person conducting surface mining activities. In addition, the Director is requiring that Indiana further amend 310 IAC 12-5-29, or otherwise amend its program to clearly require the replacement of water supplies which are affected by contamination, diminution, or interruption proximately resulting from surface mining activities which do not involve the legitimate water use by a person conducting surface mining activities.

As discussed in Finding 2, the Director is approving the proposed amendment to 310 IAC 12-5-94.

The Federal regulations at 30 CFR part 914 codifying decisions concerning the Indiana program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage the states to conform their programs with the Federal standards without delay. Consistency of

State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to a State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved programs. In the oversight of the Indiana program, the Director will recognize only the approved program, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Indiana of such provisions.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). In response to OSM's request for concurrence, the EPA stated that it concluded that the proposed amendment demonstrates the legal authority, administrative capability, and technical conformity with controlling Federal National Pollutant Discharge Elimination System (NPDES) regulations to maintain water quality standards promulgated under the authority of the Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*).

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 19, 1991.

Jeffrey Jarrett,

Acting Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 914—INDIANA

1. The authority citation for part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 914.15 is amended by adding a new paragraph (ff) to read as follows:

§ 914.15 Approval of regulatory program amendments.

(ff) With the exceptions noted herein, the following amendment to the Indiana program as submitted to OSM by Indiana, is approved effective August 2, 1991: Amendments to 310 IAC 12-5-29 concerning hydrologic balance, water rights and replacement except to the extent that the amendment would prevent the replacement of affected water supplies under circumstances which do not involve a legitimate water use by a person conducting surface mining activities; and 310 IAC 12-5-94 concerning underground mining, hydrologic balance, water rights and replacement.

3. In Section 914.16, paragraph (f) is added to read as follows:

§ 914.16 Required program amendments.

(f) By January 3, 1992, Indiana shall amend 310 IAC 12-5-29, or otherwise amend the Indiana regulatory program to clearly require the replacement of water supplies which are affected by

contamination, diminution, or interruption proximately resulting from surface mining activities which do not involve a legitimate water use by a person conducting these surface mining activities.

* * * * *

[FR Doc. 91-18373 Filed 8-1-91; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 914

Indiana Permanent Regulatory Program; Administrative Changes

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of and a required amendment to a proposed amendment to the Indiana permanent regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment (Program Amendment Number 91-2) consists of proposed changes to the Indiana Surface Mining Statute provisions concerning the administration of the Indiana program. The amendment is intended to make specific changes to the administrative responsibilities and procedures as they affect the approved program.

EFFECTIVE DATE: August 2, 1991.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard D. Rieke, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, room 301, Indianapolis, IN 46204, Telephone (317) 226-8166.

SUPPLEMENTARY INFORMATION:

- I. Background on the Indiana Program.
- II. Submission of the Amendment.
- III. Director's Findings.
- IV. Summary and Disposition of Comments.
- V. Director's Decision.
- VI. Procedural Determinations.

I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982 *Federal Register* (47 FR 32107). Subsequent actions concerning the conditions of

approval and program amendments are identified at 30 CFR 914.15 and 914.16.

II. Submission of the Amendment

By letter dated February 15, 1991, (Administrative Record No. IND-0836), the Indiana Department of Natural Resources (IDNR) submitted proposed Program Amendment Number 91-2 to the Indiana program at Indiana Code (IC) 4-26-3-27.8; IC 13-4.1; IC 14-3-1; and IC 14-3-3. The proposed amendment is part of Indiana's 1990 Senate Enrolled Act No. 362 (Public Law 28-1990).

OSM announced receipt of the proposed amendment in the March 15, 1991, *Federal Register* (56 FR 11133), and in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on April 15, 1991. The scheduled public hearing was not held as no one requested an opportunity to provide testimony.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Indiana program. Any revisions not specifically discussed below are found to be no less stringent than SMCRA and no less effective than the Federal regulations. Revisions which are not discussed below contain language similar to the corresponding Federal rules, concern nonsubstantive wording changes, or revise cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

1. IC 4-26-3-27.8

This new section provides for the continuation of the Natural Resources Commission (NRC), the IDNR and other agencies or elements of the IDNR. IC 4-26-3 is known as Indiana's "Sunset" law and under IC 4-26-3-27, the IDNR was scheduled for termination. The proposed amendment provides for the continuation of the IDNR. The Director finds that the proposed amendment is in accordance with SMCRA section 503(a)(3) which requires the State under its approved regulatory program to maintain a State regulatory authority to regulate surface coal mining and reclamation operations.

2. IC 13-4.1-2-2.5

This new section requires the director of the IDNR to develop a policy and procedures manual to standardize the implementation of IC 13-4.1. The

Director finds the proposed amendment to be in accordance with SMCRA section 503(a)(7) which requires the State to develop rules and regulations consistent with regulations issued by the Secretary of the Department of the Interior pursuant to SMCRA.

3. IC 13-4.1-4-1

This provision is being amended by adding subsections (2) and (3). Subsection (2) requires an applicant to mail a copy of the advertisement to each person identified in the application under IC 13-4.1-3-3(a) (2). Subsection (3) requires an applicant to mail a copy of the advertisement to every person who has requested notice of such applications. The Director finds the proposed amendments to be in accordance with the provisions of SMCRA at section 513(a) concerning public notice.

4. IC 13-4.1-4-2

This provision is being amended by the addition of subsection (c), and a reference to the new subsection (c) is added in subsections (a) and (b). New subsection (c) requires that a public hearing shall be held on a proposed initial or revised application upon the request of the applicant, the filing of a petition by 25 individuals who meet specified age, residence, or real property ownership requirements, or by the motion of the director of the IDNR. The Director finds the proposed amendments to be in accordance with the public notice and public hearings provisions at SMCRA section 513.

5. IC 13-4.1-4-5

This provision is being amended by deleting subsection (a). Subsection (b) is relettered as subsection (a) and is rewritten to indicate that permit decisions will be made by the director of the IDNR rather than by the NRC. New subsection (a) requires the director of the IDNR to notify the applicant of the director's decision regarding the application. New subsection (a) also states that if the application is disapproved, the notification shall set forth specific reasons for the application's disapproval. The provision deleted from old subsection (a) which requires notification of local government officials is being relocated to new section SC 13-4.1-4-5.3. The Director finds that the proposed revisions are no less stringent than SMCRA section 510(a) which requires such notification of local government officials, and in accordance with SMCRA section 503 which requires a State regulatory

authority capable of carrying out the provisions of the regulatory program.

6. IC 13-4.1-4-5.1

This new section is added to require the director of the IDNR to issue a permit if all of the following apply: The application is approved; the bonding requirements of IC 13-4.1-6 are met; and the 30-day period specified under section IC 13-4.1-4-5(b) has expired. The referenced provision at IC 13-4.1-4-5(b) authorizes that a hearing may be requested by the applicant, or by any person with an interest which is or may be adversely affected, within 30 days after the applicant is notified of the approval or disapproval of the application.

The Director finds that the proposed provisions are in accordance with SMCRA at section 514(c) concerning permit issuance and the availability of a hearing on the reasons for the final determination on a permit application.

7. IC 13-4.1-4-5.2

This new section is added to state that notwithstanding IC 4-21.5-3-5, a permit issued under section 5.1 of chapter IC 13-4.1-4 is effective upon issuance, unless a stay of the permit has been granted under section 6 of chapter IC 13-4.1-4. IC 4-21.5-3-5 requires notice to designated persons of the grant, renewal, restoration, transfer or denial of a license. The Director finds the proposed amendment to be in accordance with SMCRA section 514(c) concerning permit issuance.

8. IC 13-4.1-4-5.3

This new section is added to require that within 10 days after a permit is issued, the director of the IDNR shall notify: local government officials; each person identified in the permit application under IC 13-4.1-3-3(a)(2); each person who has requested a hearing under IC 13-4.1-4-2(c)(2); and each person who has requested such a notice. The notice must include a description of the land's location.

The Federal regulations at 30 CFR 773.19(b) concerning notification, require the regulatory authority to issue written notification of the decision to issue a permit to the following persons and entities: The applicant, each person who files comments or objections to the permit application, and each party to an informal conference. In the preamble of the **Federal Register** notice which proposed the Federal regulation at 30 CFR 773.19(b) (47 FR 27698, June 25, 1982), OSM stated that the rule would require notification of persons filing objections to a permit because "such objectors should have adequate notice

to request administrative or judicial review of the decision." The proposed Indiana provision, however, does not appear to afford adequate notice to such commentors and objectors because they would not be notified until a permit is issued. After a permit is issued, the time period specified in proposed 13-4.1-4-5(b) for requesting a hearing on a permit decision has expired. Therefore, the proposed provision would not satisfy the Federal regulations at 30 CFR 773.19(b).

The Director notes that the approved Indiana provisions at IC 13-4.1-4-4(a) require that, within 60 days following an informal conference, all parties to that conference must be furnished with the written findings granting or denying the permit in whole or in part and stating the reasons therefor. This requirement would partially satisfy the requirement at 30 CFR 773.19(b) concerning notification of participants to an informal conference, if the 30-day time period specified at IC 13-4.1-4-5(b) began when the applicant and others are notified under IC 13-4.1-4-4(a).

The Director is approving the provisions at IC 13-4.1-4-5.3. In addition, the Director is requiring that Indiana amend the Indiana program to provide timely notice as required by 30 CFR 773.19(b)(1) of the decision to approve or not to approve a permit application to each person who files comments or objections to the permit application, and each party to an informal conference or hearing. Timely notice is that which would allow the above persons or entities to request a hearing within the 30-day period specified at IC 13-4.1-4-5(b).

9. IC 13-4.1-5-5

Subsections (b) and (c) have been amended to clarify that authority for making decisions on permit revisions has been transferred from the NRC to the director of the IDNR. Language in subsection (c), which requires that any revisions proposing significant alterations in a reclamation plan shall, at a minimum, be subject to notice and hearing requirements, has been deleted and relocated to new IC 13-4.1-5-5.3. The Director finds that the proposed changes are in accordance with SMCRA section 511 concerning revision of permits.

10. IC 13-4.1-5-5.1

This new section is added to require at subsection (a) that the NRC adopt rules under IC 4-22-2 to define nonsignificant revisions of a permit under section 5 of chapter 5. Proposed new subsection (b) states that a permit revision that would require significant

alterations in the reclamation plan may not be defined as nonsignificant under this section. The Director finds that the proposed subsection (a) is in accordance with the requirements of SMCRA at section 511 concerning revision of permits. Further, the Director finds that subsection (b) is no less stringent than section 511(a)(2) of SMCRA.

11. IC 13-4.1-5-5.2

This new section authorizes the director of the IDNR to approve applications for permit revisions submitted under IC 13-4.1-5 if the application is based only on nonsignificant revisions of a permit (as defined in the rules to be adopted under IC 13-4.1-5-5.1). This new provision also authorizes the director of the IDNR to approve a nonsignificant revision without notice and a hearing. The Director finds that the proposed provisions are in accordance with SMCRA at section 511(a)(2) concerning approval of permit revisions.

12. IC 13-4.1-5-5.3

This new section requires that an application for a significant permit revision may be approved only after the notice and hearing requirements of IC 13-4.1 are complied with. The new provision also authorizes the director of the IDNR to impose other conditions for approval of permit revision applications. The Director finds the proposed provisions to be in accordance with the requirements of SMCRA at section 511(a)(2) concerning approval of permit revisions.

13. IC 14-3-1-5

This provision is amended to clarify that hearing officers shall be appointed by the NRC rather than employed by the IDNR. The Director finds that the proposed amendments are in accordance with the requirements of SMCRA at section 503(a)(3) which requires the State to maintain a regulatory authority to regulate surface coal mining and reclamation operations in accordance with the requirements of SMCRA.

14. IC 14-3-3-3

This provision establishes the NRC. Two changes are made to subsection (a) which establishes seven *ex-officio* members of the NRC. The word "commissioner's" is deleted and replaced by the word "director's" at subsection (a)(3). The word "commissioner's" is deleted and replaced by the word "president's" at subsection (a)(7). These changes are

intended to clarify the makeup of the *ex-officio* appointments to the NRC.

Subsection (c) is amended to require that at least two of the citizen appointees to the NRC must have knowledge, experience, or education in the environment or in natural resource conservation.

Subsection (e) is amended to clarify that all administrative law judges must be appointed by the NRC.

The Director finds that the proposed amendments are in accordance with the requirements of SMCRA at section 503(a)(3) which requires the State, under its approved regulatory program, to maintain a State regulatory authority.

15. IC 14-3-3-5 and IC 14-3-3-6

These sections are amended to establish within the IDNR a Bureau of Mine Reclamation. The Director finds that these amendments are not inconsistent with SMCRA at section 503(a)(3) which requires the State, under its approved regulatory program, to maintain a State regulatory authority to regulate surface coal mining and reclamation operations.

16. IC 14-3-3-10

This section is amended to clarify that an advisory council may not act in any capacity on permit applications. This modification will have no effect on the newly established Bureau of Mine Reclamation since the new Bureau will not have an advisory council. The Director finds that the proposed amendment is not inconsistent with SMCRA at section 503(a)(3).

17. TC 14-3-3-21

This provision is amended to establish the NRC as the ultimate authority for all administrative appeals. Prior to this amendment, the ultimate authority under the Indiana program was the director of the IDNR in some situations, and the NRC in others. Generally, the director of the IDNR was the ultimate authority on all inspection, enforcement, and civil penalty matters. All such authority now rests with the NRC. This section was also amended to require, rather than give discretion to, the NRC to adopt rules to carry out its duties.

The Director finds that the proposed amendments are in accordance with SMCRA at section 503 (a) (3) .

18. IC 14-3-3-24

This new provision is added to establish that the director of the IDNR shall issue all Indiana surface coal mining and reclamation permits and all other licenses as defined and identified at new subsection (a). Permits may be issued by designees of the director of

the IDNR who are full-time employees of the IDNR. The Director finds that the proposed amendments are in accordance with SMCRA at section 503 (a)(3).

19. IC 14-3-3-25

This provision is added to establish that all hearings before the IDNR shall be heard by the NRC. The Director finds that the proposed amendment is in accordance with the provisions of SMCRA at section 503(a)(3).

20. Classification Plan

This proposed provision, section 46 of SEA 362, is a noncode provision directing the Indiana Personnel Director to prepare a new classification plan and a new pay plan for professional, administrative, and technical positions in the new Bureau of Mine Reclamation.

The Director finds that the proposed amendment is in accordance with the provisions of SMCRA at section 503(a)(3).

IV. Summary and Disposition of Comments

Agency Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), comments were solicited from various interested Federal agencies. The Fish and Wildlife Service responded that it had no objections to the proposed changes. The U.S. Soil Conservation Service responded that it had no relevant comments to offer.

The U.S. Forest Service commented (Administrative Record No. IND-0850) and recommended that under IC 13-4.1-4-1(b)(3) the Forest Service be added to the list of agencies to which the director of the IDNR shall give notice of the submission of an application for a permit or revision. While this provision is not being amended by Indiana, the Director notes that the list at subparagraph (b)(3) is not an exhaustive list of all the agencies which may have an interest in the proposed operations, but is a list of agencies which, at a minimum, must be so notified. The Director recommends that the commenter contact the director of the IDNR and request to be notified under IC 13-4.1-4-1(b)(3).

Public Comments

The public comment period and opportunity to request a public hearing was announced in the March 15, 1991, *Federal Register* (56 FR 11133). The comment period closed on April 15, 1991. No comments were received during the comment period, and no one requested an opportunity to testify at

the scheduled public hearing so no hearing was held.

By letter dated March 6, 1991 (Administrative Record No. IND-0856), Mr. David H. Pope commented and stated that a complete reading of the Indiana Surface Mining Control and Reclamation Act leads inevitably to the conclusion that the amendments contained in Indiana Public Law 28-1990 do not vest the authority to approve permit applications in the director of the IDNR. Pope stated that the 1990 Indiana legislation creates confusion as to who has authority to approve permit applications and OSM should not approve the amendments. The Director disagrees with the commenter. By letter dated March 8, 1991 (Administrative Record No. IND-0853), the chief legal counsel for the Indiana Bureau of Reclamation commented on the proposed amendments. Counsel stated that, under Indiana case law and rules of statutory interpretation, the proposed amendments do not conflict with other provisions of existing Indiana law or regulations. In addition, Counsel stated that the proposed amendments designate the director of the IDNR or the director's delegate, the initial decision-maker with respect to permit approval and issuance, and the Natural Resources Commission the final decision-maker in contested cases which must go to formal administrative review. The Director has concluded that the proposed amendments make the delegations of authority sufficiently clear.

V. Director's Decision

Based on the above findings, the Director is approving proposed Program Amendment Number 91-2 as submitted by Indiana on February 15, 1991. In addition, as discussed in Finding 8, the Director is requiring that Indiana amend the Indiana program to provide timely notice of the decision to approve or not to approve a permit to each person who files comments or objections to the permit application, and to each party to an informal conference or hearing.

The Federal regulations at 30 CFR part 914 codifying decisions concerning the Indiana program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage the states to conform their programs with the Federal standards without delay. Consistency of State and Federal standards is required by SMCRA.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written

concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required. However, EPA responded to the Director's request for comments and stated that EPA had no comments and that it concurred on the proposed amendment (Administrative Record No. IND-0858).

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 19, 1991.

Jeffrey Jarrett,

Acting Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 914—INDIANA

1. The authority citation for part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 914.15 is amended by adding a new paragraph (gg) to read as follows:

§ 914.15 Approval of regulatory program amendments.

(gg) The following amendment (Program Amendment Number 91-2) to the Indiana program as submitted to OSM on February 15, 1991, is approved effective August 2, 1991: IC 4-26-3-27.8 concerning the continuance of specified agencies; IC 13-4.1-2 concerning the regulatory authority; IC 13-4.1-4 concerning permit approval or denial; IC 13-4.1-5 concerning permit terms; IC 14-3 concerning the Department of Natural Resources; and the non-code provision at section 46 of Senate Enrolled Act 362 concerning the Bureau of Mine Reclamation.

3. In Section 914.16, paragraph (a) is revised to read as follows:

§ 914.16 Required program amendments.

(a) By January 5, 1992, Indiana shall amend the Indiana program to provide timely notice of any decision of the Director of the IDNR to approve or not approve a permit application to the following persons or entities: Each person who files comments or objections to the permit application, and each party to an informal conference or hearing.

[FR Doc. 91-18374 Filed 8-1-91; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 626

Biological Defense Safety Program—(AR 385-69)

AGENCY: Department of the Army, DoD.

ACTION: Final rule; suspension of regulations and request for comments.

SUMMARY: 32 CFR part 626, Biological Defense Safety Program—AR 385-69 was published in the *Federal Register* (56 FR 3186; January 28, 1991) as a final rule with an effective date of February 27, 1991. Amendments to part 626 were published on April 4, 1991 (56 FR 13759) with an effective date of April 4, 1991. It was felt by some members of the

general public that publishing 32 CFR part 626 as a final rule did not permit them a comment period. Upon publication of this document in the *Federal Register* the regulations published at 56 FR 3186 and 56 FR 13759 are suspended. This suspension will allow for a comment period not to exceed 30 days from the date of publishing in the *Federal Register*. During this period rules and procedures established in 32 CFR part 626—AR 385-69 will not be enforced. A new effective date and/or change, if necessary, to 32 CFR part 626 will be published in the *Federal Register* approximately 60 days from the last date of the comment period.

DATES: Effective on August 2, 1991 32 CFR part 626 is suspended indefinitely.

Comments will be received until September 3, 1991.

FOR FURTHER INFORMATION CONTACT:

Submit written comments to HQDA(DACS-SF), Mr. William Wortley, room: 2C717, Pentagon, Washington, DC 20310-0200, (703) 695-7291.

(Authority: 10 U.S.C. 42; Public Law 101-510, 104 Stat. 1485)

Kenneth L. Denton,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 91-18174 Filed 8-1-91; 8:45 am]

BILLING CODE 3710-08-M

32 CFR Part 627

Biological Defense Safety Program (Technical Safety Requirements) (DA Pamphlet 385-69)

AGENCY: Department of the Army, DoD.

ACTION: Final rule; suspension of regulations and request for comments.

SUMMARY: 32 CFR part 627, The Biological Defense Safety Program (Technical Safety Requirements) (DA Pamphlet 385-69), was published in the *Federal Register* (56 FR 9424; March 6, 1991) as a final rule with an effective date of April 5, 1991. It was felt by some members of the general public that publishing 32 CFR part 627 as a final rule did not permit them a comment period. Upon publication of this document in the *Federal Register* the regulations at 56 FR 9424 are suspended. This suspension will allow for a comment period not to exceed 30 days from the date of publishing in the *Federal Register*. During this period rules and procedures established in 32 CFR part 627—DA Pamphlet 385-69 will not be enforced. A new effective date and/or change, if necessary, to 32 CFR

part 627 will be published in the *Federal Register* approximately 60 days from the last date of the comment period.

DATES: Effective on August 2, 1991 32 CFR part 627 is suspended indefinitely.

Comments will be received until September 3, 1991.

FOR FURTHER INFORMATION CONTACT:

Submit written comments to HQDA(DACS-SF), Mr. William Wortley, room 2C717, Pentagon, Washington, DC 20310-0200, (703) 695-7291.

(Authority: 10 U.S.C. 42; Public Law 101-510, 104 Stat. 1485)

Kenneth L. Denton,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 91-18173 Filed 8-1-91; 8:45 am]

BILLING CODE 3710-08-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL-3990.5]

Volatility Regulations for Gasoline and Alcohol Blends Sold in Calendar Year 1991; Northeastern Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final rulemaking.

SUMMARY: Today's action promulgates a revision of the Phase I federal gasoline and alcohol blend volatility regulations which were promulgated on March 22, 1989 (54 FR 11886). This revision is limited to that part of the State of Arizona bordered by New Mexico and Utah, north of 34 degrees latitude and east of 111 degrees longitude, and applies only to the month of August, 1991. This action changes the Phase I summertime volatility standard for the portion of Arizona described from 9.0 to 9.5 pounds per square inch (psi), for the month of August, 1991. This revision is in response to a petition dated August 22, 1990 received by EPA from Giant Industries Arizona and other refiners.

EFFECTIVE DATE: This regulation is effective on August 1, 1991.

ADDRESSES: Materials relevant to this rulemaking have been placed in Docket A-91-03 by EPA. The docket is located at the Air Docket (LE-131), U.S. Environmental Protection Agency, Washington, DC 20460, in room M-1500 Waterside Mall and may be inspected from 8:30 a.m. to 12:00 noon and 1:30 p.m. to 3:30 p.m. Monday through Friday. A reasonable fee may be charged for copying docket material.

FOR FURTHER INFORMATION CONTACT:

Anne-Marie Cooney, (202) 382-2640.

SUPPLEMENTARY INFORMATION:

Introduction

This notice describes EPA's decision to revise the Reid Vapor Pressure (RVP) standard for the northeastern portion of Arizona for the month of August 1991. The remainder of this preamble will be divided into three sections. The first provides the background for this action, with respect to chronology and broad issues involved. The second section presents today's action and EPA's rationale. The third section summarizes the comments received on the proposed action and EPA's responses to them.

Background

On August 19, 1987, the Agency proposed a two-phase reduction in summertime gasoline volatility (52 FR 31274). On March 22, 1989 (54 FR 11868), EPA published a notice of final rulemaking promulgating Phase I of these volatility control regulations. These Phase I regulations included a list of applicable standards for geographical areas throughout the 48 contiguous states and the District of Columbia for the period of May 1 through September 15, effective June 1, 1989.¹

The final rule for the Phase I program, established a federal volatility standard of 9.0 psi for the month of August for the entire State of Arizona. EPA based its volatility designations on the geographic volatility classification scheme historically used by the American Society of Testing and Materials (ASTM). Prior to promulgation, no comments were received concerning the treatment of northeastern Arizona.

On August 22, 1990, EPA received a petition to reconsider its Phase I volatility regulations from Giant Industries Arizona, Inc., Bloomfield Refining Company, and Thriftway Marketing Company. The petition requested that EPA change the August Phase I volatility standard for gasoline and alcohol blends for northeastern Arizona from 9.0 to 9.5 psi.

The petitioners based their request on the following facts. On June 18, 1990, the American Society for Testing and Materials voted to change the volatility classification for northeastern Arizona from "A" to "A/B", eliminating the distinction between northeastern Arizona and northern New Mexico for all months except January. They further argued that the northeastern part of Arizona is more similar to northern New Mexico in terms of climate, altitude, and

population density than it is to the rest of Arizona. The petitioners argued that the difference in EPA's volatility standard poses a number of practical problems for refiners attempting to serve both the northern New Mexico and northeastern Arizona markets, and requested that EPA amend its classification for northeastern Arizona to be consistent with recent changes in ASTM classification for the area. As noted above, in June 1990, ASTM voted to change the classification for northeastern Arizona from "A" to "A/B".

On November 30, 1990, EPA wrote a letter to Governor Rose Mofford of Arizona, conveying the concerns that had been raised by the petition. In the letter, EPA presented the issues raised and requested the Governor's opinion as to whether EPA should begin rulemaking to amend volatility regulations for northeastern Arizona. On January 18, 1991, a response was received from the Arizona Department of Environmental Quality (ADEQ). The letter stated that the State supports the petition because of climatic and geographic reasons, the isolation of the area, and the fact that the area does not have a current or potential ozone problem.

The effect of today's revision is to change the federal Phase I volatility standard for northeastern Arizona from 9.0 to 9.5 psi, for the month of August, 1991. This change is limited to this one month, as beginning with the summer of 1992, EPA's Phase II gasoline and alcohol blend volatility regulations will become effective.

On June 11, 1990, EPA published a notice of final rulemaking promulgating Phase II of a two phase nationwide reduction in summertime commercial gasoline volatility (55 FR 23658). The Phase II standards will take effect in the summer of 1992. On May 29, 1991, EPA proposed revisions to the Phase II regulations to implement the provisions of section 211(h) of the Clean Air Act (Act) (56 FR 24242).² Today's revisions are limited to the month of August of the 1991 volatility season, and do not affect the Phase II regulations.

The revisions to the Phase I volatility standards for northeastern Arizona adopted today were proposed on May 30, 1991 (56 FR 24360).

Description of Today's Action

EPA has reviewed Giant Industries' petition and has found that the request to change the Phase I volatility standard

¹ In 1989, the standards did not go into effect until June 1.

² Section 216 of the Clean Air Act Amendments of 1990, 104 Stat. 2399, amended section 211 of the Act by adding paragraph (h) to that section.

for northeastern Arizona from 9.0 to 9.5 psi for the month of August, 1991 is appropriate based on the petition itself, the support expressed for this action in the letter from ADEQ, and the following considerations. The petitioners are refiners in northern New Mexico who serve the New Mexico and northeastern Arizona markets in the Four Corners region of the Rocky Mountains. The difference in EPA's Phase I volatility standard for northern New Mexico and northeastern Arizona poses practical problems for refiners seeking to serve both markets. In particular, unless the refiner has redundant blending facilities, it cannot serve the smaller Arizona market during the month of August under the Phase I standards. The part of Arizona in question is not served by products pipelines and most of the area's demand for petroleum products is supplied by local refineries, such as the petitioners'. Northeastern Arizona and northern New Mexico are similar in climate and topography. The portion of Arizona in question is in attainment for ozone³ and has a low population density. Finally, the proposed change would be effective for only one month, August 1991, before Phase II standards become effective in 1992.

The State of Arizona has expressed support for this action. No requests for a public hearing were received by EPA.

Summary of Public Comments and EPA's Responses

(1) *Comment:* Only one comment was submitted in response to EPA's proposal. That commenter expressed concern that amendments to the Phase I or Phase II volatility standards which relaxed volatility standards might cause safety problems for automobiles. The commenter noted that automobile manufacturers are in advanced stages of hardware development to comply with new enhanced evaporative emissions requirements and lower volatility gasoline, as originally required, is necessary to meet these new vehicle requirements. The commenter pointed out that higher volatility fuels generate excessive vapor and might cause canister breakthrough in enhanced evaporative systems and onboard vapor recovery systems, if these systems are required. Finally, the commenter asserted that basing the relaxation of RVP standards solely on clean air attainment considerations, with no consideration for possible safety implications, was inappropriate.

Response: EPA has given close consideration to the safety concerns

raised by the commenter. The expressed concern is that increased gasoline volatility will affect the proper operations of motor vehicle emission control systems designed to meet enhanced evaporative emissions and onboard vapor recovery requirements. EPA is currently conducting rulemaking concerning these motor vehicle requirements. As such, safety concerns regarding these motor vehicle emission control systems are more properly addressed in those rulemakings. In any case, motor vehicles are not at present time subject to these requirements, and the volatility revision announced today applies only during the month of August, 1991. It therefore will not affect motor vehicle hardware designed to meet any future requirements established by those rulemakings.

Environmental Impact

Today's action is not expected to have any adverse environmental effect. The portion of Arizona affected has a low population density and does not have an ozone problem. The amendment affects only one month (August) in 1991.

Economic Impact

The rule will not have a substantial impact. It will allow flexibility for refiners seeking to service both the northern New Mexico and northern Arizona markets, and may result in cost savings for consumers.

Administrative Requirements

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 through 612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment, a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant impact on a substantial number of small entities. In such circumstances, a regulatory flexibility analysis is not required.

The expected impact of the rule on small entities is negligible. This rule does not impose additional regulatory requirements on small entities. I therefore certify that the regulatory revision announced in this notice will not have a significant adverse impact on a substantial number of small entities, and therefore does not require a regulatory flexibility analysis.

Under Executive Order 12291, the Agency must judge whether a regulation is "major" and thus subject to the

requirement to prepare a Regulatory Impact Analysis. The rule published today is not major because the rule will not result in an effect on the economy of \$100 million or more, will not result in increased costs or prices, will not have significant adverse effects on competition, employment, investment, productivity, and innovation, and will not significantly disrupt domestic export markets. Therefore the Agency has not prepared a Regulatory Impact Analysis under the Executive Order.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order No. 12291. No written comments were received from OMB.

This rulemaking does not include any new information collection requirements. Information collection requirements in the regulations promulgated on March 22, 1989, were approved by OMB under the Paperwork Reduction Act, 44 U.S.C. et seq., and have been assigned OMB control number 2060-0178.

Authority for the action proposed in this notice is granted to EPA by sections 114, 211, and 301 of the Clean Air Act (42 U.S.C. 7414, 7545, and 7601).

The regulation published today is effective on August 1, 1991. I find that good cause exists for an exception from the normal requirement of publication or service 30 days prior to the effective date of a regulation. Section 553(d)(3) of the Administrative Procedure Act, 5 U.S.C. 553(d)(3). In this case, the revised rule applies for only one month, August 1991, and a delay in the effective date would therefore interfere with the purposes of this rulemaking. In addition, no persons are prejudiced by an immediate effective date, given the reasons for issuance of the rule and the fact it relaxes the gasoline volatility standard for that one month.

Since this rulemaking relieves a restriction in the current volatility regulations, EPA also believes that the publication requirements of section 553(d) do not apply under 5 U.S.C. 553(d)(1).

List of Subjects in 40 CFR Part 80

Fuel and fuel additives, Gasoline, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: July 30, 1991.

William K. Reilly,
Administrator.

For the reasons set forth in the preamble, part 80 of title 40 of the Code of Federal Regulations is amended as follows:

³ See, 40 CFR 61.303.

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: Sec. 114, 211 and 301(a) of the Clean Air Act as amended, 42 U.S.C. 7414, 7545, and 7601(a).

2. In § 80.27(a)(1) the table is amended by revising the entry for Arizona to read as follows:

§ 80.27 Controls and prohibitions on gasoline volatility

(a) * * *

APPLICABLE STANDARDS ¹

[(1) 1989-1991]

State	May	June	July	Aug.	Sept.
Arizona:					
North of 34 degrees latitude and east of 111 degrees longitude.....	9.5	9.0	9.0	9.5	9.5
All areas except North of 34 degrees latitude and east of 111 degrees longitude	9.5	9.0	9.0	9.0	9.5

¹ Standards are expressed in pounds per square inch (psi).

[FR Doc. 91-18495 Filed 8-1-91; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 663**

[Docket No. 901078-0345]

Pacific Coast Groundfish Fishery

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

ACTION: Notice of fishing restrictions, and request for comments.

SUMMARY: NOAA announces an increase in trip limits for thornyheads caught with trawl gear in the commercial groundfish fishery for the deepwater complex off Washington, Oregon, and California. This action is authorized by the regulations implementing the Pacific Coast Groundfish Fishery Management Plan. The trip limits are designed to keep landings within the harvest guideline for these species while extending the fishery as long as possible during the year.

EFFECTIVE DATE: 0001 hours (local time) July 31, 1991, through 2400 hours (local time) December 31, 1991, unless modified, superseded, or rescinded. Comments will be accepted through August 19, 1991.

ADDRESSES: Submit comments on this action to Rolland A. Schmitt, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Seattle, WA 98115; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT:

Joe Scordino (Northwest Region, NMFS) 206-526-6140, Rodney McInnis (Southwest Region, NMFS) 213-514-6199, or the Pacific Fishery Management Council at 503-221-6352.

SUPPLEMENTARY INFORMATION:

Regulations implementing Amendment 4 to the Pacific Coast Groundfish Fishery Management Plan (FMP) were approved on November 15, 1991, and final implementing regulations were published at 56 FR 736 (January 8, 1991). The amended FMP provides for rapid changes to specific management measures if they have been designated as "routine." This designation means that the identified management measure may be implemented and adjusted for a specified species or species group and gear type after consideration at a single meeting of the Pacific Fishery Management Council (Council), as long as the purpose of the measure is the same as originally established when the measure was designated as routine and the impacts of the measure already have been analyzed. Trip landing and frequency limits for thornyheads (*Sebastolobus altivelis* and *Sebastolobus alascanus*) are among those management measures that have been designated as routine at 50 CFR 663.23(c). This management measure falls within the scope of the impacts analyzed when Amendment 4 was implemented.

Thornyheads are in the "deepwater complex" which also includes sablefish and Dover sole. Since January 1, 1991, the commercial fishery for the deepwater complex has been managed by a weekly trip limit of 27,500 pounds, of which no more than 1,000 pounds or 25 percent, whichever is greater, can be sablefish and no more than 7,500 pounds can be thornyheads. Biweekly and

twice-weekly trip limit options also are available.

At its July 1991 meeting, the Council's Groundfish Management Team (GMT) announced that the total landings of thornyheads were 2,548 mt through June 8, about 32 percent of the harvest guideline of 7,900 mt. At the present rate, landings of thornyheads are projected to reach 5,042 mt by December 31, 1991. Therefore, to enable the harvest guideline to be reached, the Council recommended increasing the weekly trip limit on thornyheads from 7,500 pounds to 12,500 pounds with proportional changes to the biweekly and twice-weekly trip limit options (25,000 pounds biweekly and 6,250 pounds twice-weekly). The higher trip limits may bring the annual total landings of thornyheads to approximately 7,000 mt if effort remains constant. The trip limits for the complex will not be increased, however, so that the trawl allocation for sablefish will not be exceeded.

Secretarial Action

The Regional Director, Northwest Region, NMFS, approved the Council's recommendation and, therefore, the Secretary of Commerce publishes this implementing notice. By this notice, NOAA modifies the trip limits for thornyheads caught with trawl gear announced at 56 FR 645 (January 8, 1991) in section II. 1991 Management Measures by changing: (1) the weekly trip limit from 7,500 pounds to 12,500 pounds in paragraph D(4)(a)(ii); (2) the biweekly trip limit from 15,000 pounds to 25,000 pounds in paragraph D(4)(a)(iii); and the twice-weekly trip limit from 3,750 pounds to 6,250 pounds in paragraph D(4)(a)(iv). Unless retention or landing of the deepwater complex or thornyheads has been prohibited, a vessel that has landed a weekly (or

biweekly or twice-weekly) limit may continue to fish on the limits for the next fishing period (weekly, biweekly, or twice-weekly) so long as the fish are not landed (offloaded) until the next fishing period.

All other provisions announced at 56 FR 645 regarding thornyheads caught with trawl gear remain in effect, with the following exception regarding State notification procedures.

Trip Limit Options

At the July Council meeting, the States of Oregon and Washington agreed to no longer require fishermen to declare their intent to use biweekly or twice-weekly trip limit options (currently available for the *Sebastes* complex of rockfish, widow rockfish, and the deepwater complex). Instead, Oregon, and Washington intend to adopt the system used in California which allows fishermen to decide at sea which option to use, without prior declaration to the State. This change is intended to minimize discarding fish in excess of the weekly (or twice-weekly) limit, because a fisherman will be allowed to choose the appropriate trip landing and frequency limit based on actual performance during each two-week period. However, the choice of a weekly, biweekly or twice-weekly option will be bidding for the vessel for each two-week period. The two-week periods remaining in 1991 are: July 31-Aug. 13; Aug. 14-27; Aug. 28-Sept. 10; Sept. 11-24; Sept. 25-Oct. 8; Oct. 9-22; Oct. 23-Nov. 6-19; Nov. 20-Dec. 3; Dec. 4-17; Dec. 18-31. For example, those fishermen who already have declared to the States of Oregon and Washington that they are opting for a biweekly trip limit starting on July 24, a biweekly landing limit will apply during the week of July 24-30. The States of Oregon and Washington may require vessels to keep copies of trip tickets on board, and should be contacted to determine the specifics and effective dates of their new regulations. For further information, contact the Oregon Department of Fish and Wildlife, Marine Regional Office, Marine Science Drive, Building No. 3, Newport, OR 98365, telephone 503-867-47841; P.O. Box 5430, Charleston, OR 97420, telephone 503-888-5515; 53 Portway Street, Astoria, OR 97103, telephone 503-325-2462; or the Washington Department of Fisheries, 115 General Administration Building, Olympia, WA 98504, telephone 206-753-6623.

Once the States of Oregon and Washington implement this change, reference to state notification procedures for trip limit options (or their revocation) at 56 FR 645 (January 8, 1991) and 56 FR 20142 (May 2, 1991) will

no longer apply, and the provisions that pertained only to California in paragraph "E. Notifications for Biweekly and Twice-weekly Trip Limit Options" at 56 FR 651 will apply to all three states (56 FR 645; January 8, 1991).

Classification

These actions are taken under the authority of, and in accordance with, 50 CFR part 663.23(c)(1)(i)(G) as added by the final rule published at 56 FR 2865 (January 25, 1991), and section III.B.3 of the appendix to 50 CFR part 663.

This action is authorized by Amendment 4 to the FMP for which a Supplemental Environmental Impact Statement (SEIS) was prepared in accordance with the National Environmental Policy Act (NEPA). Because this action and its impacts have not changed significantly from those considered in the SEIS, this action is categorically excluded from the NEPA requirement to prepare an environmental assessment in accordance with paragraph 5a(3) of the NOAA Directives Manual 02-10.

This action is in compliance with Executive Order 12291, and is covered by the Regulatory Flexibility Analysis prepared for the authorizing regulations.

The public has had the opportunity to comment on this action. The public participated in GMT, Groundfish Advisory Subpanel, Scientific and Statistical Committee, and Council meetings in July 1991 that resulted in the recommendation to take this action. Additional public comments will be accepted for 15 days after publication of this notice in the Federal Register.

List of Subjects in 50 CFR Part 663

Fisheries, Fishing.

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

Dated: July 30, 1991.

David S. Crestin,

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

[FR Doc. 91-18457 Filed 7-30-91; 4:46 p.m.]

BILLING CODE 3510-22-M

50 CFR Part 685

[Docket No. 910374-1117, 910469-1089]

RIN 0648-AD97

Pelagic Fisheries of the Western Pacific Region

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

ACTION: Final rule; emergency interim rule; effective date extension and modification of management measures

in the protected species zone in the Northwestern Hawaiian Islands; corrections.

SUMMARY: This document corrects a final rule that was published on May 31, 1991 (56 FR 24731), by correcting the definition of "Protected species zone" in § 685.2, and the effective dates for the newly redesignated paragraphs (o) through (t) in § 685.5.

This document also corrects an emergency interim rule that was published on July 19, 1991 (56 FR 33211), by correcting the effective dates for paragraphs (s) and (t) of § 685.5 appearing in the preamble of that rule document.

EFFECTIVE DATES: The corrections to the final rule document published at 56 FR 24731 on May 31, 1991, are effective May 31, 1991. The correction to the emergency interim rule document published at 56 FR 33211 on July 19, 1991, is effective July 19, 1991.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, Fisheries Management Division, Southwest Region, NMFS, Terminal Island, California (213) 514-6660; or Alvin Katekaru, Pacific Area Office, Southwest Region, NMFS, Honolulu, Hawaii (808) 955-8831.

SUPPLEMENTARY INFORMATION: In a final rule published May 31, 1991 (56 FR 24731), paragraphs (m) through (r) in § 685.5 were redesignated as paragraphs (o) through (t). The intent of this redesignation was to allow for the insertion of new paragraphs while maintaining the temporary status of the redesignated paragraphs, but not to change the temporary status of those paragraphs to a permanent status. The end of the effective period of newly redesignated paragraphs (o) through (r) was intended to remain 2400 hours local time July 22, 1991, and the end of the effective period of newly redesignated paragraphs (s) and (t) was intended to remain 2400 hours local time July 15, 1991. Paragraphs (o) through (r) have subsequently been extended to 2400 hours local time October 9, 1991, by an emergency rule extension and modification notice published June 24, 1991 (56 FR 28718). The effectiveness of paragraphs (s) and (t) was meant to be extended to 2400 hours local time October 13, 1991, by an emergency rule extension and modification notice published July 19, 1991 (56 FR 33211), which is accordingly corrected by this notice.

In addition, the final rule published May 31, 1991 (56 FR 24731), contained a definition in § 685.2 for "Protected species zone" which was incomplete

and not consistent with the original definition contained in the emergency interim rule published April 18, 1991 (56 FR 15842).

Finally, in an emergency interim rule effective date extension and modification notice published July 19, 1991 on page 33212, paragraph 2. under the "Effective Dates" subheading in the preamble incorrectly stated that paragraphs (s) and (t) of § 685.5 are not impacted by the extension notice due to the redesignation of those paragraphs in the May 31, 1991, final rule (56 FR 24731). It was intended that paragraphs (s) and (t), although redesignated by the May 31, 1991, final rule, maintain their temporary status until 2400 hours local time July 15, 1991, and then be extended to 2400 hours local time October 13, 1991, by the emergency rule extension and modification notice published July 19, 1991 (56 FR 33211).

This notice corrects the May 31, 1991 (56 FR 24731), final rule and the July 19, 1991 (56 FR 33211), emergency rule extension and modification notice, so that the effective dates of redesignated paragraphs (o) through (t) and the definition for "Protected species zone" are correct.

In FR Doc. 91-12800 (56 FR 24731, May 31, 1991), make the following corrections:

1. On p. 24731, in the third column, in the **EFFECTIVE DATE** paragraph, the first two sentences should read: "This action is effective at 0000 hours local time May 26, 1991, except for the definition of

"Protected species zone" in § 685.2; § 685.4(c); § 685.5 paragraphs (i) and (l) through (t); § 685.11; and § 685.13. The definition of "Protected species zone" in § 685.2, and § 685.11 will become effective at 0000 hours local time July 16, 1991; the effective dates of newly redesignated paragraphs (o) through (r) of § 685.5 remain 0001 hours local time April 23, 1991, to 2400 hours local time July 22, 1991; and the effective dates for newly redesignated paragraphs (s) and (t) of § 685.5 remain 0001 hours local time April 15, 1991, to 2400 hours local time July 15, 1991.

PART 685—[CORRECTED]

§ 685.2 [Corrected]

2. On p. 24735, in the first column, in § 685.2, the definition for "Protected species zone" is corrected by adding to the end of the definition the following sentence: "Where these areas are not contiguous, parallel lines drawn tangent to and connecting those semi-circles of the 50-nm areas that lie between Nihoa Island and Necker Island, French Frigate Shoals and Gardner Pinnacles, Gardner Pinnacles and Maro Reef, and Lisianski Island and Pearl and Hermes Reef, shall delimit the remainder of the protected species zone."

3. On p. 24735, in the third column, in the last paragraph (amendatory instruction 5), the first sentence should read: "In § 685.5, existing paragraphs (m) through (p), which are effective through July 22, 1991, and (q) and (r), which are effective through July 15, 1991,

are redesignated as paragraphs (o) through (t); newly redesignated paragraphs (o) and (r) remain effective through July 22, 1991, and newly redesignated paragraphs (s) and (t) remain effective through July 25, 1991; paragraph (d) is revised; and new paragraphs (e) through (n) are added to read as indicated below."

In FR Doc. 91-17190 (56 FR 33211, July 19, 1991), make the following corrections:

4. On p. 33212, in the second column, paragraph 2. under the "Effective Dates" subheading should read: "In § 685.5, paragraph (i) was suspended and new paragraphs (q) and (r) were added by the April 18, 1991, emergency rule. The May 31, 1991, final rule added a new paragraph (i) to replace the suspended version and redesignated paragraphs (q) and (r) as paragraphs (s) and (t) to be effective through July 15, 1991. New paragraph (i) of § 685.5 will become effective upon approval from OMB and publication of a notice to that effect in the **Federal Register**. Paragraphs (s) and (t) are extended from 0000 hours local time July 16, 1991, to 2400 hours local time, October 13, 1991, by this document.

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

Dated: July 25, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries,
National Marine Fisheries Service.

[FR Doc. 91-18193 Filed 8-1-91; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 56, No. 149

Friday, August 2, 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

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 91-081]

Specifically Approved States Authorized to Receive Mares and Stallions Imported from CEM-Affected Countries

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to add Florida to the list of States approved to receive mares and stallions imported into the United States from countries affected with contagious equine metritis (CEM). We are taking this action because Florida has entered into an agreement with the Administrator of the Animal and Plant Health Inspection Service, to enforce its State laws and regulations to control CEM and to require inspection, treatment, and testing of horses, as required by federal regulations, to further ensure the horses' freedom from CEM. This action would relieve unnecessary restrictions on importers of mares and stallions from countries affected with CEM.

DATES: Consideration will be given to comments received on or before October 1, 1991.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket 91-081. Comments received may be inspected as USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT:

Dr. Manuel A. Thomas, Jr., Senior Staff Veterinarian, Sheep, Goat, Equine and Poultry Diseases Staff, USDA, APHIS, room 769, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-6954.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92 §§ 92.301(c)(2), 92.304(a)(4)(ii) and 92.304(a)(7)(ii) allow certain horses (mares and stallions over 731 days old) to be imported into the United States from certain countries where contagious equine metritis (CEM) exists if specific requirements to prevent their introducing CEM into the United States are met and the horses are consigned to approved States for further inspection, treatment, and testing.

Mares and stallions over 731 days old must be consigned to States which have been approved by the Administrator of the Animal and Plant Health Inspection Service (APHIS) as meeting conditions necessary to ensure that the horses are free of CEM. These conditions, which concern inspection, treatment, and testing of the horses, are contained in § 92.304(a)(5) of the regulations for stallions and in § 92.304(a)(8) for mares. Florida has agreed to abide by the regulations concerning horses imported from countries where CEM exists, and to enter into a written agreement with the Administrator, APHIS, to enforce its State laws and regulations to control CEM. Therefore, we propose to add Florida to the list of States approved to receive mares and stallions that are over 731 days old and imported into the United States from certain countries where CEM exists.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than \$100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect 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.

We anticipate that fewer than 20 mares and stallions over 731 days old will be imported into the State of Florida annually from countries where CEM exists. Approximately 225 mares and stallions over 731 days old and from countries where CEM exists were imported into the entire United States in fiscal year 1990. During this same period, approximately 34,715 horses of all classes were imported into the United States.

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

Paperwork Reduction Act

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

Executive Order 12372

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

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

Accordingly, 9 CFR part 92 would be amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 would continue to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102-105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.304 [Amended]

2. In § 92.304 paragraphs (a)(4)(ii) and (a)(7)(ii) would be amended by adding "The State of Florida" in alphabetical order.

Done in Washington, DC, on this 29th day of July 1991.

Robert Melland,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-18367 Filed 8-1-91; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL TRADE COMMISSION**16 CFR Ch. I****Petitions for Environmental Marketing and Advertising Guides**

AGENCY: Federal Trade Commission.

ACTION: Extension of time of filing public comment on issues concerning environmental marketing and advertising claims and pending petitions.

SUMMARY: The Federal Trade Commission ("FTC" or "Commission") has extended the time to file written comment on issues relating to whether additional guidance to the public is needed on the applicability of section 5 of the FTC Act, 15 U.S.C. 45 (section 5), to environmental advertising and labeling claims and, more specifically, what form such guidance should take and what it should cover. Public hearings on these issues were held on July 17-18, 1991. In order to ensure that all interested parties have the opportunity to submit comments in writing, the Commission has extended the time for filing comments for thirty days, until August 16, 1991. The Commission refers interested parties to its May 31, 1991 Federal Register notice (56 FR 24968) for further explication of its interest in this matter and of the issues which the Commission particularly would like addressed.

DATES: Comments will be accepted until August 16, 1991.

ADDRESSES: Comments may be mailed to the Office of the Secretary, room 159, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Devenette Sneed, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, suite 4002, 6th & Pennsylvania Ave. NW., Washington, DC 20580, (202) 326-3360.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 91-18421 Filed 8-1-91; 8:45 am]

BILLING CODE 6750-01-M

COMMODITY FUTURES TRADING COMMISSION**17 CFR Parts 1 and 3****Adverse Registration Actions and Other Registration Matters**

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission (Commission) is proposing to amend its rules relating to the procedures to be followed when an applicant for registration or a registrant under the Commodity Exchange Act (Act), 7 U.S.C. 1 *et seq.* (1988), is subject to statutory disqualification from registration. The proposed amendments would afford applicants subject to statutory disqualification under section 8a(2) of the Act the opportunity to present evidence of rehabilitation and mitigation, rights currently afforded to all registrants subject to statutory disqualification and to those applicants subject to statutory disqualification under section 8a(3) of the Act. However, the standards of proof which an applicant or registrant must meet to demonstrate that full, conditioned or restricted registration would not pose a substantial risk to the public despite the existence of the statutory disqualification would differ depending upon whether a section 8a(2) or a section 8a(3) disqualification were involved. The standard for a section 8a(2) disqualification would be a clear and convincing showing and the standard for a section 8a(3) disqualification would be a preponderance of the evidence. Further, the Commission is proposing to retain a procedure whereby a registrant subject to statutory disqualification under section 8a(2) of the Act would have his registration suspended on the basis of written submissions without the opportunity to present evidence of rehabilitation and mitigation; however, the Commission would continue to permit such a registrant an oral hearing where such evidence could be presented before his registration could be revoked or restricted. These proposed rules are intended to conform the Commission's rules with respect to adverse registration actions with the standards enunciated in the Commission's decision

in *In the Matter of Elizabeth A. Kanoles and In the Matter of Mark W. Chamberlain* (Current Binder) Comm. Fut. L. Rep. (CCH) ¶ 24,855 (June 6, 1990).

The Commission is also proposing amendments to several other provisions of the rules relating to the registration process. These proposals include, among others: elimination of most restrictions on dual and multiple associations of associated persons (APs); codification of positions exempting (1) top corporate officers from AP registration under certain circumstances, (2) APs from being required to re-register when they gain a new sponsor due to events such as a merger or acquisition of the sponsoring firm, and (3) firms from being required to re-register because of a corporate reorganization where there is no change in the natural persons involved in the firms' operations; requiring a Form 8-R and fingerprint card from certain natural person principals of an entity that is a non-natural person principal of a firm applying for registration, unless the non-natural person is a publicly-held company or an otherwise regulated entity; and simplified registration procedures for persons who will confine their activities under the Act to specified products. These proposed rule amendments would codify certain current staff positions and address certain aspects of the registration process that the Commission believes should be clarified or simplified. The Commission is also proposing to codify by rule the requirement that a futures commission merchant (FCM) that has entered into a guarantee agreement with an introducing broker (IB) carry the customer accounts introduced by the IB.

DATES: Comments must be received by October 28, 1991.

ADDRESSES: Comments should be sent to the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581 and should refer to "Registration Rule Amendments."

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, or Scott L. Diamond, Attorney-Advisor, Division of Trading and Markets, at the above address. Telephone (202) 254-8955.

SUPPLEMENTARY INFORMATION:**I. Paperwork Reduction Act**

While the Commission has determined that the proposed rule amendments will effectively decrease the existing paperwork reduction burden previously approved by the Office of Management and Budget (OMB), the

public reporting burden for the collection of information which includes all proposed amendments to parts 1 and 3 of the Commission's regulations is estimated to average 1.20 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 Mr. Joe F. Mink, CFTC Clearance Officer, 2033 K Street NW., Washington, DC 20581; and to Office of Management and Budget, Paperwork Reduction Project (3038-0024), Washington, DC 20503.

II. Statutory Disqualifications

A. Introduction

The Commission's decision *In re Kangles and Chamberlain*, (Current Binder) Comm. Fut. L. Rep. (CCH) ¶ 24,855 (June 6, 1990), called for equal treatment of applicants and registrants who are subject to statutory disqualification. Therein, the Commission stated that "our registration process should use uniform substantive standards to assess the fitness of disqualified applicants seeking entry into the futures industry and disqualified registrants seeking retention in the industry." *Id.*, at 37,028 (footnote omitted). As a result, the Commission called for the promulgation of proposed amendments to its rules relating to statutory disqualifications from registration, which are now being proposed. *Id.*, at 37,036 n.36.

B. Procedure To Deny, Condition, Suspend, Revoke or Place Restrictions Upon Registration Pursuant to Sections 8a(2), 8a(3) and 8a(4) of the Act

The Commission's proposed amendments to Rule 3.60 would set forth procedures applicable to statutory disqualification proceedings pursuant to sections 8a(2), 8a(3) and 8a(4) of the Act. Proposed Rule 3.60 is intended to create procedural equality between applicants and registrants subject to statutory disqualification under sections 8a(2), 8a(3) or 8a(4) of the Act. Under a statutory disqualification proceeding, unlike other types of enforcement proceedings, the Commission will be relying on the fact of the statutory disqualification, and generally not upon its own investigation, as the basis for bringing the proceeding. Accordingly, the procedures discussed herein shift the burden to an applicant or registrant subject to a statutory disqualification to

show why, notwithstanding that fact, circumstances justify granting full, conditioned or restricted registration, because such registration would not pose a substantial risk to the public. The Commission believes it is appropriate to shift the burden in this manner because such evidence, if it exists, should be within the applicant's or registrant's control. (Proposed Rule 3.60(b)(2)).

A statutory disqualification proceeding would commence with issuance of a notice by the Commission¹ that an applicant or registrant is subject to statutory disqualification. Such notice would state the bases upon which a registration may be denied, granted upon conditions, suspended, revoked or restricted. The notice is not, however, required to specify any proposed conditions or restrictions. The notice will further contain instructions with respect to the filing of a response and a section on the ramifications of a failure to respond. (Proposed Rule 3.60(a)).²

Within thirty days of service of the notice, the applicant or registrant must file a response to the notice. See Proposed Rule 3.60(b). In the response, the applicant or registrant may challenge the evidentiary basis for the statutory disqualification under proposed Rule 3.60(b)(1). If the applicant or registrant cannot dispute the evidentiary basis of the statutory disqualification on the grounds set forth in proposed Rule 3.60(b)(1), the burden is on the applicant or registrant, if other than the AP or floor broker (FB) registration categories are involved, to show that full registration, and if the AP or FB registration categories are involved, to show that full, conditioned or restricted registration, would not pose a substantial risk to the public. The applicant or registrant must also indicate in his response whether he or she intends to make such a showing. (Proposed Rule 3.60(b)(2)).

If a person is an AP or FB or is an applicant for registration in either category, and intends to make a showing that full, conditioned or restricted registration would not pose a substantial risk to the public under

proposed Rule 3.60(b)(2)(i), he must include a letter, which is binding upon a sponsor or supervising FB who meets the qualifications set forth in proposed Rule 3.60(b)(2)(i) (A) through (C), indicating that the qualified sponsor or supervising FB agrees to sign a Supplemental Sponsor Certification Statement and supervise compliance with any conditions or restrictions that may be imposed on the applicant or registrant.³ The Commission also notes that it can place conditions or restrictions on other categories of registrant, if appropriate, but such other categories of registrant are not required to submit an agreement for supervised compliance with conditions or restrictions with their response to the notice.

Pursuant to proposed Rule 3.60(b)(2)(ii), an applicant or registrant who intends to make a showing that full, conditioned or restricted registration would not pose a substantial risk to the general public must submit, within fifteen days after filing his initial response,⁴ a statement by himself, or his attorney, which identifies and summarizes the expected testimony of all witnesses whom the applicant or registrant intends to have testify on his behalf. The applicant or registrant must further submit copies of all documents which he intends to introduce. The summary of testimony and copies of documents should show that full, conditioned or restricted registration would not pose a substantial risk to the public and should constitute evidence of mitigation of the seriousness of the statutory disqualification⁵ and

³ A Supplemental Sponsor's Certification Statement consists of a statement, made by a registrant's sponsor or an applicant's potential sponsor, or someone who would become a supervising floor broker to the conditioned or restricted FB, wherein the particular relationship between the applicant or registrant and his sponsor or supervising FB is described with specificity and a detailed description of the safeguards to protect the public is provided. The Commission views a sponsor's or supervising FB's failure to supervise in accordance with the special supervisory conditions set forth in a Supplemental Sponsor's Certification Statement as constituting other good cause to affect the registration of the sponsor or supervising FB. The Commission also views a registrant's failure to comply with conditions or restrictions as constituting other good cause to affect such registrant's registration, and notes that the conditions or restrictions themselves generally provide that such a failure to comply would impact upon the registrant's registration.

⁴ The Commission believes it is appropriate to allow extra time to make this further submission.

⁵ The Commission has stated that "(a)s a conceptual matter, mitigation evidence tends to show that under the particular circumstances, the weight that would ordinarily be accorded the presumption arising from proof of that particular

¹ As discussed below, notices that commence a statutory disqualification proceeding are proposed to be issued by the Commission rather than by the Director of the Division of Trading and Markets (Division) or the Director's designee pursuant to delegated authority, as permitted under the current rules.

² The Commission notes that so long as a person is registered when a proceeding is commenced, such a registration can be revoked even if it ceases *pendente lite*. See *In the Matter of First Regal Commodities, Inc.*, (1984-1986 Transfer Binder) Comm. Fut. L. Rep. (CCH) ¶ 22,600, at 30,570 (CFTC May 22, 1985).

rehabilitation⁶ since the time of the wrongdoing underlying the statutory disqualification,⁷ as well as, if the AP or FB registration categories are involved, evidence of and proposals for a set of effective supervisory controls. The Commission also notes that an applicant's or registrant's willful, material false or misleading statements or omission of material facts about a statutory disqualification in his registration application can constitute separate grounds for disqualification under 8a(2)(G) and 8a(3)(G) of the Act and impact the applicant's or registrant's showing of mitigation or rehabilitation.

The Division of Enforcement (DOE), pursuant to proposed Rule 3.60(c), must reply to the registrant's or applicant's response within thirty days after the later of the initial response or the further submission referred to in the preceding paragraph. The DOE, in its reply, shall either submit a motion for summary judgment stating that there are no genuine issues of material fact to be determined or, if there are material factual issues in dispute, a description of

the evidence it intends to produce, including identification of witness and summaries of anticipated DOE witness testimony and copies of documents intended to be introduced in an oral hearing. A motion for summary judgment, pursuant to proposed Rule 3.60(c)(1), may request only a denial or revocation of registration. Summary procedures will not yield a conditioned or restricted registration.

Based upon the notice, response and further submission, if any, and reply, and pursuant to proposed Rule 3.60(d), the Administrative Law Judge (ALJ) will issue a summary order granting, denying, suspending or revoking registration, or an order notifying the parties of a hearing to be conducted in accordance with specified procedures under Part 10 of the Commission's regulations. A telephonic hearing procedure is available under proposed Rule 3.60(d)(3). The telephonic hearing procedure, however, will only be available upon the agreement of all parties to the proceeding.

The ALJ's determinations must be in writing and must accord with the standards and make the findings as set forth in proposed Rule 3.60(e) and (f). Proposed Rule 3.60(e) separates the burdens of proof for statutory disqualifications under 8a(2) and 8a(3) and 8a(4) of the Act. Pursuant to proposed Rule 3.60(e)(1), an applicant or registrant subject to a 8a(2) statutory disqualification must make a clear and convincing showing that full, conditioned or restricted registration would not pose a substantial risk to the public, whereas, under proposed Rule 3.60(e)(2), an applicant or registrant subject to statutory disqualification under 8a(3) or 8a(4) of the Act must make his case by a preponderance of the evidence.⁸ As the Commission stated in *Bryant*, *supra* at n.21, "Disqualifications arising under section 8a(3) are generally less serious than those arising under section 8a(2) * * *. In light of this distinction, the

evidentiary burden appropriate for registrants subject to disqualifications under section 8a(3) need not be as strict as that imposed on registrants subject to disqualifications under section 8a(2)."

Under proposed § 3.60(f), the ALJ must, as appropriate, make findings concerning evidence of mitigation and rehabilitation, as well as the feasibility of effective supervision of conditions or restrictions. The ALJ must also specify a time period after which a registrant who would be subject to conditions or restrictions may petition to lift or modify the conditions or restrictions pursuant to the procedures set out in proposed Rule 3.64.

The settlement provisions of proposed Rule 3.60(h) closely track those found in part 10 of the Commission's regulations. An offer by an applicant or registrant shall be submitted, pursuant to proposed Rule 3.60(h)(3), to the DOE, which will then inform the applicant or registrant of the DOE's recommendation. In the event that the DOE makes an unfavorable recommendation, the applicant or registrant will decide whether to present the offer to the Commission for acceptance or rejection. If the Commission chooses to accept an offer, it will issue an order pursuant to proposed Rule 3.60(h)(4). If the Commission, however, decides to reject an offer, such offer shall be deemed withdrawn, in accordance with proposed Rule 3.60(h)(5). Proposed Rules 3.60(i) and (j) govern the finality of, and appeal procedures with respect to, Commission orders.

C. Suspension and Revocation of Registration Pursuant to Section 8a(2) of the Act

Most of the current rules relating specifically to statutory disqualifications under section 8a(2) of the Act would be repealed. However, the Commission has determined to retain the two-tier system of temporary suspension and full hearing currently available under Rule 3.55 for a registrant subject to statutory disqualification under section 8a(2) of the Act. The expedited suspension procedures in Rule 3.55, as amended, serve the important public interests of offering the Commission a swift and efficient way to temporarily remove apparently disqualified registrants and thus prevent any further harm to the public while also protecting a registrant's interest in a full administrative hearing on the matter. 49 FR 8208, 8213-14 (March 5, 1984). This protection of the public interest is preserved by proposed Rule 3.55 which, in the first tier, allows an ALJ to temporarily suspend a registrant who is

disqualification should be lessened." *In the Matter of Horn*, (1987-1990 Transfer Binder) Comm. Fut. L. Rep. (CCH) ¶ 23,731, at 33,889 n.9 (CFTC July 21, 1987). The Commission has also stated that "(w)here * * * the category of disqualification at issue covers a broad range of potential conduct, the relative severity of the crime for which the registrant was convicted becomes a relevant consideration in assessing the danger posed to the public." For example, conviction for "transporting a bag of counterfeit money for a \$200 payment * * * is clearly less serious * * * than actual production of the counterfeit currency." The disposition of the criminal case can also provide evidence of mitigating circumstances. *In the Matter of Walter*, (1987-1990 Transfer Binder) Comm. Fut. L. Rep. (CCH) ¶ 24,215, at 35,014-15 (CFTC April 14, 1988). The Commission has noted, however, that an asserted lack of relationship between the wrongful conduct and the futures markets is not a basis for mitigation nor is the fact that someone was registered under the Act for approximately ten years prior to committing an offense. *Horn*, *supra*, at 33,889 and *Walter*, *supra*, at 35,015 n.21.

⁶ The focus of the rehabilitation inquiry in a statutory disqualification case must be on evidence demonstrating that an applicant or registrant has undertaken a changed direction in his activities. The evidence must show changes in character or business practices since the time of the wrongful conduct. The potential for industry service or quality of professional services plays no role in the rehabilitation inquiry. *See In the Matter of Antonacci*, (Current Binder) Comm. Fut. L. Rep. (CCH) ¶ 24,835, at 36,933 (CFTC April 18, 1990); *In the Matter of Anderson*, (1988-1987 Transfer Binder) Comm. Fut. L. Rep. (CCH) ¶ 23,085, at 32,209 (CFTC May 30, 1988).

⁷ *See In the Matter of Kangles and Chamberlain*, (Current Binder) Comm. Fut. L. Rep. (CCH) ¶ 24,855 at 37,036, n. 32 (June 6, 1990). *See also In the Matter of Bear Stearns & Co.*, (Current Binder) Comm. Fut. L. Rep. (CCH) ¶ 24,994 at 37,666 (Jan. 25, 1991); *In the Matter of Sigler*, (Current Binder) Comm. Fut. L. Rep. (CCH) ¶ 24,978 at 37,578 (Jan. 8, 1991); *In the Matter of Antonacci*, (Current Binder) Comm. Fut. L. Rep. (CCH) ¶ 24,835 at 36,933 (Apr. 18, 1990).

⁸ *See In the Matter of Bryant*, (Current Binder) Comm. Fut. L. Rep. (CCH) ¶ 24,847 at 36,997 and n.21 (CFTC April 18, 1990); *In the Matter of Horn*, (Current Binder) Comm. Fut. L. Rep. (CCH) ¶ 24,836, at 36,939 and n.15 (CFTC April 18, 1990). The current rules provide for such a distinction in the standard of proof depending upon whether a registrant is subject to statutory disqualification under § 8a(2) or under 8a(3) and 8a(4) of the Act. Compare Rule 3.55(f)(2) and (j) with Rule 3.61. *See also* 49 FR 8208, 8213-14 (March 5, 1984). The Commission has stated in *Horn*, *supra*, that it "interpret(s) the 'clear and compelling' language of (Rule) 3.55(f)(2) as analogous to the traditional evidentiary standard 'clear and convincing.' That standard has been described as evidence which produces in the mind of the trier of fact 'an abiding conviction that the truth of (the) factual contentions are highly probable.'" (Citations omitted.)

subject to a section 8a(2) disqualification for up to six months. The second tier of the procedure affords the registrant the right to a full hearing on the issue.

Under the first tier, following proper notice by the Commission, the registrant may make a written submission to the ALJ consisting of the evidence described in proposed Rule 3.60 (b)(1), which is limited to a challenge to the evidentiary basis of the statutory disqualification set forth in the notice. The DOE may then reply to the registrant's written submission. After considering the registrant's challenge to the evidentiary basis of the statutory disqualification, the ALJ may temporarily suspend the registration and order the registrant to show cause why the registration should not be permanently revoked. See Proposed Rule 3.55(e). The further proceeding to determine whether the registrant's registration should be revoked or restricted would be conducted pursuant to proposed Rule 3.60 (b)(2) through (j). A registrant will continue to be allowed to present evidence of mitigation and rehabilitation during the second tier proceeding. Alternatively, the ALJ may issue an order finding the registrant not subject to statutory disqualification. New appellate procedures applicable to such an order are available through cross-reference to selected sections of part 10 of the Commission's regulations.

The Commission is also proposing a procedural change with respect to statutory disqualification proceedings. Under current rules, a notice of intent to deny, condition, suspend, revoke or place restrictions upon registration can be issued by the Director of the Division of Trading and Markets or the Director's designee, with the concurrence of the Director of the Division of Enforcement and the General Counsel or their designees. Rules 3.51(a), 3.52, 3.55(a) and 3.60. A statutory disqualification proceeding can thus be instituted pursuant to delegated authority under Rule 3.75 without specific consideration by the Commission, although any ruling by an ALJ in a statutory disqualification proceeding is subject to Commission review on appeal. The Commission is proposing to amend Rules 3.51(a), 3.55(a) and 3.60 (Rule 3.52 is proposed to be revoked) to require specific Commission authorization to commence a statutory disqualification proceeding, thereby revoking the delegation of authority referred to in this paragraph. This would conform the commencement of a statutory disqualification proceeding with the commencement of other types

of enforcement proceedings.⁹ The Commission notes, however, that these rule amendments would only affect those statutory disqualification proceedings instituted by the Commission. The Commission has previously authorized NFA to conduct statutory disqualification proceedings with respect to registrants and applicants for registration in all registration categories other than that of floor broker.¹⁰ Although any NFA ruling in a statutory disqualification proceeding is and will continue to be appealable to the Commission, statutory disqualification proceedings may be instituted by NFA under previous delegations of authority without Commission consideration.

Since the Commission has delegated to NFA the authority to conduct statutory disqualification proceedings with respect to all registrant categories other than FBs, the Commission anticipates that if the rules proposed herewith with respect to such proceedings, including procedures to lift or modify conditions or restrictions, are adopted, NFA will adopt and submit for Commission review similar rules. Such rules should afford applicants or registrants subject to statutory disqualification with rights similar to those under Commission rules, although we recognize that NFA's rules may not be identical to the Commission's rules in all particulars.

D. Procedure to Lift or Modify Conditions or Restrictions

There is currently no rule concerning lifting or modifying conditions or restrictions on a registration. In light of the fact that more registrants may be subject to conditions or restrictions if the proposed rules described above are adopted, the Commission believes that such a rule is appropriate. Proposed Rule 3.64 is designed to provide procedures whereby a registrant whose registration is subject to conditions or restrictions may petition the Commission to lift or modify such conditions or restrictions.

Rule 3.64(a), as proposed, would allow the registrant to petition for modification or cessation of any conditions or restrictions on his registration no earlier

than the date which the ALJ initially set in his decision rendered pursuant to proposed Rule 3.60(f)(3). The registrant's showing in a petition to lift or modify conditions or restrictions shall be strictly limited to affidavits indicating that the conditions or restrictions have been fulfilled in accordance with the standards established in the ALJ's initial decision.

The DOE will respond to the registrant's petition under proposed Rule 3.64(b). Such a response will include the DOE's recommendation as to whether to continue the conditioned or restricted registration or to permit full registration. Where the DOE and the petitioner are in agreement, the Commission may accept the DOE's recommendation and issue an order accordingly.

If the Commission fails to accept the agreement of the DOE and the petitioner, and a proceeding before an ALJ is required to resolve the petition, an ALJ may order an oral hearing, where appropriate to the reliable resolution of the petition, in accordance with proposed Rule 3.64(c)(1), or determine that a decision on the papers is sufficient, under proposed Rule 3.64(c)(2). The focus of such a proceeding would be strictly limited to determining whether the goals of the conditions or restrictions (*i.e.*, preventing harm to the public) have been fulfilled. The purposes of the proceeding are not to reexamine evidence of mitigation and rehabilitation with respect to the statutory disqualification, or the severity of the statutory disqualification. Those matters having been resolved in the initial statutory disqualification proceeding giving rise to the conditions or restrictions, the focus of a Rule 3.64 proceeding would be on whether such conditions or restrictions have been (1) adhered to by the petitioner and his sponsor or supervising FB, (2) successful in preventing harm to the public, and (3) remain necessary to protect the public. The ALJ's written decision may be appealed, pursuant to proposed Rule 3.64(d) and selected sections of part 10 of the Commission's regulations.¹¹

III. Other Registration Matters

A. Major Proposals

In addition to the proposed changes in the statutory disqualification procedures, the Commission is proposing amendments to almost every other provision of the part 3 rules, as

⁹ See Rule 10.21.

¹⁰ 50 FR 34885 (August 28, 1985); 54 FR 41133 (October 5, 1989). Under such delegations, the National Futures Association (NFA) institutes the majority of statutory disqualification cases. However, the Commission retained authority: (1) To initiate its own statutory disqualification proceedings for all categories of registrants; (2) to review the granting of any registration by NFA; and (3) to institute a review of NFA final orders in statutory disqualification cases on its own motion.

¹¹ As noted above, the Commission anticipates that NFA will adopt and submit for Commission review rules prescribing the procedures to lift or modify conditions or restrictions.

well as a few amendments to the part 1 rules. Based upon its administration and oversight of the registration process, the Commission believes that these areas of the rules should be clarified and simplified. Some of these amendments would merely codify or extend the logic of existing positions taken by the Division pursuant to delegated authority. These proposals include, among others: Elimination of most restrictions on dual and multiple associations of APs; codification of positions exempting (1) top corporate officers from AP registration under certain circumstances, (2) APs from being required to re-register when they gain a new sponsor due to events such as a merger or acquisition of the sponsoring firm, and (3) firms from being required to reregister because of a corporate reorganization where there is no change in the natural persons involved in the firms' operations; requiring a Form 8-R and fingerprint card from certain natural person principals of an entity that is a non-natural person principal of a firm applying for registration, unless the nonnatural person is a publicly-held company or an otherwise regulated entity; simplified registration procedures for persons who will confine their activities under the Act to specified products; and requiring a futures commission merchant that has entered into a guarantee agreement with an IB to carry all of the customer accounts introduced by the IB.

B. Section-by-Section Analysis

1. Rule 1.10(j)

The Commission is proposing two technical amendments to the requirements for a guarantee agreement between an FCM and an IB under Rule 1.10(j). In paragraph (j)(3), the cross-reference to § 3.15(a) would be changed to § 3.10(a) because Rule 3.15, the current rule pertaining to registration of IBs, is proposed to be removed as part of the effort to eliminate separate rules pertaining to registration of different types of firms¹² and to consolidate all such provisions in an amended Rule 3.10. In paragraph (j)(4), the references to an IB or an FCM failing to renew its registration would be deleted since the requirement for annual renewal of registration has been replaced by a system of perpetual registration with an annual update of the firm's Form 7-R.¹³

¹² See also Rule 3.13 (commodity trading advisors (CTAs)), Rule 3.14 (commodity pool operators (CPOs)) and Rule 3.17 (leverage transaction merchants (LTM)).

¹³ 53 FR 8428 (March 25, 1988).

2. Rule 1.57

The Commission is proposing an amendment to Rule 1.57, which governs the operations and activities of IBs. The rule currently does not provide specifically that an FCM which enters into a guarantee agreement with an IB must carry all of the accounts of the IB's customers. When the Commission adopted the guarantee agreement rule, it "assume(d) that an FCM which enters into a guarantee agreement with an introducing broker will require the introducing broker to introduce all of its accounts to that FCM. However, these matters are left to the parties to arrange."¹⁴ The Commission permitted some limited flexibility in anticipation of a rare instance where the customer of an IB, due to a preexisting business or personal relationship, would prefer to have his account carried at an FCM other than the guarantor FCM. However, since it was the Commission's expectation that the guarantor FCM would carry all or nearly all of the customer accounts of the guaranteed IB (IBG), and that such increased customer business would increase the guarantor FCM's minimum adjusted net capital requirement based on four percent of segregated funds,¹⁵ the Commission did not impose a capital charge on the guarantor FCM based solely upon the entry into a guarantee agreement.¹⁶

It subsequently came to the attention of the Division, however, that a few FCMs were entering into guarantee agreements with IBs but not carrying any of the accounts of the IB's customers and instead introducing those accounts to another FCM. Some FCMs guaranteed numerous IBs even though the FCM maintained only the minimum dollar amount of adjusted net capital required under the Commission's rules. The Division pointed out to the IBs involved in these agreements that "(s)uch activity is not contemplated by the Commission's rules related to IB guarantee agreements. (Such a) clearing arrangement is not consistent with the terms of the guarantee agreement required by Commission rules for guaranteed introducing brokers, and consequently your firm has not demonstrated compliance with the Commission's minimum financial requirements * * * ." ¹⁷ The Division

¹⁴ 48 FR 35248, 35264 (Aug. 3, 1983).

¹⁵ See Rule 1.17(a)(1)(i)(B).

¹⁶ 48 FR 35248, 35267-68 (Aug. 3, 1983).

¹⁷ CFTC Interpretative Letter No. 88-4, (1987-1990 Transfer Binder) Comm. Fut. L. Rep. (CCH) ¶ 24,098 (Jan. 26, 1988).

further noted " '(T)he purpose of the guarantee agreement is * * * to protect the customers of the introducing broker.' " ¹⁸

The Commission is now proposing to codify the Division's position set forth in CFTC Interpretative Letter No. 88-4. The vast majority of IBGs and their guarantor FCMs have conducted themselves in accordance with this policy because effectively IBGs function like APs or nonproprietary branch offices, and the Division believes that the earlier problems that it discovered have been resolved. Nonetheless, the Commission wants to ensure that there is no recurrence of this abuse and accordingly is proposing an amendment to Rule 1.57(a)(1) to require that an IBG introduce *all* of its customer accounts to its guarantor FCM.¹⁹

3. Rule 1.62

Contract markets are currently required by Rule 1.62 to adopt and enforce rules to assure that only registered FBs act as FBs on the floor of the contract market. Because the Commission is proposing to require that FBs complete an annual update of their registration applications (as do FCMs, IBs, CTAs, CPOs and LTMs) and to provide for an FB to withdraw his registration,²⁰ the Commission is also proposing to amend Rule 1.62 to ensure that the contract markets will adopt and enforce rules with respect to annual updates and withdrawals by FBs.

The Commission is further proposing to require each contract market to notify the Commission of any facts regarding an FB or applicant therefor which are set forth as statutory disqualifications in section 8a(2) of the Act within ten business days of the date upon which the contract market first knows or should have known such facts. This requirement would be consistent with the obligation of a sponsor of an AP or applicant for registration as an AP who knows or should have known such facts about the AP or applicant for registration as an AP under Rule 3.70(a).

4. Rule 3.1

The Commission is proposing several minor, technical amendments to certain of the definitions applicable to the part 3 rules. The Commission is proposing to clarify, since it receives inquiries on the subject periodically, that the provision

¹⁸ *Id.*, citing 48 FR 35248, at 35264.

¹⁹ Of course, an independent IB (IBI) which meets the basic minimum adjusted net capital requirement under Rule 1.17(a)(1)(i)(A) may have its customers' accounts carried by more than one FCM.

²⁰ See proposed Rule 3.11(d) and proposed amendments to Rule 3.13.

in Rule 3.1(a)(3) that includes within the principal definition "any person who has contributed ten percent or more of the capital" applies generally to a person who has contributed capital by means of subordinated debt. However, the Commission is proposing to provide an exclusion from the definition of principal in the context of contribution of subordinated debt the proceeds of which qualify as net capital, if the contributor of subordinated debt is an unaffiliated (i) bank insured by the Federal Deposit Insurance Corporation, (ii) U.S. branch or agency of an unaffiliated foreign bank that is licensed under U.S. law and regulated, supervised and examined by U.S. government authorities having regulatory responsibility for such financial institutions, or (iii) insurance company subject to regulation by any State, provided in each case that such debt is not guaranteed by another party not listed as a principal. Since such institutions engage in such financing in the ordinary course of their business and are otherwise regulated, the Commission believes it is not necessary for purposes of the registration process to include such entities as principals, subject to the specified conditions.

The Commission also wishes to note, however, that a bank or insurance company that has contributed ten percent or more of a firm's capital by means of subordinated debt could still be required to be listed as principals of the firm if they meet other criteria of the principal definition, *e.g.*, such persons have the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over the firm's activities which are subject to regulation by the Commission.

The Commission is also proposing minor, technical amendments to Rules 3.1 (b) and (c). The definition of "current" in Rule 3.1(b) would be amended by removing the reference to the obsolete Form 94. The definition of "sponsor" in Rule 3.1(c) would be amended by removing cross-references to Rules 3.16 and 3.18, which the Commission is proposing to delete. These amendments would constitute part of the proposed consolidation of all the provisions relating to registration of APs into Rule 3.12, the current rule governing registration of APs of FCMs and IBs. Such a consolidation would parallel the proposed consolidation of all provisions relating to registration of firms into an amended Rule 3.10, as referred to above.

The Commission further proposes to add three new definitions for purposes of part 3. The first of these would be a

definition of "beneficial owner," a term used in the definition of principal and in Rule 3.32 governing re-registration. The language of the definition parallels that contained in 17 CFR 240.13d-3(b) (1990), a Securities and Exchange Commission (SEC) rule relating to the determination of the beneficial owner of securities in connection with a tender offer. The intent of the proposed definition is to prevent a person from avoiding classification as a principal of a firm through establishment of an intermediary entity to hold securities of a firm.

Another proposed new definition is the term "foreign futures authority." This definition would be needed because such a term is contained in a proposed new Rule 3.10(a)(2)(ii), which is discussed below. The language of the definition is consistent with the language in the Commission's pending reauthorization legislation.²¹

The third new definition being proposed is the term "commodity interest." This term is used in proposed new Rule 3.12(j), which is discussed below. The language of the definition is closely modelled on that set forth in Rule 4.10(a), but since that definition is by its terms applicable only to part 4 of the Commission's rules, it is necessary to have a similar definition in part 3 of the Commission's rules.

5. Rule 3.10

The Commission is proposing to consolidate in an amended Rule 3.10 all provisions relating to registration of any type of firm, *i.e.*, FCM, CTA, CPO, IB, and LTM. If this were adopted, Rules 3.13, 3.14, 3.15 and 3.17, which currently apply to the latter four categories of registrant, would be deleted. The Commission is also proposing to eliminate certain outdated references in Rule 3.10 to initial registration, termination of registration and Form 94. The Commission is further proposing to amend Rule 3.10(b) to clarify the effect of a registration suspension. An FCM, IB, CTA, CPO or LTM would not be deemed to be registered during the pendency of a registration suspension, but such a suspension will not have the effect of a revocation or withdrawal of registration. When the suspension expires, the firm could resume regulated activity without the necessity of filing a new Form 7-R and accompanying documents, as would be required if the firm's registration were revoked or withdrawn. This clarification would make the language of Rule 3.10(b)

consistent with the practical effect of a registration suspension.

The Commission is also proposing a new paragraph (b)(2) to Rule 3.10 concerning an IB that has been party to a guarantee agreement with an FCM, an IBC. The registration of an IBC automatically would terminate thirty days after termination of the guarantee agreement unless the procedures set forth in Rule 1.10(j)(8) are followed, *i.e.*, the IB files a new guarantee agreement or raises its own capital to meet the minimum financial requirement for an IBI. Such a procedure would be akin to termination of an AP that is no longer associated with a sponsor and would not require a formal proceeding. An IBC whose registration has terminated in this manner would have to re-apply for IB registration like any new applicant and would be subject to appropriate fitness checks. Although it is clear under current rules that such a firm cannot deal with the public, the Commission believes that it is preferable that such firms no longer be deemed registered for any purpose to avoid any confusion as to their status.

The Commission is also proposing a substantive amendment in a proposed new paragraph (a)(2)(ii) of Rule 3.10 relating to principals of a firm that are not natural persons. Under current law, each Form 7-R filed by a firm applying for registration under the Act must be accompanied by a Form 8-R and fingerprint card for each natural person who is a principal of the applicant, unless such person has a current Form 8-R or Form 94 on file. If the applicant lists on its Form 7-R a principal that is not a natural person (*e.g.*, a corporate holding company or a general partnership), however, the firm is only required to provide on a separate sheet the names of officers and directors or general partners of that entity. Further, there is currently no requirement to provide even the name of a person who is the holder or beneficial owner or ten percent or more of the outstanding shares of any class of stock or has contributed ten percent or more of the capital of such an entity. Because of the lack of a Form 8-R and fingerprint card for such persons, no systematic fitness check is conducted with respect to such persons, although further information may be requested by the NFA if circumstances warrant such a request. This leaves open the possibility that persons who could not meet the fitness standards as individual principals of an applicant firm might be able to exercise control of the firm through the vehicle of a corporate holding company or other entity. An ALJ has previously alluded to

²¹ See H.R. 707, 102d Cong. 2d Sess. 301 and Senate Amendment to H.R. 707, 102d Cong. 2d Sess. 251.

this potential weakness in the registration system. See *Maloney v. Jack Carl/312 Futures, Inc., et al.*, CFTC Docket No. 89-R096, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,464, at n.2 (April 27, 1989).

The Commission has therefore determined to propose new Rule 3.10(a)(2)(ii) generally to require the filing of a Form 8-R and fingerprint card for each natural person who is the holder or beneficial owner of ten percent or more of the outstanding shares of any class of stock or has contributed ten percent or more of the capital of an entity that is a non-natural person principal listed on the Form 7-R of a firm applying for registration. If all of the principals of an applicant's non-natural person principal are also non-natural persons, the Form 7-R must be accompanied by a Form 8-R and fingerprints for each natural person described in the preceding sentence. The provisions of proposed Rule 3.10(a)(2)(ii) would not apply to any natural person who has a current Form 8-R on file with the Commission or the National Futures Association, or who has had filed on his behalf a Form 8-R and a fingerprint card pursuant to Rule 3.10(a)(2)(i), *i.e.*, the person is himself a principal of the applicant. Proposed Rule 3.10(a)(2)(ii) would also not apply where the non-natural person principal is a publicly-held company or regulated under securities, banking or insurance laws. The Commission is also proposing that if the natural person in question is a foreign national regulated by a foreign futures authority that provides information concerning facts which would constitute a potential statutory disqualification to NFA, NFA may waive the requirement to file a Form 8-R and fingerprints.

Generally, the Commission would wish to know that the individual in question is licensed and in good standing with the foreign futures authority. The Commission and NFA have undertaken initiatives with certain foreign jurisdictions to obtain information relevant to processing such applications. In other appropriate cases, NFA may also waive the requirement to file a Form 8-R and fingerprints. Proposed Rule 3.10(a)(2)(ii) would also provide that, in appropriate cases, the Commission or NFA may require further information from the applicant with respect to any natural person or entities referred to in that rule.²² For example,

the names of officers and directors or general partners of a non-natural person principal would still have to be listed on a separate sheet, and further information could be requested with respect to such officers, directors or general partners.

6. Rule 3.11

The Commission is proposing to amend paragraph (b) of Rule 3.11 relating to the duration of registration of an FB. Similar language to that proposed to be included in the amendments to Rule 3.10(b) concerning the effect of a suspension of registration, discussed above, would be included. An FB's registration expires if all of his trading privileges on all contract markets of which he is a member have ceased, and re-registration would be required before he could lawfully resume activity as an FB. If all of an FB's trading privileges on all contract markets are suspended, the FB's registration is effectively suspended for a similar duration, but the FB can resume his activities when the trading privilege suspension expires without re-registration. If such trading privileges cease or are suspended at one contract market but the FB retains such privileges at another contract market, registration as an FB would not expire or be suspended.²³ Further, the Commission is proposing to add a cross-reference to a contract market's existing obligation under Rule 3.31(d) to notify NFA when the trading privileges of an FB or an applicant for registration as an FB have ceased.

The Commission is also proposing to add a new paragraph (d) to Rule 3.11 to provide for annual updates of an FB's Form 8-R. Although NFA has previously conducted periodic updates of Forms 8-R filed by FBs, there has been no rule to govern this procedure. As discussed above, contract markets would be required to adopt and enforce rules with respect to such annual updates under the proposed amendments to Rule 1.62. The proposed new Rule 3.11(d) would be consistent with existing requirements for annual updates of Form 7-R by FCMs, IBs, CTAs, CPOs and LTM's, including a provision that if an FB were to fail to file the required Form 8-R update within thirty days of the date specified by NFA, the FB would be deemed to have requested withdrawal from registration.

²³ The Commission notes, however, that if trading privileges have ceased or been suspended as a result of an outstanding order of a contract market, the FB would be subject to statutory disqualification from registration pursuant to section 8a(3)(j) of the Act.

7. Rule 3.12

The Commission is proposing several major and minor revisions to Rule 3.12, which would now govern registration for all types of APs and allow the deletion of Rules 3.16 (APs of CTAs and CPOs) and 3.18 (APs of LTM's). The minor revisions proposed are similar to ones discussed above with respect to other rules, including new cross-references, deletion of outdated references and clarification of the effect of a registration suspension.

The Commission is proposing to amend Rule 3.12(d) which permits special temporary license (TL) and registration procedures when an AP's registration has terminated within the preceding sixty days. Although the substance of the rule would remain the same, there would be restrictions on who could act as a new sponsor for a person subject to conditional registration, which would be consistent with the restrictions on who can act as a sponsor for a conditioned AP initially.²⁴ The certifications which the new sponsor must make with respect to any person seeking registration as an AP who has been terminated by any previous sponsors within the preceding sixty days would include whether there is a pending adjudicatory proceeding under sections 6(b), 6(c), 6c, 6d, 8a or 9 of the Act. Currently, the rule only requires a certification with respect to proceedings under which registration can be affected (6(b) and 8a). The Commission is now proposing to add adjudicatory proceedings under other sections of the Act as bars to the use of the special TL and registration procedures: 6(c) (cease and desist orders); 6c (injunctive proceedings); 6d (state proceedings); and 9 (criminal proceedings). Of course, any person terminated within the preceding sixty days for whom a new sponsor cannot make the certifications under Rule 3.12(d)(1) would continue to be able to apply for a new AP registration under standard procedures for a new applicant.

a. *Dual and Multiple Association.* One of the major revisions the Commission is proposing is to eliminate most of the prohibitions on dual and multiple associations of APs contained in Rule 3.12(f). Currently, Rule 3.12(f) prohibits

²⁴ These restrictions, which are set forth in paragraphs (b)(2)(i)(A) and (B) of the proposed revision of Rule 3.60, provide that a sponsor of a conditioned AP cannot be subject to a pending adjudicatory proceeding under the Act or, if the sponsor would be subject to minimum capital requirements, *i.e.*, an FCM or LTM, have adjusted net capital that is below the "early warning" level. See also Rules 1.10(j)(2) and 3.55(f)(3).

²² See also proposed Rule 3.32(a)(2), discussed below.

certain dual and multiple associations of APs with various sponsors. The rule provides that no person may be simultaneously associated as an AP with: (1) More than one FCM or more than one IB; (2) an FCM and an IB or an LTM; and (3) an IB and an LTM. The rule also provides that no person may be simultaneously associated as an AP with: (1) An FCM and a CTA; (2) an FCM and a CPO; (3) an IB and a CTA; and (4) an IB and a CPO, unless all of the customers of the AP in question have their accounts cleared through the FCM or IB with which the AP is associated (in which case the AP is deemed to be solely associated with the FCM or IB and remains registered as an AP only of the FCM or IB, even though solicitation on behalf of the CTA or CPO takes place) or none of the accounts of customers of the AP solicited on behalf of the CTA or CPO is cleared through the FCM or IB with which the AP is associated (in which case the AP registers also as an AP of the CTA or CPO).²⁵ The rule was adopted to address situations where each sponsor might try to disclaim responsibility for supervision or liability for the AP with dual or multiple associations.

The Division has issued numerous letters pursuant to delegated authority under Rule 3.12(g) exempting APs from the prohibitions of Rule 3.12(f) based upon, among other things, common ownership of the firms. It has been the Division's experience, however, that these rules have been difficult to understand and follow, even for experienced practitioners. The Division has also found that in certain instances they can have perverse effects, for example, limiting the choice of which FCM a customer can use to carry his managed account.

The Commission believes that a better model for addressing the concerns raised by dual and multiple sponsorship situations already exists. Rule 3.16(e)(2)(i), which would be eliminated as part of the proposed consolidation of all provisions relating to AP registration into Rule 3.12, currently provides that a person who is already registered as an AP in any capacity may become associated with a CTA or CPO if the CTA or CPO files a Form 3-R, Part II with the NFA. Such filing contains a certification that the sponsor has verified that the AP is currently registered and is not subject to statutory disqualification under Section 8a(2) of the Act. Further, such sponsor's certification includes an

acknowledgment that, in addition to its responsibility to supervise all activities of the AP relating to the sponsor's business as a registrant under the Act in accordance with Rule 166.3, the sponsor is jointly and severally liable for the AP's activities with respect to any customers common to it and another sponsor of the AP.

In light of the fact that the Commission has not found there to be substantial problems under current Rule 3.16(e)(2)(i), the Commission is proposing to incorporate the provisions of that rule into Rule 3.12(f) to be applicable generally to all APs. The Form 3-R would be modified, however, so that each sponsor of an AP, his existing sponsors and any potential new sponsor, would have to sign the Form 3-R when the AP seeks to add a new association. This would make it clear that such new association is known to existing sponsors, and make existing sponsors as well as the potential new sponsor responsible for certifications as to the AP's registration status and fitness. It would also make clear that each sponsor is jointly and severally liable for the AP's conduct with respect to customers common to it and another sponsor of the AP, without regard to whether such conduct would otherwise fall within the purview of the sponsor's supervisory responsibility under Rule 166.3. Sponsors should also be aware that these proposed amendments will not in any respect reduce their supervisory responsibilities under Rule 166.3 with respect to any of their APs.

The Commission is also proposing standards with respect to a firm seeking to utilize the simplified procedures under Rule 3.12(f) to become an additional sponsor of an AP. Such additional sponsor could not be subject to a pending adjudicatory proceeding under the Act or subject to financial early warning reporting requirements. These standards would be similar to those applicable to a sponsor of an AP subject to conditions or restrictions on his registration as discussed above, and the Commission believes it is appropriate to have similar standards where multiple sponsors would be involved in light of the joint and several liability provisions applicable in these situations. Further, these standards would essentially conform the treatment of a potential new sponsor under Rule 3.12(f) with that of an AP seeking such a new sponsor, because an AP involved in a pending proceeding could not add a new sponsor in accordance with the

procedures set forth in the proposed amendments to Rule 3.12(f).²⁶

The Commission is also proposing to retain one feature of the current system of prohibitions under Rule 3.12(f), however. Under proposed Rule 3.12(f)(4), if an individual is associated as an AP with an FCM or with an IB and he directs customers seeking a managed account to use the services of a CTA or CTAs approved by the FCM or IB and all such customers' accounts solicited or accepted by that AP are carried by the FCM or introduced by the IB with which the AP is associated, such an individual shall be deemed associated solely with the FCM or IB and cannot also register as an AP of the CTA or CTAs nor be required to file a Form 3-R. The Commission believes that it is appropriate to maintain responsibility for such activity by an AP with the FCM or IB. The Commission further believes that, since an FCM or IB may have numerous APs and may change CTAs on its "approved list" frequently, this provision would eliminate the need to file thousands of Forms 3-R annually as a result of changes in such approved lists and thus relieve an administrative burden on FCMs, IBs and APs.

b. Exemptions. The Commission is proposing to consolidate the existing provisions for exemption from AP registration now contained in Rules 3.12, 3.16 and 3.18 into a revised Rule 3.12(h). In addition, the Commission is proposing to codify a position which has been taken by the Division pursuant to delegated authority with respect to the requirement for AP registration of persons such as a chief operating officer (COO) or general partner (GP) of a firm engaged primarily in a business other than commodity interest trading.²⁷

²⁶ See appendix A to part 3 ("other good cause" provision of 8a(3)(M) of the Act authorizes the Commission to refuse to register any registrant in any new capacity if such person is the subject of an administrative proceeding brought by the Commission to revoke the existing registration of such person in any other capacity, pending a final decision in such administrative proceeding).

²⁷ As interpreted by the Commission, the provisions of section 4k of the Act require the registration as an AP of all individuals in the line of supervisory authority over the APs who solicit and accept customers' orders, including positions up through that of the firm's COO. See Interpretative Statement Regarding the Scope of the Term "Supervision" in the Associated Person Requirement, 45 Fed. Reg. 54032 (Aug. 14, 1980). Although at the time that statement was issued there were only APs of FCMs, the Division took a similar position with respect to APs of other types of firms when such registrant categories were added to the Act by the Futures Trading Act of 1982.

²⁵ See CFTC Interpretative Letter 83-11. (1982-1984 Transfer Binder) Comm. Fut. L. Rep. (CCH) ¶21,952 (Dec. 20, 1983).

Although such a person would always be required to be listed as a principal on a firm's registration application, and if such person is found to be unfit to act as a principal the firm would be subject to statutory disqualification under section 8a(3)(N) of the Act, the Division has granted exemptions from the AP registration requirements to such persons under certain circumstances.²⁸ Exemptions have been granted where corporate or partnership resolutions are adopted prohibiting the COO or GP or other similarly situated person from soliciting or accepting customer orders or exercising any line supervisory authority over those persons so engaged or exercising any authority with respect to hiring or firing or other personnel matters involving persons engaged in activities subject to regulation under the Act. Such a resolution must also designate a person registered as an AP or applying for registration as an AP who will have full and final supervisory authority over the customer commodity interest related activities of the firm.

Neither the person so designated nor the firm can be subject to a pending proceeding brought by the Commission or a self-regulatory organization alleging failure to supervise nor can the designated person or the firm have been found in such a proceeding to have failed to supervise. The Division has also generally limited its granting of AP exemptions for a COO or GP to cases where the firm's commodity interest related activity accounts for no more than ten percent of total revenue on an annual basis.

The Commission believes it is appropriate to codify this exemption in the rules to eliminate the need for firms to seek separate relief with respect to persons such as a COO or GP. The Commission also believes that the ten percent revenue measure is appropriate in these circumstances because if the firm's commodity interest related activities constitute a greater percentage of its total business, supervisory control over such activities generally should be exercised by the COO or GP. The Commission also believes that the percentage of business devoted to commodity interest related activities must be reevaluated by a firm on an annual basis in accordance with the annual update of its registration form, and if circumstances have changed, e.g., that percentage now exceeds ten percent, the exemption would no longer

be applicable and registration would be required. It is part of a firm's general supervisory duties to monitor this situation and any other aspects of its operations affecting registration so as to ensure that those persons whose status and activities require registration under the Act are properly registered. The Commission also wishes to note that although it is proposing to codify the exemption from registration as an AP, the duties and obligations under section 2(a)(1) of the Act with respect to liability for an agent and Rule 166.3 regarding supervision would still apply.

c. *Sponsor Reorganization.* The Commission is also proposing a new paragraph (i) of Rule 3.12 for situations where an AP is to become sponsored by an entity other than his current sponsor through no choice or action by the AP. This could occur if the sponsor engages in a corporate reorganization whereby an intermediate company is to be inserted as the new owner of the sponsor. It could also occur in the case of the sponsor being merged with or acquired by another company. In any of these instances, the AP may still be dealing with the same customers, have the same supervisor and even operate out of the same physical location (albeit, with a new name on the door). In such circumstances, the Division has previously granted, pursuant to delegated authority, relief to APs from being required to re-register if the new sponsor represents that it will be responsible for supervising all activities of the AP in connection with the sponsor's business as a registrant under the Act, fitness information has not changed since the AP's Form 8-R or most recent update was filed with the NFA, and the day-to-day nature of the AP's activities will be unchanged as a result of the new sponsorship. Such relief has been conditioned upon the filing of a sponsor's certification by the new sponsor.

The Commission believes this policy should be codified and has therefore proposed Rule 3.12(i). Registration as an AP of the new sponsor would be granted upon mailing of certifications specified therein to NFA, and no new Form 8-R or fingerprint card would be required.²⁹ This situation would be distinguished from the special procedures under Rule 3.12(d), which provide only for granting of a temporary license upon mailing of the certifications specified therein and require submission of a new Form 8-R and fingerprint card. The Commission

believes this disparate treatment is appropriate because in the former case, the new sponsor comes about through no choice and as a result of events beyond the control of the AP, while in the latter case the AP has chosen to leave one sponsor to associate with another. The Commission also notes that if Rule 3.12(i) were to be adopted, it would be incumbent upon firms involved in such situations to submit timely to NFA the required paperwork so that there will be no interruption of registration status and to enable NFA to make an appropriate amendment to the registration record with respect to the sponsor of the AP.

d. *Special registration procedures for persons dealing only with certain commodity interests.* The Commission is also proposing, in Rule 3.12(j), to allow special procedures that would be available to a person who limits his activities to certain specified commodity interests. If this rule were to be adopted, the Commission would expect to set forth in an appendix B to part 3 those commodity interests to which the special registration procedures would apply. A commodity interest would only be included in such an appendix B upon petition by a contract market demonstrating that it is not contrary to the purposes of the Act and the registration rules promulgated thereunder or the public interest to permit special registration procedures for persons involved only with that commodity interest. Although the Commission notes that proficiency testing requirements are governed by NFA Rule 401, such a contract market petition could also address whether alternative proficiency testing requirements would be appropriate. If the Commission were to approve the contract market petition, NFA could then adopt and submit for Commission approval special registration procedures to govern those persons involved only with the particular commodity interest that is the subject of the petition. Such NFA rules could vary depending upon the commodity interest involved and would be considered by the Commission on a case-by-case basis. The Commission would expect to include the gold asset participation contract for which the Commodity Exchange, Inc. was designated as a contract market on February 26, 1991, and similar products, such as index participations, in an Appendix B to Part 3 for purposes of the special procedures under Rule 3.12(j).³⁰

²⁸ Since the fitness review for the individual and the firm is the same whether or not such exemption is available, the main effect of such an exemption is to eliminate NFA's proficiency testing requirement with respect to such individual. See NFA Rule 401.

²⁹ In light of that relief, NFA would have the authority to require the filing of fingerprints and other information every two years under proposed Rule 3.12(i)(3).

³⁰ See also Senate Amendment to H.R. 707, 102d Cong. 2d Sess. 304.

8. Rule 3.21

Historically, the Commission has strictly applied the requirement that natural person principals of firms file a Form 8-R and a fingerprint card so that the fitness of such persons can be checked as part of the registration process. Occasionally, the Division has received requests to waive the fingerprint card requirement. Such requests have generally been submitted on behalf of persons who claim to be basically honorary or ceremonial directors of a firm with no direct line involvement in the firm's commodity interest related activities. Such persons may be figures of national prominence, such as former Executive Branch officeholders, and it is claimed that it is unnecessary to require fingerprints from such persons. Certain foreign nationals have claimed that in their culture it is considered undignified to have one's fingerprints taken. In general, the Commission has denied such requests because of the overriding public policy interest of the Act that persons who have the ability to influence the operations of firms required to register under the Act, such as a corporate director, be subject to a thorough fitness check.

However, the Division recently took a no-action position with respect to an outside director of a firm who did not submit a fingerprint card.³¹ The Division noted that the firm involved was also registered as a securities broker-dealer with NASD and that the SEC has adopted a rule which provides for an exemption from the fingerprinting requirement in circumstances in which directors, among others, have no direct operational or supervisory role in a firm's securities business.³²

The Commission has reconsidered the fingerprinting issue and has determined that additional flexibility in this area may be appropriate in certain circumstances. The Commission has therefore determined to propose amendments to Rule 3.21 which would allow NFA to consider petitions of outside directors for exemption from the fingerprint requirement if such persons do not engage in commodity interest activities themselves or have direct supervisory responsibility over persons so engaged, nor have regular access to books and records related to commodity interest activities. The Commission would expect that such exemptions would be granted only on rare occasions and believes that it is appropriate to

delegate this function to NFA. Even if such an exemption from the fingerprint requirement were granted, however, the director would still be required to submit a Form 8-R so that certain fitness checks could be performed.

9. Rule 3.22

Rule 3.22 provides that the Commission, the Directors of the Division of Trading and Markets or Division of Enforcement or either Director's designee, or NFA can request supplemental filings of registration forms from an applicant or registrant if they acquire derogatory information about the applicant or registrant which, if true, could constitute a statutory disqualification from registration. The Commission, in light of the expansion of the right of applicants or registrants to present evidence of mitigation or rehabilitation with respect to statutory disqualifications discussed above, is proposing to amend Rule 3.22 to allow such requests for supplemental information from an applicant or registrant, on a voluntary basis, with respect to mitigation or rehabilitation evidence concerning a potential statutory disqualification.³³ Failure to provide such information with respect to mitigation or rehabilitation evidence would not be considered a rule violation which itself constitutes grounds upon which to base a determination that a person is unfit to become or to remain registered under the Act, as is and will remain the case with respect to failure to file a requested Form 7-R or Form 8-R accompanied by a fingerprint card under Rule 3.22.³⁴ However, the Commission believes it would be beneficial for the recipient of a notice under Rule 3.22, if the proposed amendment is adopted, to submit requested information concerning mitigation or rehabilitation with respect to a potential statutory disqualification, if such information is available. The Commission would envision itself or NFA making use of such a provision where circumstances require clarification as to whether it would be appropriate to commence a formal statutory disqualification proceeding under Rule 3.55 or 3.60.

³³ The Commission also anticipates that at the conclusion of this rulemaking proceeding, the registration forms will be amended to provide, among other things, for persons to include on supplemental sheets, on a voluntary basis, information with respect to mitigation or rehabilitation evidence concerning a potential statutory disqualification.

³⁴ See also appendix A to part 3 which provides in pertinent part that "Good cause to affect a person's registration * * * exists * * * if such person has failed to answer the inquiries or requests for further information concerning an application for registration filed with the Commission."

Further information from the applicant or registrant might enable the matter to be resolved without a formal proceeding whereas if no further information is provided by the applicant or registrant in response to a notice under Rule 3.22, there may be no alternative but to institute such a formal proceeding.

10. Rule 3.30

The Commission is proposing to amend Rule 3.30 to clarify and emphasize the affirmative duty of an individual registrant to notify NFA, while registered and for two years after termination of registration, of any change of address. The proposed amendment also clarifies the possible consequences of a failure to provide such notice.³⁵ The amendments are intended to prevent inadvertent defaults by individuals and to strengthen the presumption of receipt of actual notice by any person who might attempt to argue otherwise. The proposed amendment also specifies that all address change notices must be filed with NFA, rather than with NFA or the Commission. This will conform the rule to current practice whereby NFA processes all registration applications under Commission oversight, and eliminate any confusion as to where to file address change notices.

11. Rule 3.32

The Commission is proposing several exemptions to Rule 3.32 with respect to changes requiring re-registration of a firm and the addition of principals. The Division, acting under delegated authority, has issued several exemptions from the re-registration requirements set forth in current Rule 3.32(a)(1)-(3) in cases where a reorganization will result in the addition of a new principal (such as an intermediate holding company), but no new natural persons are to be added as principals. The Division has generally granted exemptions if the following factors are present: (A) The ultimate day-to-day control of the registrant will remain the same (even if there is a new owner on paper); (B) the addition of the new principal will not affect the conduct or the day-to-day operations of the registrant; and (C) the insertion of the new principal into the ownership chain is not being done for the purpose, and will not have the effect, of limiting any liability of the registrant.

³⁵ If such amendments were adopted, changes to registration forms may be appropriate to remind individuals and principals of their personal obligation to comply with Rule 3.30, whether or not they delegate the preparation of the paperwork to some other party, such as the employing firm's compliance department.

³¹ The individual involved was a former president of the United States.

³² See 17 CFF 240.17f-2 (1990).

The Commission believes it is appropriate to codify the Division's position in this area and has therefore proposed a new paragraph (a)(2) of Rule 3.32. If there is a reorganization but no new natural person principals of a registrant as a result, the registrant would only be required to file a Form 3-R to indicate the new principal and written certifications as to the factors cited in the preceding paragraph.³⁶ Elimination of the re-registration requirement for a firm in these circumstances would be consistent with the proposed new paragraph (i) of Rule 3.12 discussed above, which would eliminate the need for an AP to re-register when he becomes sponsored by a new entity due to a corporate reorganization, for example, even though his day-to-day activities remain unchanged.

The Commission is also proposing certain clarifications with respect to the re-registration requirements. Under the current rules, if a firm adds a new director it would have ninety days to complete re-registration if such new director is already registered or listed as a principal under the Act (Rule 3.32(d)) or it could avoid re-registration and simply file a Form 3-R accompanied by a Form 8-R and fingerprints for the new director if such forms are filed prior to the person becoming a director (Rule 3.32(a)). It has been the Commission's experience, however, that often a new director is not already registered or listed as a principal under the Act and it is not known who will be a new director until he or she is elected, at which point it is too late to file the forms necessary to avoid re-registration by the firm. On occasion, the Division, pursuant to delegated authority, has granted an exemption from the re-registration requirement where the registrant submits a board of directors resolution prohibiting the new director from exercising any authority or voting privilege as a director with respect to the conduct of the registrant's commodity interest related business until NFA completes its fitness inquiry and determines the new director is not unfit to act as a principal.

The Commission believes the Division's position should be codified in cases where a majority of the board of directors is unchanged and the firm files a new Form 8-R and fingerprints for the new director(s) (unless other exemptions apply) and a new Form 3-R

to amend the firm's Form 7-R to identify the new director(s). This will allow firms to keep operating while NFA conducts its fitness inquiry with respect to the new director.

The Commission wishes to note, however, that the current Rule 3.32(e) would be retained with respect to a change in control resulting from a new chief executive officer (CEO) or similar type of person. To avoid re-registration in that circumstance, the firm will continue to be required to notify NFA and file the appropriate forms and fingerprints prior to the change in control. The Commission believes it appropriate to have stricter requirements with respect to a change in CEO than would be the case for the addition of less than a majority of the board of directors. The other proposed amendments to Rule 3.32 are essentially technical in nature and would make necessary cross-references or delete outdated references.

12. Rule 3.33

The Commission is proposing to amend Rule 3.33 concerning withdrawal from registration to permit FBs to withdraw from registration. Under current rules, there is no specific provision allowing an FB to withdraw his registration. The proposed amendment would make FBs subject to the same withdrawal procedures applicable to registered firms and thus FBs would be unable to withdraw from registration without Commission acquiescence.

13. Temporary Licenses (Rules 3.40, 3.42 and 3.44)

The Commission is proposing certain minor, technical amendments to the rules governing TLs for APs in Rules 3.40 and 3.42. The Commission is also proposing to amend Rule 3.42 to add additional events that will cause termination of a TL of an AP. These additional events would be failure timely to pay a civil monetary penalty, reparation award or arbitration award. The Act currently provides that registration is automatically suspended for failure timely to pay a reparation award,³⁷ and the Commission's pending reauthorization legislation would cause a similar result for failure timely to pay a civil monetary penalty.³⁸ The Commission believes that if registration can be suspended automatically for failure to make such payments, similar failures should also cause termination of a TL. The Commission also believes that

failure to pay an arbitration award timely should be treated in the same manner as failure to pay a civil monetary penalty or a reparations award.

The other amendment the Commission is proposing with respect to TLs relates to a TL for an IBG. Rule 3.44 provides that an IBG can receive a TL for up to six months while the full fitness check of the firm and its principals are completed. In order to qualify for a TL, the IBG must, among other things, submit a Form 8-R for the applicant, if a sole proprietor, and each principal (including each branch office manager) thereof, the Disciplinary History portion of which contains no "Yes" answers indicating that the applicant may be subject to a statutory disqualification under sections 8a(2) through 8a(4) of the Act. Rule 3.44(a)(3). The Commission has become aware that it is sometimes the case that a new IBG is being formed by persons registered as APs of another firm. Such persons might be required to respond "Yes" to certain of the Disciplinary History questions even if such information has previously been disclosed in connection with their AP registration and determined not to constitute a disqualifying event. Such "Yes" answers would nevertheless prevent the IBG from being granted a TL under current rules. If the persons forming the IBG had already terminated their association with the previous sponsor, they could be unable to conduct business lawfully for several weeks awaiting completion of full fitness checks. However, if those same APs were transferring to a new sponsoring firm as APs, they could be granted a TL immediately at the new firm. See paragraph (d)(1)(vi) of current Rules 3.12 and 3.16.

The Commission has therefore determined to propose to conform the treatment of an IBG applying for a TL to that of an AP transferring to a new sponsor such that Forms 8-R filed in connection with the application for registration of an IBG would not prevent issuance of a TL to the IBG if the only "Yes" answers thereon arose from a matter which already has been disclosed in connection with a previous application for registration in any capacity if such registration was granted, or which was disclosed more than thirty days previously in an amendment to such application.

IV. Related matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601-611 (1988), requires that

³⁶ However, a Form 8-R and a fingerprint card would be required for natural person principals of the newly-inserted non-natural person to the same extent as discussed above with respect to proposed Rule 3.10(a)(2)(ii).

³⁷ Section 14(f) of the Act, 7 U.S.C. 18(f) (1988).

³⁸ H.R. 707, 102d Cong. 2d Sess. 207 and Senate Amendment to H.R. 707, 102d Cong. 2d Sess. 244.

agencies, in proposing rules, consider the impact of those rules on small businesses. The proposed package of rules would affect IBs, FCMs, APs, FBs, CTAs, CPOs and LTMs. The Commission has already established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such small entities in accordance with the RFA.³⁹ FCMs, registered CPOs and LTMs have been determined not to be small entities under the RFA. With respect to them as well as the other registrant categories, the Commission does not believe that the proposed rules would have any increased regulatory impact as the overall effect of the package is to reduce regulatory burdens on all entities, including small businesses. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities. The Commission, nonetheless invites comments from any person or entity which believes that these proposed rules would have a significant impact on its operations.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. 3501-3512 (1988), 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 Act the Commission has submitted this proposed rule and its associated information collection requirement to the Office of Management and Budget. While these proposed rules proposed impose no additional overall burden, the group of rules of which this is a part has the following burden.

Average Burden Hours per Response ...	1.20
Number of Respondents	180
Frequency of Response	3

Persons wishing to comment on the estimated paperwork burden associated with these proposed rules should contact Mr. Garry 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 Mr. Joe F. Mink, CFTC Clearance Officer, 2033 K Street NW., Washington, DC 20581 (202) 254-9735.

List of Subjects

17 CFR Part 1

Brokers, Commodity futures.

17 CFR Part 3

Brokers, Registration.

Accordingly, the Commission, pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 2, 4d, 4e, 4f, 4k, 4m, 4n, 4p, 5a, 8a, 17 and 19 thereof (7 U.S.C. 2, 6d, 6e, 6f, 6k, 6m, 6n, 6p, 7a, 12a, 21 and 23), hereby proposes to amend parts 1 and 3 of chapter I of title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 8, 9, 12, 12a, 12c, 13a, 13a-1, 16, 19, 21, 23 and 24, unless otherwise stated.

2. Section 1.10 is proposed to be amended by revising paragraphs (j)(3) and (j)(4) to read as follows:

§ 1.10 Financial reports of futures commission merchants and introducing brokers.

(j) * * *

(3) A guarantee agreement filed in connection with an application for initial registration as an introducing broker in accordance with the provisions of § 3.10(a) of this chapter shall become effective upon the granting of registration or, if appropriate, a temporary license, to the introducing broker. A guarantee agreement filed other than in connection with an application for initial registration as an introducing broker shall become effective as of the date agreed to by the parties.

(4) (i) If the registration of the introducing broker is suspended, revoked, or withdrawn in accordance with the provisions of this chapter, the guarantee agreement shall expire as of the date of such suspension, revocation or withdrawal.

(ii) If the registration of the futures commission merchant is suspended or revoked, the guarantee agreement shall expire 30 days after such suspension or revocation, or at such earlier time as may be approved by the Commission, the introducing broker, and the introducing broker's designated self-regulatory organization.

* * * * *

3. Section 1.57 is proposed to be amended by revising paragraph (a)(1) to read as follows:

§ 1.57 Operations and activities of introducing brokers.

(a) * * *

(1) Open and carry each customer's and option customer's account with a carrying futures commission merchant on a fully-disclosed basis: Provided, however, That an introducing broker which has entered into a guarantee agreement with a futures commission merchant in accordance with the provisions of § 1.10(j) of this part must open and carry such customer's and option customer's account with such guarantor futures commission merchant on a fully-disclosed basis; and

* * * * *

4. Section 1.62 is proposed to be revised to read as follows:

§ 1.62 Contract market requirement for floor broker registration.

(a) Each contract market shall adopt, maintain in effect, and enforce rules which have become effective pursuant to section 5a(12) of the Act and § 1.41 of this part and which provide that no person in or surrounding any pit, ring, post, or other place provided by such contract market for the meeting of persons similarly engaged, shall purchase or sell for any other person any commodity for future delivery, or any commodity option, on or subject to the rules of that contract market, unless such person is registered under the Act as a floor broker in accordance with section 4f of the Act and § 3.11 of this chapter, and such registration has not been suspended (and the period of such suspension shall not have expired), nor been withdrawn nor revoked. Each contract market shall also adopt, maintain in effect, and enforce rules which have become effective pursuant to section 5a(12) of the Act and § 1.41 of this part which require annual updates of registration filings by floor brokers in accordance with § 3.11(d) of this chapter and provide for requests for withdrawal of floor broker registration using Form 7-W in accordance with § 3.33 of this chapter.

(b) Each contract market must notify the Commission of any facts regarding a floor broker or an applicant for registration as a floor broker who has been granted trading privileges at the contract market which are set forth as statutory disqualifications in section 8a(2) of the Act within ten business days of the date upon which the contract market first knows or should have known such facts. Notice to the

³⁹ 47 FR 18618-18621 (April 30, 1982).

Commission shall be sufficient if the contract market gives notice to the Director of the Division of Trading and Markets or the Director's designee by telephone and confirms such notice in writing by certified or registered mail or equivalent means to the Commission at its Washington, DC office (Attn: Chief Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581).

PART 3—REGISTRATION

Subpart A—Registration

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

Authority: 7 U.S.C. 2, 4, 4a, 6c, 6d, 6e, 6f, 6k, 6m, 6n, 6p, 12a, 13c, 16a and 23 unless otherwise noted.

6. Section 3.1 is proposed to be amended by revising paragraphs (a)(3), (b) and (c) and by adding new paragraphs (d), (e), and (f) to read as follows:

§ 3.1 Definitions.

(a) * * *

(3) Any person who has contributed ten percent or more of the capital: Provided, however, That if such capital contribution consists of subordinated debt contributed by an unaffiliated (i) bank insured by the Federal Deposit Insurance corporation, (ii) United States branch or agency of an unaffiliated foreign bank that is licensed under the laws of the United States and regulated, supervised and examined by United States government authorities having regulatory responsibility for such financial institutions, or (iii) insurance company subject to regulation by any State, such bank, branch, agency or insurance company will not be deemed to be a principal for purposes of this section, provided such debt is not guaranteed by another party not listed as a principal.

(b) *Current*. As used in this subpart, a Form 8-R is current if, subsequent to the filing of that form and continuously thereafter, the registrant or principal has been either registered or affiliated with a registrant as a principal.

(c) *Sponsor*. Sponsor means the futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant which makes the certification required by § 3.12 of this part for the registration of an associated person of such sponsor.

(d) *Beneficial owner*. Any person who, without limitation, directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement

or any other contract, arrangement, or device with the purpose or effect of divesting such person of beneficial ownership of a security or preventing the vesting of such beneficial ownership, or of avoiding making a contribution of ten percent or more of the capital, as part of a plan or scheme to evade being deemed a principal of an applicant or registrant under paragraph (a) of this section shall be deemed for purposes of such paragraph to be the beneficial owner or the contributor of capital.

(e) *Foreign futures authority*. Foreign futures authority means any foreign government, or any department, agency, governmental body, or regulatory organization empowered by a foreign government to administer or enforce a law, rule, or regulation as it relates to a futures or options matter, or any department or agency of a political subdivision of a foreign government empowered to administer or enforce a law, rule or regulation as it relates to a futures or options matter.

(f) *Commodity interest*. Commodity interest means:

(1) Any contract for the purchase or sale of a commodity for future delivery regulated under the Act and rules promulgated thereunder; and

(2) Any contract, agreement or transaction subject to Commission regulation under sections 4c or 19 of the Act.

7. Section 3.10 is proposed to be amended by revising the heading and paragraphs (a), (b) and (d) to read as follows:

§ 3.10 Registration of futures commission merchants, introducing brokers, commodity trading advisors, commodity pool operators and leverage transaction merchants.

(a) *Application for registration*. (1) (i) Application for registration as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant must be on Form 7-R, completed and filed with the National Futures Association in accordance with the instructions thereto.

(ii) Applicants for registration as a futures commission merchant or introducing broker must accompany their Form 7-R with a Form 1-FR-FCM or Form 1-FR-1B, respectively, in accordance with the provisions of § 1.10 of this chapter: Provided, however, That an applicant for registration as a futures commission merchant or introducing broker which is registered with the Securities and Exchange Commission as a securities broker or dealer may accompany its Form 7-R with a copy of

its Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, part II or part II A, in accordance with the provisions of § 1.10(h) of this chapter.

(iii) Applicants for registration as a commodity pool operator must accompany their Form 7-R with the financial statements described in § 4.13(c) of this chapter.

(iv) Applicants for registration as a leverage transaction merchant must accompany their Form 7-R with a Form 2-FR in accordance with the provisions of § 31.13 of this chapter.

(2)(i) Each Form 7-R filed in accordance with the requirements of paragraph (a)(1)(i) of this section must be accompanied by a Form 8-R, completed in accordance with the instructions thereto and executed by each natural person who is a principal of the applicant, and must be accompanied by the fingerprints of that principal on a fingerprint card provided by the National Futures Association for that purpose, unless such principal is a director who qualifies for the exemption from the fingerprint requirement pursuant to § 3.21(c) of this part. The provisions of this paragraph (a)(2)(i) do not apply to any principal who has a current Form 8-R on file with the Commission or the National Futures Association.

(ii) In the case of an applicant with a principal that is not a natural person, the applicant's Form 7-R must also be accompanied by a Form 8-R, completed in accordance with the instructions thereto and executed by each natural person who is the holder or beneficial owner of ten percent or more of the outstanding shares of any class of stock or has contributed ten percent or more of the capital of the entity that is a non-natural person principal listed on the Form 7-R of the applicant, and must be accompanied by the fingerprints of such natural person on a fingerprint card provided by the National Futures Association for that purpose: Provided, however, That the provisions of this paragraph (a)(2)(ii) shall not apply if the non-natural person principal files reports under the Securities Exchange Act of 1934 or has filed a registration statement under the Securities Act of 1933, or is subject to regulation by the Securities and Exchange Commission, an insurance company subject to regulation by any State, or a bank or any other financial depository institution subject to regulation by any State or the United States. If all of the principals of an applicant's non-natural person principal are also non-natural persons, the Form 7-R must be

accompanied by a Form 8-R and fingerprints for each natural person described in the preceding sentence of such nonnatural persons. The provisions of this paragraph (a)(2)(ii) do not apply to any natural person who has a current Form 8-R on file with the Commission or the National Futures Association or who has had filed on his behalf a Form 8-R and a fingerprint card pursuant to paragraph (a)(2)(i) of this section. However, if such natural person is a foreign national regulated by a foreign futures authority that provides information concerning facts which would constitute a potential statutory disqualification and whether such person is in good standing with the foreign futures authority to the National Futures Association, or in other appropriate cases, the National Futures Association may waive the requirement to file a Form 8-R and a fingerprint card. In appropriate cases, the Commission and the National Futures Association may require further information from the applicant with respect to any natural person or entities referred to in this paragraph (a)(2)(ii).

(b) *Duration of registration.* (1) A person registered as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant in accordance with paragraph (a) of this section will continue to be so registered until the effective date of any revocation or withdrawal of such registration, and such person will also not be deemed to be registered during the pendency of any suspension of such registration.

(2) A person registered as an introducing broker who was a party to a guarantee agreement with a futures commission merchant in accordance with § 1.10(j) of this chapter will also have its registration cease thirty days after the termination of such guarantee agreement unless the procedures set forth in § 1.10(j)(8) of this chapter are followed.

(d) *Annual filing.* Any person registered as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant in accordance with paragraph (a) of this section must file with the National Futures Association a Form 7-R, completed in accordance with the instructions thereto, annually on a date specified by the National Futures Association. The failure to file the Form 7-R within thirty days following such date shall be deemed to be a request for withdrawal from registration. On at

least thirty days written notice, and following such action, if any, deemed to be necessary by the Commission or the National Futures Association, the National Futures Association may grant the request for withdrawal from registration.

8. Section 3.11 is proposed to be amended by revising paragraph (b) and by adding a new paragraph (d) to read as follows:

§ 3.11 Registration of floor brokers.

(b) *Duration of registration.* A person registered as a floor broker in accordance with paragraphs (a) or (c) of this section, and whose registration has neither been revoked nor withdrawn, will continue to be so registered unless such person's trading privileges on all contract markets have ceased, and such person will also not be deemed to be registered during the pendency of any suspension of such registration or all such trading privileges. In accordance with § 3.31(d) of this part, each contract market that has granted trading privileges to a person who is registered, or has applied for registration, as a floor broker, must notify the National Futures Association within twenty days after such person's trading privileges on such contract market have ceased.

(d) *Annual filing.* Any person registered as a floor broker in accordance with paragraphs (a) or (c) of this section must file with the National Futures Association a Form 8-R, completed in accordance with the instructions thereto, annually on a date specified by the National Futures Association. The failure to file the Form 8-R within thirty days following such date shall be deemed to be a request for withdrawal from registration. On at least thirty days written notice, and following such action, if any, deemed to be necessary by the Commission or the National Futures Association, the National Futures Association may grant the request for withdrawal from registration.

9. Section 3.12 is proposed to be amended by revising the heading and paragraphs (a), (b), (c) introductory text, (d)(1) introductory text, (d)(1)(iv), (d)(1)(v), and (d)(2), by removing paragraphs (d)(4) and (d)(5), by revising paragraphs (f) and (h), and by adding new paragraphs (i) and (j) to read as follows:

§ 3.12 Registration of associated persons of futures commission merchants, introducing brokers, commodity trading advisors, commodity pool operators and leverage transaction merchants.

(a) *Registration required.* It shall be unlawful for any person to be associated with a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant as an associated person unless that person shall have registered under the Act as an associated person of that sponsoring futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant in accordance with the procedures in paragraphs (c), (d), (f), (i), or (j) of this section or is exempt from such registration pursuant to paragraph (h) of this section.

(b) *Duration of registration.* A person registered in accordance with paragraphs (c), (d), (f), (i), or (j) of this section and whose registration has not been revoked will continue to be so registered until the revocation or withdrawal of the registration of each of the registrant's sponsors, or until the cessation of the association of the registrant with each of his sponsors and such person will also not be deemed to be registered during the pendency of any suspension of his or his sponsor's registration. In accordance with § 3.31(c) of this part, each of the registrant's sponsors must file a notice with the National Futures Association on Form 8-T or on a Uniform Termination Notice for Securities Industry Registration reporting the termination of the association of the associated person within twenty days thereafter.

(c) *Application for registration.* Except as otherwise provided in paragraphs (d), (f), (i), and (j) of this section, application for registration as an associated person in any capacity must be on Form 8-R, completed and filed in accordance with the instructions thereto.

(d) *Special temporary licensing and registration procedures for certain persons—(1) Registration terminated within the preceding sixty days.* Except as otherwise provided in paragraphs (f) and (i) of this section, any person whose registration as an associated person in any capacity has terminated within the preceding sixty days and who becomes associated with a new sponsor will be granted a temporary license to act in the capacity of an associated person of such sponsor upon the mailing by that sponsor to the National Futures

Association of a Form 8-R, completed in accordance with the instructions thereto and accompanied by the fingerprints of the applicant on a fingerprint card provided by the National Futures Association for that purpose and, if applicable, a Supplemental Sponsor Certification Statement signed by the new sponsor (who must meet the requirements set forth in § 3.60(b)(2)(i) (A) and (B) of this part) that contains conditions identical to those agreed to by the previous sponsor, which includes written certifications stating:

(iv) Whether there is a pending adjudicatory proceeding under sections 6(b), 6(c), 6c, 6d, 8a, or 9 of the Act or §§ 3.55 or 3.60 of this part or if, within the preceding twelve months, the Commission has permitted the withdrawal of an application for registration in any capacity after instituting the procedures provided in § 3.51 of this part and, if so, that the sponsor has been given a copy of the notice of the institution of a proceeding in connection therewith;

(v) That the sponsor has received a copy of the notice of the institution of a proceeding if the applicant or registrant has certified, in accordance with paragraph (d)(1)(iv) of this section, that there is a proceeding pending against him as described in that paragraph or that the Commission has permitted the withdrawal of an application for registration as described in that paragraph; and

(2) A temporary license received in accordance with paragraph (d)(1) of this section shall be subject to the provisions of §§ 3.41, 3.42 and 3.43 of this part.

(f) *Reporting of dual and multiple associations.* (1) Except as otherwise provided in paragraph (f)(4) of this section, a person who is already registered as an associated person in any capacity whose registration is not subject to conditions or restrictions may become associated as an associated person with another sponsor if the new sponsor (who must meet the requirements set forth in § 3.60(b)(2)(i) (A) and (B) of this part) files with the National Futures Association a Form 3-R in accordance with the instructions thereto. The filing of such a Form 3-R shall contain a certification signed by each sponsor that each sponsor has verified that the associated person is currently registered as an associated person in some capacity and that the associated person is not subject to a statutory disqualification as set forth in section 8a(2) of the Act, and an

acknowledgment that in addition to each sponsor's responsibility to supervise that associated person, each sponsor is jointly and severally responsible for the conduct of the associated person with respect to (i) the solicitation or acceptance of customers' orders, (ii) the solicitation of funds, securities or property for a participation in a commodity pool, (iii) the solicitation of a client's or prospective client's discretionary account, (iv) the solicitation or acceptance of leverage customers' orders for leverage transactions, and (v) the associated person's supervision of any person or persons engaged in any of the foregoing solicitations or acceptances, with respect to any customers, option customers or leverage customers common to it and any other futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, or leverage transaction merchant with which the associated person is associated.

(2) Upon receipt by the National Futures Association of a Form 3-R filed in accordance with paragraph (f)(1) of this section from an associated person, the associated person named therein shall be registered as an associated person of the new sponsor.

(3) A person who is simultaneously associated with more than one sponsor in accordance with the provisions of paragraphs (f)(1) and (f)(2) of this section shall be required, upon receipt of notice from the National Futures Association, to file with the National Futures Association his fingerprints on a fingerprint card provided by the National Futures Association for that purpose as well as such other information as the National Futures Association may require. The National Futures Association may require such a filing every two years, or at such greater period of time as the National Futures Association may deem appropriate, after the associated person has become associated with a new sponsor in accordance with the requirements of paragraphs (f)(1) and (f)(2) of this section.

(4) If a person is associated with a futures commission merchant or with an introducing broker and he directs customers seeking a managed account to use the services of a commodity trading advisor(s) approved by the futures commission merchant or introducing broker and all such customers' accounts solicited or accepted by that associated person are carried by the futures commission merchant or introduced by the introducing broker with which the associated person is associated, such a

person shall be deemed to be associated solely with the futures commission merchant or introducing broker and may not also register as an associated person of the commodity trading advisor(s) nor be required to file a Form 3-R.

(h) *Exemption from registration.* (1) A person is not required to register as an associated person in any capacity if that person is:

(i) Registered under the Act as a futures commission merchant, floor broker, or as an introducing broker;

(ii) Engaged in the solicitation of funds, securities, or property for a participation in a commodity pool, or the supervision of any person or persons so engaged, pursuant to registration with the National Association of Securities Dealers as a registered representative, registered principal, limited representative or limited principal, and that person does not engage in any other activity subject to regulation by the Commission; or

(iii) The chief operating officer, general partner or otherwise in the supervisory chain-of-command, provided the futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, or leverage transaction merchant engages in commodity interest related activity as no more than ten percent of its total revenue on an annual basis, the firm is not subject to a pending proceeding brought by the Commission or a self-regulatory organization alleging fraud or failure to supervise, and has not been found in such a proceeding to have committed fraud or failed to supervise, as required by the Act, the rules promulgated thereunder or the rules of a self-regulatory organization, the person for whom exemption is sought and the person designated in accordance with paragraphs (h)(3)(i)(C) or (h)(3)(i)(D) of this section are listed as principals of the firm, the fitness examination conducted by the National Futures Association with respect to these persons discloses no derogatory information that would disqualify any of such persons as a principal or as an associated person, and the firm files with the National Futures Association corporate or partnership resolutions stating that:

(A) Such supervisory person is not authorized to (1) solicit or accept customers' or leverage customers' orders, (2) solicit a client's or prospective client's discretionary account, (3) solicit funds, securities or property for a participation in a commodity pool, nor (4) exercise any

line supervisory authority over those persons so engaged;

(B) Such supervisory person has no authority with respect to hiring, firing or other personnel matters involving persons engaged in activities subject to regulation under the Act;

(C) Another person (or persons) designated therein, who is registered as an associated person(s) or who has applied for registration as an associated person(s) and is not subject to a pending proceeding brought by the Commission or a self-regulatory organization alleging fraud or failure to supervise, and has not been found in such a proceeding to have committed fraud or failed to supervise, as required by the Act, the rules promulgated thereunder or the rules of a self-regulatory organization, holds and exercises full and final supervisory authority, including authority to hire and fire personnel, over the customer commodity interest related activities of the firm; and

(D) If the person (or persons) so designated in accordance with paragraph (h)(3)(i)(C) of this section ceases to have the authority referred to therein, the firm will notify the National Futures Association within twenty days of such occurrence by means of a subsequent resolution which resolution must also include the name of another associated person (or persons) who has been vested with full supervisory authority, including authority to hire and fire personnel, over the customer commodity interest related activities of the firm in the event that all of those previously designated in accordance with paragraph (h)(3)(i)(C) of this section have been relieved of such authority. Subsequent changes in supervisory authority shall be reported in the same manner.

(2) A person is not required to register as an associated person of a commodity trading advisor if that person is:

(i) Registered as a commodity trading advisor, if that person is associated with a commodity trading advisor; or

(ii) Exempt from registration as a commodity trading advisor pursuant to the provisions of § 4.14 (a)(1), § 4.14(a)(2) or § 4.14(a)(8) of this chapter or is associated with a person who is so exempt from registration: Provided, That the provisions of this paragraph (h)(2)(ii) shall not apply to the solicitation of a client's or prospective client's discretionary account, or the supervision of any person or persons so engaged, by, for or on behalf of a commodity trading advisor (A) which is not exempt from registration pursuant to the provisions of § 4.14(a)(1), (a)(2), or (a)(8) of this chapter or (B) which is registered as a commodity trading advisor

notwithstanding the availability of that exemption.

(3) A person is not required to register as an associated person of a commodity pool operator if that person is:

(i) Registered as a commodity pool operator, if that person is associated with a commodity pool operator;

(ii) Exempt from registration as a commodity pool operator pursuant to the provisions of § 4.13 of this chapter or is associated with a person who is so exempt from registration: Provided, That the provisions of this paragraph (h)(3)(ii) shall not apply to the solicitation of funds, securities, or property for a participation in a commodity pool, or the supervision of any person or persons so engaged, by, for, or on behalf of a commodity pool operator (A) which is not exempt from registration pursuant to the provisions of § 4.13 of this chapter or (B) which is registered as a commodity pool operator notwithstanding the availability of that exemption; or

(iii) Where a commodity pool is operated or to be operated by two or more commodity pool operators, registered as an associated person of one of the pool operators of the commodity pool in accordance with the provisions of paragraphs (c), (d), (f) or (i) of this section: Provided, That each such commodity pool operator shall be jointly and severally liable for the conduct of that associated person in the solicitation of funds, securities, or property for participation in the commodity pool, or the supervision of any person or persons so engaged, regardless of whether that associated person is registered as an associated person of each such commodity pool operator.

(i) *Special registration or temporary licensing procedures when previous sponsor's registration ceases.* (1) Any person whose registration as an associated person in any capacity was not subject to conditions or restrictions, and was terminated within the preceding sixty days because the previous sponsor's registration was revoked, suspended or withdrawn, and who becomes associated with a new sponsor, will be registered as an associated person of such new sponsor upon the mailing by that new sponsor to the National Futures Association of written certifications stating:

(i) That such person has been hired or is otherwise employed by that sponsor;

(ii) That such person's registration as an associated person in any capacity is not suspended or revoked;

(iii) That such person is eligible to be registered in accordance with this paragraph (i);

(iv) Whether there is a pending adjudicatory proceeding under sections

6(b), 6(c), 6c, 6d, 8a or 9 of the Act or §§ 3.55 or 3.60 of this part or if, within the preceding twelve months, the Commission has permitted the withdrawal of an application for registration in any capacity after instituting the procedures provided in § 3.51 of this part and, if so, that the sponsor has been given a copy of the notice of the institution of a proceeding in connection therewith;

(v) That the new sponsor has received a copy of the notice of the institution of a proceeding if the applicant for registration has certified, in accordance with paragraph (i)(1)(iv) of this section, that there is a proceeding pending against him as described in that paragraph or that the Commission has permitted the withdrawal of an application for registration as described in that paragraph;

(vi) That the Disciplinary History of such person's registration application contains no "Yes" answers, or none except those arising from a matter which already has been disclosed in connection with a previous application for registration in any capacity if such registration was granted, or which was disclosed more than thirty days previously in an amendment to such application; and

(vii) That the new sponsor will be responsible for supervising all activities of the person in connection with the sponsor's business as a registrant under the Act.

Provided, however, That if such person's prior registration as an associated person was subject to conditions or restrictions, the new sponsor (who must meet the requirements set forth in § 3.60(b)(2)(i) (A) and (B) of this part) must also file a signed Supplemental Sponsor Certification Statement that contains conditions identical to those agreed to by the original sponsor and, in such case, the person will be granted a temporary license, subject to the provisions of §§ 3.41, 3.42 and 3.43 of this part.

(2) The certifications required by paragraphs (i)(1)(i), (i)(1)(v) and (i)(1)(vii) of this section must be signed and dated by an officer, if the sponsor is a corporation, a general partner, if a partnership, or the proprietor, if a sole proprietorship. The certifications required by paragraphs (i)(1)(ii)(iv) and (i)(1)(vi) of this section must be signed and dated by the applicant for registration as an associated person.

(3) A person who is registered in accordance with the provisions of paragraph (i)(1) of this section shall be required, upon receipt of notice from the National Futures Association, to file

with the National Futures Association his fingerprints on a fingerprint card provided by the National Futures Association for that purpose as well as such other information as the National Futures Association may require. The National Futures Association may require such a filing every two years, or at such greater period of time as the National Futures Association may deem appropriate, after the associated person has become associated with a new sponsor in connection with the requirements of paragraph (i)(1) of this section.

(j) *Special temporary licensing and registration procedures for associated persons of futures commission merchants and introducing brokers involved only with certain commodity interests.* Notwithstanding any other provision of law, any person associated with a futures commission merchant or an introducing broker may be granted a temporary license or registration to act in the capacity of an associated person of such sponsor if such person restricts his activities only to those commodity interests listed in Appendix B to this part and if such person and his sponsor comply with any special temporary licensing or registration procedures applicable to persons involved solely with such commodity interests that have been adopted by the National Futures Association and approved by the Commission.

§§ 3.13 through 3.18 and § 3.20 [Removed and reserved]

10. Sections 3.13 through 3.18 and § 3.20 are proposed to be removed and reserved.

11. Section 3.21 is proposed to be amended by adding a new paragraph (c) to read as follows:

§ 3.21 Exemption from fingerprinting requirement in certain cases.

* * * * *

(c) *Outside directors.* Any principal who is a director but is not also an officer or employee of an applicant for registration or a registrant may file a petition with the National Futures Association for an exemption from the requirement to submit a fingerprint card in accordance with the provisions of §§ 3.10(a)(2)(i), 3.32(a)(3)(i), 3.32(c), and 3.32(h) of this part. Such petition shall state, if true, that such principal:

(1) Is not engaged in (i) the solicitation or acceptance of customers' orders, (ii) the solicitation of funds, securities or property for a participation in a commodity pool, (iii) the solicitation of a client's or prospective client's discretionary account, (iv) the solicitation or acceptance of leverage

customers' orders for leverage transactions;

(2) Does not regularly have access to the keeping, handling or processing of:

(i) Commodity interest transactions;
(ii) Customer funds, leverage customer funds, foreign futures or foreign options secured amount, or adjusted net capital; or

(iii) The original books and records relating to the items described in paragraphs (c)(2)(i) and (c)(2)(ii) of this section; and

(3) Does not have direct supervisory responsibility over persons engaged in the activities referred to in paragraphs (c)(1) and (c)(2) of this section; and

(4) The petition shall also include:

(i) The name of the futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, leverage transaction merchant, or applicant for registration in any of these capacities of which the person is a principal;

(ii) The nature of the duties of the principal for whom exemption under this paragraph (c) is sought;

(iii) The internal controls used to ensure that the principal for whom exemption under this paragraph (c) is sought does not have access to the keeping, handling or processing of the items described in paragraphs (c)(2)(i), (c)(2)(ii), and (c)(2)(iii) of this section; and

(iv) The reasons why the principal believes he should be exempted from the fingerprint requirement and why such an exemption would not be contrary to the public interest and the purposes of the provision from which exemption is sought.

(d) The petition filed in accordance with paragraph (c) of this section will be granted or denied by the National Futures Association on the basis of the papers filed. The National Futures Association may grant such a petition if it finds that the exemption is not contrary to the public interest and the purposes of the provision from which exemption is sought. The petition may be granted subject to such terms and conditions as the National Futures Association may find appropriate.

(e) A firm with a principal who has been granted an exemption from the requirement to submit a fingerprint card pursuant to paragraph (d) of this section must file with the National Futures Association on behalf of such principal a Form 8-R, completed in accordance with the instructions thereto and executed by the principal. The exemption provided for in paragraphs (c) and (d) of this section is limited solely to the principal's fingerprint requirement and does not affect any

other duties or responsibilities of the firm or the principal under the Act or the rules set forth in this chapter.

12. Section 3.22 is proposed to be amended by revising the introductory text and paragraphs (a) and (c) to read as follows:

§ 3.22 Supplemental filings.

Notwithstanding any other provision of this chapter, the Commission, the Directors of the Division of Trading and Markets or Division of Enforcement or either Director's designee, or the National Futures Association may, at any time, give written notice to any registrant, applicant for registration, or person required to be registered:

(a)(1) That derogatory information has come to the attention of the staff of the Commission or the National Futures Association which, if true, could constitute grounds upon which to base a determination that the person is unfit to become, or to remain, registered or temporarily licensed in accordance with the Act or the regulations thereunder and setting forth such information in the notice and requesting the person to provide evidence mitigating the seriousness of the statutory disqualification set forth in the notice and evidence that the person has undergone rehabilitation, or

(2) That the Commission or the National Futures Association has undertaken a routine or periodic review of the registrant's fitness to remain registered or temporarily licensed; and
* * * *

(c) Failure to provide the information required under paragraph (b) of this section is a violation of the Commission's regulations which itself constitutes grounds upon which to base a determination that the person is unfit to become or to remain so registered.

13. Section 3.30 is proposed to be revised to read as follows:

§ 3.30 Current address for purpose of delivery of communications from the Commission or the National Futures Association.

(a) The address of each registrant, applicant for registration and principal, as submitted on the application for registration (Form 7-R or Form 8-R) or as submitted on the biographical supplement (Form 8-R) shall be deemed to be the address for delivery to the registrant, applicant or principal for any communications from the Commission or the National Futures Association, including any summons, complaint, reparation claim, order, subpoena, special call, request for information, notice, and other written documents or

correspondence, unless the registrant, applicant or principal specifies another address for this purpose: Provided, That the Commission or the National Futures Association may address any correspondence relating to a biographical supplement submitted for or on behalf of a principal to the futures commission merchant, commodity trading advisor, commodity pool operator, introducing broker, or leverage transaction merchant with which the principal is affiliated and may address any correspondence relating to the registration of an associated person to the futures commission merchant, commodity trading advisor, commodity pool operator, introducing broker, or leverage transaction merchant with which the associated person or the applicant for registration is or will be associated as an associated person.

(b) Each registrant, while registered and for two years after termination of registration, and each principal, while affiliated and for two years after termination of affiliation, must notify in writing the National Futures Association of any change of the address on the application for registration, biographical supplement, or other address filed with the National Futures Association for the purpose of receiving communications from the Commission or the National Futures Association. Failure to file a required response to any communication sent to the latest such address filed with the National Futures Association which is caused by failure to notify in writing the National Futures Association of an address change may result in an order of default and award of claimed monetary damages or other appropriate order in any National Futures Association or Commission proceeding, including a reparation proceeding brought under part 12 of this chapter.

14. Section 3.32 is proposed to be amended by revising paragraphs (a), (c), (e), (g), and (h) to read as follows:

§ 3.32 Changes requiring new registration; addition of principals.

(a)(1) Except as otherwise provided in this section, if the registrant is a futures commission merchant, introducing broker, commodity pool operator, commodity trading advisor or leverage transaction merchant, registration is deemed to terminate and a new registration is required whenever a person not listed on the registrant's application for registration (or amendment of such application prior to the granting of registration):

(i) Becomes the holder or beneficial owner of ten percent or more of the outstanding shares of any class of stock or acquires the right to vote ten percent

or more of the corporate registrant's voting securities;

(ii) Becomes entitled to receive ten percent or more of the registrant's profits;

(iii) Contributes ten percent or more of the capital:

Provided, however, That if such capital contribution consists of subordinated debt contributed by an unaffiliated (A) bank insured by the Federal Deposit Insurance Corporation, (B) United States branch or agency of an unaffiliated foreign bank that is licensed under the laws of the United States and regulated, supervised and examined by United States government authorities having regulatory responsibility for such financial institutions, or (C) insurance company regulated by any State, the termination of registration shall be deemed not to have occurred and the re-registration requirement shall not apply, provided such debt is not guaranteed by another party not listed as a principal.

(iv) Becomes a director of the corporate registrant;

(v) Becomes the chief executive officer of the corporate registrant or occupies a position of similar status or performs a similar function;

(vi) Acquires ownership of the registrant's business in the case of a sole proprietorship; or

(vii) Becomes a general partner of the registrant in the case of a partnership.

(2)(i) If the person who becomes a principal of the registrant because of an event described in paragraphs (a)(1)(i), (a)(1)(ii), or (a)(1)(iii) of this section is a non-natural person and each natural person who would be deemed a principal, under the definition set forth in § 3.1(a) of this part, of the entity that is a non-natural person has a current Form 8-R on file with the Commission or the National Futures Association, the registrant's registration shall not be deemed to terminate and a new Form 7-R need not be filed: Provided, however, That within twenty days of the occurrence of the event described in paragraphs (a)(1)(i), (a)(1)(ii), or (a)(1)(iii) of this section, the registrant must notify the National Futures Association of the name of such added principal on Form 3-R and must file written certifications with the National Futures Association stating (A) the ultimate day-to-day control of the registrant remains the same, (B) the addition of the new principal will not affect the conduct or the day-to-day operations of the registrant, and (C) the insertion of the new principal into the chain of ownership is not being done for the purpose, and will not have the effect, of limiting any liability of the registrant.

(ii) If the principals of the new non-natural person principal of the registrant are also non-natural person principals, the registrant's registration shall not be deemed to terminate and a new Form 7-R need not be filed only if the registrant files a Form 8-R and fingerprints for each natural person who is the holder or beneficial owner of ten percent or more of the outstanding shares of any class of stock or has contributed ten percent or more of the capital of such latter non-natural persons: Provided, however, That the provisions of this paragraph (a)(2)(ii) shall not apply if the non-natural person principal files reports under the Securities Exchange Act of 1934 or has filed a registration statement under the Securities Act of 1933, or is subject to regulation by the Securities and Exchange Commission, an insurance company subject to regulation by any State, or a bank or any other financial depository institution subject to regulation by any State or by the United States. The provisions of this paragraph (a)(2)(ii) do not apply to any natural person who has a current Form 8-R on file with the Commission or the National Futures Association. However, if such natural person is a foreign national regulated by a foreign futures authority that provides information concerning facts which would constitute a potential statutory disqualification and whether such person is in good standing with the foreign futures authority to the National Futures Association, or in other appropriate cases, the National Futures Association may waive the requirement to file a Form 8-R and a fingerprint card. In appropriate cases, the Commission and the National Futures Association may require further information from the registrant with respect to any natural persons or entities referred to in this paragraph (a)(2)(ii).

(3) If a registrant adds a new director, the registrant's registration shall not be deemed to terminate and a new Form 7-R need not be filed pursuant to paragraph (a)(1)(iv) of this section if a majority of the board of directors remains the same and the registrant, within twenty days after the election of the director, files with the National Futures Association:

(i) A Form 8-R, completed in accordance with the instructions thereto and executed by the new director, accompanied by the fingerprints of that principal on a fingerprint card provided by the National Futures Association for that purpose (unless such director qualifies for the exemption from the fingerprint requirement pursuant to § 3.21(c) of this part), unless the new

director has a current Form 8-R on file with the National Futures Association or the Commission;

(ii) A Form 3-R amending the registrant's Form 7-R to identify the new director and, if such new director has a current Form 8-R on file with the National Futures Association or the Commission, a statement to that effect; and

(iii) A corporate resolution prohibiting the new director from exercising any authority or voting privilege as a director with respect to the conduct of the registrant's commodity interest related business until the National Futures Association has completed its fitness inquiry and has determined that the new director is not unfit to act as a principal of the registrant.

* * * * *

(c) Notwithstanding any other provision of this part, each Form 7-R filed in accordance with paragraph (b) of this section must be accompanied by a Form 8-R, completed in accordance with the instructions thereto and executed by each natural person who is a principal of the registrant and who was not listed on the registrant's initial application for registration or any amendment thereto. The Form 8-R for each such principal must be accompanied by the fingerprints of that principal on a fingerprint card provided by the National Futures Association for that purpose, unless such principal is a director who has been granted an exemption from the fingerprint requirement pursuant to § 3.21(c) of this part.

* * * * *

(e) (1) Except where a registrant chooses to file an application pursuant to paragraph (d) of this section, if applicable, in the event of a change as described in paragraph (a)(1)(v) of this section, a new registration will not be required if the registrant submits a written notice on Form 3-R to the National Futures Association prior to the date of such change in control (and such change does not occur until the registrant receives written approval from the National Futures Association) and includes with such notice a Form 8-R, completed in accordance with the instructions thereto and executed by the registrant's new chief executive officer or person occupying a position of similar status or performing a similar function. The Form 8-R for such individual must be accompanied by the fingerprints of that individual on a fingerprint card provided for that purpose by the National Futures Association: Provided, however, That a fingerprint card need not be provided under this paragraph for

any individual who has a current Form 8-R on file with the National Futures Association or the Commission.

(2) No person who submits written notification in accordance with the provisions of paragraph (e)(1) of this section may become so affiliated with such registrant until that registrant receives a written confirmation from the National Futures Association that such affiliation has been approved.

* * * * *

(g) Notwithstanding the provisions of § 3.12(a), if a new registration is granted under this section, any person who is registered, or who has submitted an application for registration, as an associated person of the registrant on or prior to the date of any event described in paragraph (a) of this section, shall be deemed to be registered, or to have submitted an application for registration, as an associated person of such new registrant.

(h) Except as otherwise provided in this section, within twenty days after any natural person becomes a principal of an applicant for registration subsequent to the filing of a Form 7-R in accordance with the requirements set forth in § 3.10(a) of this part, the applicant for registration must file a Form 8-R with the National Futures Association. The Form 8-R must be completed by such principal in accordance with the instructions thereto and must be accompanied by the fingerprints of that principal on a fingerprint card provided for that purpose by the National Futures Association, unless such principal is a director who has been granted an exemption from the fingerprint requirement pursuant to § 3.21(c) of this part. This filing need not be made for any such principal who has a current Form 8-R on file with the National Futures Association or the Commission: Provided, That within twenty days the applicant for registration must notify the National Futures Association of the name of such added principal on Form 3-R.

* * * * *

15. Section 3.33 is proposed to be amended by revising paragraphs (a) introductory text, (e) and (f) introductory text to read as follows:

§ 3.33 Withdrawal from registration.

(a) A futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, leverage transaction merchant or floor broker may request that its registration be withdrawn in accordance with the requirements of this section if:

* * * * *

(e) A request for withdrawal from registration as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, leverage transaction merchant or floor broker must be sent to the National Futures Association, Registration Office, 200 West Madison Street, Chicago, Illinois 60606 and a copy of such request must be sent by the National Futures Association within three business days of the receipt of such withdrawal request to the Commodity Futures Trading Commission, Division of Trading and Markets, Registration Unit, 2033 K Street NW., Washington, DC 20581. Within three business days of any determination by the National Futures Association under §§ 3.10(d) or 3.11(d) of this part to treat the failure by a registrant to file an annual Form 7-R as a request for withdrawal, the National Futures Association shall send the Commission notice of that determination.

(f) Except as otherwise provided in §§ 3.10(d) or 3.11(d) of this part, a request for withdrawal from registration will become effective on the thirtieth day after receipt of such request by the National Futures Association, or earlier upon written notice from the National Futures Association (with the written concurrence of the Commission) of the granting of such request, unless prior to the effective date:

* * * * *

Subpart B—Temporary Licenses

16. The authority for Subpart B is revised to read as follows:

Authority: 7 U.S.C. 2 and 4, 6, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 8, 9, 9a and 13b, 12, 12a, 18, 19, 21 and 23; 5 U.S.C. 552 and 552b.

17. Section 3.40 is proposed to be amended by revising paragraph (c) to read as follows:

§ 3.40 Temporary licensing of applicants for associated person registration.

* * * * *

(c) The sponsor's certification required by § 3.12(c) of this part.

* * * * *

18. Section 3.42 is proposed to be amended by revising paragraph (a) to read as follows:

§ 3.42 Termination.

(a) A temporary license shall terminate:

(1) Five days after service upon the applicant of a notice by the Commission or the National Futures Association pursuant to § 3.60 of this part that the

applicant for registration may be found subject to a statutory disqualification from registration;

(2) Immediately upon termination of the association of the applicant with the registrant which filed the sponsorship certification described in § 3.40(c) of this part;

(3) Immediately upon the withdrawal of the registration application pursuant to § 3.40(d);

(4) Immediately upon failure to comply with an order to pay a civil monetary penalty within the time permitted under Sections 6(d) or 6b of the Act; or

(5) Immediately upon failure to pay the full amount of a reparation order within the time permitted under section 14(f) of the Act; or

(6) Immediately upon failure to comply with an award in an arbitration proceeding conducted pursuant to part 180 of this chapter within the time permitted for such compliance as specified in section 10(g) of National Futures Association's Code of Arbitration or the comparable time period specified in the rules of a contract market or other appropriate arbitration forum.

19. Section 3.44 is proposed to be amended by revising paragraphs (a)(3) and (a)(5) to read as follows:

§ 3.44 Temporary licensing of applicants for guaranteed introducing broker registration.

(a) * * *

(3) A Form 8-R for the applicant, if a sole proprietor, and each principal (including each branch office manager) thereof, properly completed in accordance with the instructions thereto, the Disciplinary History portion of which contains no "Yes" answers indicating that the applicant may be subject to a statutory disqualification under sections 8a(2) through 8a(4) of the Act, or none except those arising from a matter which already has been disclosed in connection with a previous application for a registration in any capacity if such registration was granted, or which was disclosed more than thirty days previously in an amendment to such application.

(5) The fingerprints of the applicant, if a sole proprietor, and of each principal (including each branch office manager) thereof on fingerprint cards provided by the National Futures Association for that purpose: *Provided*, That a principal who has a current Form 8-R on file with the National Futures Association or the Commission is not required to submit a fingerprint card if the principal is not

otherwise required to be registered as an associated person of the applicant.

Subpart C—Denial, Suspension or Revocation of Registration

20. The authority citation for subpart C is revised to read as follows:

Authority: 7 U.S.C. 2 and 4, 6, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 8, 9, 9a and 13b, 12, 12a, 18, 19, 21 and 23; 5 U.S.C. 552 and 552b.

21. Section 3.50 is proposed to be amended by revising paragraph (b)(1) to read as follows:

§ 3.50 Service.

* * *

(b) * * *

(1) Any registrant sponsoring the applicant or registrant pursuant to the provisions of § 3.12 of this part if the applicant or registrant is an individual registered as or applying for registration as an associated person; or

* * *

22. Section 3.51 is proposed to be amended by revising paragraph (a) introductory text and paragraph (b) to read as follows:

§ 3.51 Withdrawal of application for registration.

(a) *Notice*. Whenever information comes to the attention of the Commission that an applicant for initial registration in any capacity under the Act may be found subject to a statutory disqualification under sections 8a(2) or 8a(3) of the Act, the Commission may serve written notice upon the applicant, which notice shall specify the statutory disqualifications to which the applicant may be subject and advise the applicant that:

* * *

(b) The applicant must serve the written confirmation referred to in paragraph (a)(3) of this section upon the Secretary of the Commission on or before twenty days after the date the notice described in paragraph (a) of this section is served.

§§ 3.52 through 3.54 [Removed and reserved]

23. Sections 3.52 through 3.54 are proposed to be removed and reserved.

24. Section 3.55 is proposed to be amended by revising paragraphs (a) introductory text, (a)(3), (b), (e) and (f) and by removing paragraphs (g), (h), (i), (j) and (k) to read as follows:

§ 3.55 Suspension and revocation of registration pursuant to Section 8a(2) of the Act.

(a) *Notice*. On the basis of information obtained by the Commission, the Commission may at any time serve notice upon a registrant in any capacity under the Act that:

* * *

(3) If the registrant is found to be subject to a statutory disqualification, the registration of the registrant may be suspended and the registrant ordered to show cause why such registration should not be revoked.

(b) *Written submission*. If the registrant wishes to challenge the accuracy of the allegations set forth in the notice, the registrant may submit written evidence limited to the type described in § 3.60(b)(1) of this part. Such written submission must be served upon the Division of Enforcement and filed with the Hearing Clerk within twenty days of the date of service of notice to the registrant.

* * *

(e) *Suspension and order to show cause*. (1) If the registrant is found to be subject to a statutory disqualification, the Administrative Law Judge, within thirty days after receipt of the registrant's written submission, if any, and any reply thereto, shall issue an interim order suspending the registration of the registrant and requiring the registrant to show cause within twenty days of the date of the order why, notwithstanding the existence of the statutory disqualification, the registration of the registrant should not be revoked. The registration of the registrant shall be suspended, effective five days after the order to show cause is served upon the registrant in accordance with § 3.50(a) of this part, until a final order with respect to the order to show cause has been issued: *Provided*, That if the sole basis upon which the registrant is subject to statutory disqualification is the existence of a temporary order, judgment or decree of the type described in section 8a(2)(C) of the Act, the order to show cause shall be suspended until such time as the temporary order, judgment or decree shall have expired: *Provided*, however, That in no event shall the registrant be suspended for a period to exceed six months.

(2) If the registrant is found not to be subject to a statutory disqualification, the Administrative Law Judge shall issue an order to that effect and the Hearing Clerk shall promptly serve a copy of such order on the registrant, the Division of Trading and Markets and the

Division of Enforcement. Such order shall be effective as a final order of the Commission fifteen days after the date it is served upon the registrant in accordance with the provisions of § 3.50(a) of this part unless a timely application for review is filed in accordance with § 10.102 of this chapter. The appellate procedures set forth in §§ 10.102, 10.103, 10.104, 10.106, 10.107 and 10.109 of this chapter shall apply to any appeal brought under this paragraph (e)(2).

(f) *Further proceedings.* If an order to show cause is issued pursuant to paragraph (e)(1) of this section, further proceedings on such order shall be conducted in accordance with the provisions of § 3.60(b)-(j) of this part.

§ 3.56 [Removed and reserved]

25. Section 3.56 is proposed to be removed and reserved.

26. Section 3.60 is proposed to be revised to read as follows:

§ 3.60 Procedure to deny, condition, suspend, revoke or place restrictions upon registration pursuant to sections 8a(2), 8a(3) and 8a(4) of the Act.

(a) *Notice.* On the basis of information obtained by the Commission, the Commission may at any time give written notice to any applicant for registration or any registrant in any capacity under the Act that:

(1) The Commission alleges and is prepared to prove that the registrant or applicant is subject to one or more of the statutory disqualifications set forth in sections 8a(2), 8a(3) or 8a(4) of the Act;

(2) The allegations set forth in the notice, if true, constitute a basis upon which registration may be denied, granted upon conditions, suspended, revoked or restricted;

(3) The applicant or registrant is entitled to file a response within thirty days of the date of service of the notice to challenge the evidentiary basis of the statutory disqualification set forth in the notice or show cause why, notwithstanding the accuracy of those allegations, registration should nevertheless be granted, or granted upon condition, or should not be conditioned, suspended, revoked or restricted; and

(4) If the applicant or registrant does not file a timely response to the notice:

(i) The applicant or registrant will be deemed to have waived his right to a hearing on all issues and the facts stated in the notice shall be deemed to be true and conclusive for the purpose of finding that the applicant or registrant is subject to a statutory disqualification under Sections 8a(2), 8a(3) or 8a(4) of the Act; and

(ii) A presiding officer may thereafter decide whether to issue an order of default in accordance with paragraph (g) of this section to deny, condition, suspend, revoke, or place restrictions upon registration based solely upon the facts set forth in the notice.

(b) *Response.* Within thirty days after service upon the applicant or registrant of a notice issued in accordance with the provisions of paragraph (a) of this section, the applicant or registrant shall file a response with the Hearing Clerk and serve a copy of the response on the Division of Enforcement.

(1) In the response, the applicant or registrant shall state whether he challenges the evidentiary basis of the statutory disqualification set forth in the notice. The grounds for such a challenge shall include evidence as to (i) the applicant's identity, (ii) the existence of a clerical error in any record documenting the statutory disqualification, (iii) the nature or date of the statutory disqualification, (iv) the post-conviction modification of any record of conviction, or (v) the favorable disposition of any appeal. The applicant or registrant shall state the nature of each challenge and submit a verified statement or affidavit to support facts material to each challenge raised in the response.

(2)(i) In the response, if the person is not an associated person or a floor broker or an applicant for registration in either capacity, the applicant or registrant shall also state whether he intends to show that registration would not pose a substantial risk to the public despite the existence of the disqualification set forth in the notice. If the person is an associated person or floor broker or an applicant for registration in either capacity, the applicant or registrant shall also state whether he intends to show that full, conditioned or restricted registration would not pose a substantial risk to the public despite the existence of the disqualification set forth in the notice. If the applicant or registrant is an associated person or floor broker or an applicant for registration in either capacity and intends to make such a showing, he must also submit a letter signed by an officer or general partner authorized to bind the sponsor or, in the case of a floor broker or applicant for registration as a floor broker, another floor broker, whereby the sponsor or floor broker agrees to sign a Supplemental Sponsor Certification Statement and supervise compliance with any conditions or restrictions that may be imposed on the applicant or registrant as a result of a statutory disqualification proceeding under this

section: Provided, That, with respect to such sponsor or supervising floor broker:

(A) An adjudicatory proceeding pursuant to the provisions of sections 6(b), 6(c), 6c, 6d, 8a or 9 of the Act is not pending; and

(B) In the case of a sponsor which is a futures commission merchant or a leverage transaction merchant, the sponsor is not subject to the reporting requirements of §§ 1.12(b) or 31.7(b) of this chapter, respectively; and

(C) In the case of a supervising floor broker, such supervising floor broker is not barred from service on self-regulatory organization governing boards or committees based on disciplinary history in accordance with § 1.63 of this chapter.

(ii) If, in the response, the applicant or registrant states that he intends to make the showing referred to in paragraph (b)(2)(i) of this section, he shall also, within fifteen days after filing his initial response under this paragraph (b), file with the Hearing Clerk and serve a copy on the Division of Enforcement a submission which includes a statement of the applicant, registrant or his attorney identifying and summarizing the testimony of each witness whom the applicant or registrant intends to have testify in support of facts material to his showing, and copies of all documents which the applicant or registrant intends to introduce to support facts material to his showing. The factors forming the basis for a disqualified applicant's or registrant's showing referred to in paragraph (b)(2)(i) of this section may include:

(A) Evidence mitigating the seriousness of the wrongdoing underlying the statutory disqualification set forth in the notice;

(B) Evidence that the applicant or registrant has undergone rehabilitation since the time of the wrongdoing underlying the statutory disqualification; and

(C) If the person is an associated person or floor broker or an applicant for registration in either capacity, evidence that the applicant's or registrant's registration on a conditioned or restricted basis would be subject to supervisory controls likely both to detect future wrongdoing by the applicant or registrant and protect the public from any harm arising from the applicant's or registrant's future wrongdoing, including proposed conditions or restrictions.

(c) *Reply.* Within thirty days after the latter of the date the applicant or registrant serves a copy of the response on the Division of Enforcement (if no further submission is to be made in

accordance with paragraph (b)(2)(ii) of this section), or the date the applicant or registrant serves a copy of the further submission made in accordance with paragraph (b)(2)(ii) of this section on the Division of Enforcement, the Division of Enforcement shall file a reply thereto with the Hearing Clerk and serve a copy of the reply on the applicant or registrant. The Division of Enforcement's reply shall include either:

(1) A motion for summary disposition stating that there are no genuine issues of material fact to be determined and that registration should be denied or revoked, based upon the applicant's or registrant's response and further submission, if any, and any other materials which are attached to the reply and would be admissible under § 10.91 of this chapter; or

(2) A description of factual issues raised in the applicant's or registrant's response and further submission, if any, that the Division of Enforcement regards as material and disputed. Such a reply shall also include the identity and a summary of the expected testimony of each witness whom the Division intends to have testify, and copies of all documents which the Division intends to introduce.

(d) *Oral presentation.* Within thirty days of the date the Division of Enforcement files its reply in accordance with the provisions of paragraph (c) of this section to the applicant's or registrant's response and further submission, if any, the Administrative Law Judge shall issue an order:

(1) If the Administrative Law Judge finds, based on the motion for summary disposition, that a party is entitled to judgment as a matter of law, granting, denying, suspending, or revoking the registration of an applicant or registrant, or dismissing the notice issued in accordance with paragraph (a) of this section, and such order shall be made in accordance with the standards set forth in paragraphs (e) and (f) of this section; or

(2) Notifying the parties of a time and place of hearing. At such hearing, the parties shall be limited to presentation of witnesses and documents listed in previous filings except, for good cause shown, the parties may request that the witness and document lists be supplemented for purposes of rebuttal. Such oral hearing shall be conducted in accordance with §§ 10.61–10.81 and 10.83 of this chapter. The Administrative Law Judge shall file an initial decision after completion of the oral hearing in accordance with the standards set forth in paragraphs (e) and (f) of this section.

(3) Upon notice that the Administrative Law Judge has concluded that an oral presentation is appropriate, the parties may elect to participate by telephone in accordance with the terms set forth in § 12.209(b) of this chapter. To effect such an election, the party shall file a notice with the Hearing Clerk and serve a copy on all opposing parties within fifteen days of the date the Administrative Law Judge's notice is served. The filing of an election to participate by telephone will be deemed a waiver of the party's right to a full oral hearing on the parties' material disputes of fact. The Administrative Law Judge shall schedule a telephonic hearing only if all parties to the proceeding elect such a procedure. The Administrative Law Judge shall conduct such a hearing in accordance with § 12.209(b) of this chapter. Following the hearing, the Administrative Law Judge shall issue a written decision in accordance with the standards set forth in paragraphs (e) and (f) of this section.

(e) *Determination by Administrative Law Judge—Standards of Proof.* The Administrative Law Judge's written determination shall specifically consider whether the applicant or registrant is subject to the statutory disqualification set forth in the notice issued by the Commission and, where appropriate:

(1) In actions involving statutory disqualifications set forth in section 8a(2) of the Act, whether the applicant or registrant has made a clear and convincing showing that full, conditioned or restricted registration would not pose a substantial risk to the public despite the existence of the statutory disqualification; or

(2) In actions involving statutory disqualifications set forth in sections 8a(3) or 8a(4) of the Act, whether the applicant or registrant has shown by a preponderance of the evidence that full, conditioned or restricted registration would not pose a substantial risk to the public despite the existence of the statutory disqualification.

(f) *Determination of Administrative Law Judge—Findings.* In making his written determination, the Administrative Law Judge shall set forth the facts material to his conclusion and provide an explanation of his decision in light of the statutory disqualification set forth in the notice and, where appropriate, his findings regarding:

(1) Evidence mitigating the seriousness of the wrongdoing underlying the applicant's or registrant's statutory disqualification;

(2) Evidence that the applicant or registrant has undergone rehabilitation since the time of the wrongdoing

underlying the statutory disqualification; and

(3) If the person is an associated person or floor broker or an applicant for registration in either capacity, evidence that the applicant's or registrant's registration on a conditioned or restricted basis would be subject to supervisory controls likely both to detect future wrongdoing by the applicant or registrant and protect the public from any harm arising from future wrongdoing by the applicant or registrant. Any decision providing for a conditioned or restricted registration shall take into consideration the applicant's or registrant's statutory disqualification and the time period remaining on such statutory disqualification, and shall fix a time period after which the registrant and his sponsor or supervisory floor broker may petition to lift or modify the conditions or restrictions in accordance with § 3.64 of this part.

(g) *Default.* The procedures for obtaining a default order and the setting aside of a default order in a proceeding instituted under this section shall follow the procedures set forth in §§ 10.93 and 10.94 of this chapter.

(h) *Settlements.*—(1) *When offers may be made.* Parties may, at any time during the course of the proceeding, propose offers of settlement. All offers of settlement shall be in writing.

(2) *Content of offer.* Each offer of settlement made by a respondent shall:

(i) Acknowledge service of the notice;

(ii) Admit the jurisdiction of the Commission with respect to the matters set forth in the notice;

(iii) Include a waiver of:

(A) A hearing,

(B) All post-hearing procedures,

(C) Judicial review, and

(D) Any objection to the staff's participation in the Commission's consideration of the offer;

(iv) Stipulate the record basis on which an order may be entered, which may consist solely of the notice and any findings contained in the offer of settlement; and

(v) Consent to the entry of an order reflecting the terms of settlement agreed upon, including, where appropriate:

(A) Findings that the respondent is subject to statutory disqualification under sections 8a(2), 8a(3) or 8a(4) of the Act, and

(B) The denial or granting of full registration or imposition of conditioned or restricted registration.

(3) *Submission of offer.* Offers of settlement made by a respondent shall be submitted in writing to the Division of Enforcement, which shall present

them to the Commission with the Division's recommendation. The respondent will be informed if the recommendation will be unfavorable, in which event the offer shall not be presented to the Commission unless the respondent so requests. Any offer of settlement not presented to the Commission shall be null and void with respect to any acknowledgment, admission, waiver, stipulation or consent contained in the offer and shall not be used in any manner in the proceeding by any party thereto.

(4) *Acceptance of offer.* The offer of settlement will only be deemed accepted upon issuance by the Commission of an opinion and order based on the offer. Upon issuance of the opinion and order, the proceeding shall be terminated as to the respondent involved and so noted on the docket by the Hearing Clerk.

(5) *Rejection of offer.* When an offer of settlement is rejected, the party making the offer shall be notified by the Division of Enforcement and the offer of settlement shall be deemed withdrawn. A rejected offer of settlement and any documents relating thereto shall not constitute a part of the record in the proceeding; and the offer will be null and void with respect to any acknowledgment, admission, waiver, stipulation or consent contained in the offer and shall not be used in any manner in the proceeding by any party thereto.

(i) *Effect of the Administrative Law Judge's Determination.* The Administrative Law Judge's written determination shall become the final decision of the Commission thirty days following the date the Hearing Clerk serves the determination on the parties unless:

(1) One or more of the parties files and serves a timely notice of appeal in accordance with § 10.102 of this chapter; or

(2) The Commission issues an order staying the effective date of the determination and notifying the parties of its intention to undertake sua sponte review in accordance with § 10.105 of this chapter.

(j) *Appeal.* Following the filing of a notice of appeal the parties shall observe the rules of appellate procedure set forth in §§ 10.102, 10.103, 10.104, 10.106, 10.107 and 10.109 of this chapter.

§§ 3.61 and 3.62 [Removed and reserved]

27. Sections 3.61 and 3.62 are proposed to be removed and reserved.

28. Section 3.63 is proposed to be amended by revising paragraph (a) to read as follows:

§ 3.63 Service of order issued by a Presiding Officer.

(a) A copy of any order issued pursuant to § 3.60 of this part shall be served promptly upon the applicant or registrant, the Division of Trading and Markets, the Division of Enforcement, the National Futures Association, and any contract markets where the applicant or registrant is a member or has trading privileges in accordance with the provisions of § 3.50(a) of this part and shall be deemed a final order of the Commission thirty days after the date of such service, unless a timely application for review under paragraph (b) of this section is filed.

* * * * *

29. Section 3.64 is proposed to be added to read as follows:

§ 3.64 Procedure to lift or modify conditions or restrictions.

(a) *Petition.* The registrant and his sponsor or supervising floor broker may file a petition with the Hearing Clerk and serve a copy of the petition on the Division of Enforcement to lift or modify conditions or restrictions on the registrant's registration.

(1) The petition may be filed after the period specified in the order imposing the conditioned or restricted registration.

(2) In the petition, the registrant and his sponsor or supervising floor broker shall be limited to a showing, by affidavit, that the conditions or restrictions have been satisfied pursuant to the order which imposed them. A sponsor's or supervising floor broker's affidavit must be sworn to by a person with actual knowledge of registrant's activities on behalf of the sponsor or supervising floor broker.

(b) *Response.* (1) Within thirty days of receipt of the petition, pursuant to paragraph (a) of this section, the Division of Enforcement shall file a response with the Hearing Clerk. The response must include a recommendation by the Division of Enforcement as to whether to continue the conditions or restrictions, modify the conditions or restrictions, or to allow for a full registration.

(2) If the Division of Enforcement agrees with the petitioner's request to lift or modify conditions or restrictions on the petitioner's registration, it shall so recommend to the Commission. Such recommendation will only be deemed accepted upon issuance by the Commission of an order lifting or modifying conditions or restrictions on the petitioner's registration. Such order shall be so noted on the docket by the Hearing Clerk.

(c) *Oral Presentation.* If the Division of Enforcement requests a continuation, or a modification other than in accordance with the terms of the petition, of the restrictions or conditions on the registration, the Administrative Law Judge shall, within thirty days of the date that the response is filed pursuant to paragraph (b) of this section, determine whether an oral presentation is appropriate to the reliable resolution of the registrant's petition.

(1) If the Administrative Law Judge determines that an oral presentation is appropriate, he shall notify the parties of his determination and shall schedule and conduct an oral hearing in accordance with §§ 10.61 through 10.81 of this chapter. Following the hearing, the Administrative Law Judge shall issue a written decision or an order.

(2) If the Administrative Law Judge concludes that an oral presentation is unnecessary, he shall notify the parties and issue a written decision or an order.

(d) *Appeal.* The Hearing Clerk shall promptly serve the Administrative Law Judge's written determination on the registrant, the registrant's sponsor or supervising floor broker and the Division of Enforcement. Such written determination shall become the final decision of the Commission thirty days after the date it is served unless one or more of the parties files a timely appeal in accordance with § 10.102 of this chapter. The appellate procedures set forth in §§ 10.102, 10.103, 10.104, 10.106, 10.107 and 10.109 of this chapter shall apply to any proceeding brought under this section.

Subpart D—Notice Under Section 4k(5) of the Act

30. The authority citation for Subpart D continues to read as follows:

Authority: 7 U.S.C. 2 and 4, 6, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 8, 9, 9a and 13b, 12, 12a, 18, 19, 21 and 23; 5 U.S.C. 552 and 552b.

31. Section 3.70 is proposed to be amended by revising paragraphs (a) and (c) to read as follows:

§ 3.70 Notification of certain information regarding associated persons.

(a) *Notice.* A registrant must notify the Commission under Section 4k(5) of the Act of any facts regarding an associated person of the registrant or an applicant for registration as an associated person whom it has sponsored pursuant to the provisions of § 3.12 of this part or whom it intends to hire or otherwise employ as an associated person which are set forth as statutory disqualifications in section 8a(2) of the Act within ten business days

of the date upon which the registrant first knows or should have known such facts. Notice to the Commission shall be sufficient if the registrant gives notice to the Director of the Division of Trading and Markets or the Director's designee by telephone and confirms such notice in writing by certified or registered mail or equivalent means to the Commission at its Washington, DC office (Attn: Chief Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581).

(c) *Proceedings under Subpart C.* Upon notification to the Commission by the registrant under paragraph (a) of this section, the Commission may promptly issue notice under §§ 3.55 or 3.60 of this part, as appropriate, to suspend and revoke the registration of the associated person of the registrant or to deny the registration of the applicant for registration as an associated person of the registrant.

Subpart E—Delegation and Reservation of Authority

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

Authority: 7 U.S.C. 2 and 4, 6, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 8, 9, 9a and 13b, 12, 12a, 18, 19, 21 and 23; 5 U.S.C. 552 and 552b.

33. Section 3.75 is proposed to be amended by revising paragraph (c) to read as follows:

§ 3.75 Delegation and reservation of authority.

(c) The Commission reserves to itself the decision in any case to proceed by order, upon notice and hearing, to deny, suspend, condition or restrict the

registration of any person pursuant to sections 8a(2), 8a(3) and 8a(4) of the Act.

Issued in Washington, DC, on July 25, 1991 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91-18022 Filed 8-1-91; 8:45 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 150

Revision of Federal Speculative Position Limits

AGENCY: Commodity Futures Trading Commission.

ACTION: Petition for rulemaking.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has received pursuant to Commission Rule 13.2, 17 CFR 13.2, two petitions for rulemaking requesting that it increase certain speculative position limits and exemptions. See, 17 CFR 150.2 and 150.3. The Petitions for Rulemaking received from the Chicago Board of Trade and the New York Cotton Exchange request that these limits be raised on the specified futures contracts for grains, soybeans, soybean products and cotton. The Commission is asking for comment on the requested rule amendments to aid in its determination on these matters. The Commission seeks public comment to assist in determining the need for revisions to these speculative position limits.

DATES: Comments must be received by October 1, 1991.

ADDRESS: Commodity Futures Trading Commission, 2033 K Street NW.

Washington, DC 20581, Attention: Secretariat.

FOR FURTHER INFORMATION CONTACT: Blake Imel, Deputy Director, or Paul Architzel, Chief Counsel, Division of Economic Analysis, at the above address. Telephone: (202) 254-3203 or (202) 254-6990, respectively.

SUPPLEMENTARY INFORMATION: The Congress has provided the Commission with the authority to establish speculative position limits for futures contracts.¹ Further, Commission Rule 1.61, 17 CFR 1.61, requires that exchanges adopt and enforce speculative position limits for all contracts where they have not been established by the Commission, including contract markets for options. Currently, the limits fixed by the Commission in part 150 of its regulations cover the futures contracts for domestically produced agricultural commodities traded on the Chicago Board of Trade, the New York Cotton Exchange, the Kansas City Board of Trade, the Minneapolis Grain Exchange, the Chicago Rice and Cotton Exchange, and the MidAmerica Commodity Exchange.²

The Chicago Board of Trade ("CBT") on April 16, 1991, petitioned the Commission to increase the Commission's speculative position limits in Regulations 150.2 and 150.3 for corn, soybeans, wheat, oat, soybean oil and soybean meal futures contracts traded on the CBT. The New York Cotton Exchange ("NYCE") submitted a petition on July 16, 1990, to raise the Commission's speculative position limits on its cotton No. 2 contract. A comparison of the current limit levels and those proposed by the two exchanges are shown in the following table.

COMPARISON OF CHICAGO BOARD OF TRADE AND NEW YORK COTTON EXCHANGE PROPOSALS FOR SPECULATIVE LIMITS ON OUT RIGHT POSITIONS LIMITS IN CONTRACTS

	Corn	Soybeans	Wheat	Oats	Soybean meal	Soybean oil	NYCE cotton #2
Current Commission Rule 150.2 Speculative Position Limits							
Spot Month ¹	600	600	600	400	720	540	300
Individual Months	600	600	600	400	720	540	450
All Months Combined	2,400	2,400	1,800	400	2,160	1,620	1,200
Proposed Changes to Commission Rule 150.2 Speculative Position Limits							
Spot Month ¹	600	600	600	600	720	540	300

¹ Each of these speculative position limits rules contains limits on net positions held in any one futures month and all futures combined, a hedge exemption provision and, where applicable, a provision subjecting positions which are spread or arbitrage positions between futures and option contracts to exchange-set speculative position limits approved pursuant to Rule 1.61.

² Exchange-set speculative position limits are approved by the Commission under the standards set forth in Rule 1.61 and under section 5a(12) of the Act. Section 4a(5) of the Act provides that violation of such an exchange-set speculative position limit that has been approved by the Commission, in addition to being an enforceable violation of exchange rules, is also a violation of the Act.

The Chicago Board of Trade adopted rules identical to those of the Commission on speculative position limits so that the exchange also could enforce these limits under its rules. However, section 4a(5) provides that exchange-set speculative position limits may not be higher than the limits fixed by the Commission. Accordingly, in order to raise these exchange-set limits, the Commission must first amend its own rules.

	Corn	Soybeans	Wheat	Oats	Soybean meal	Soybean oil	NYCE cotton #2
Individual Months.....	1,600	1,600	1,200	600	1,440	1,080	900
All Months Combined.....	4,800	4,800	3,600	1,800	4,320	3,240	1,800

¹ Becomes effective for nearby futures on day preceding first notice day.

In addition to these changes, the CBT has also proposed in a separate submission to increase its option limits in the same commodities. Those limits are a matter of exchange rules and establish separate limits for outright positions in long puts, short puts, long calls and short calls, as well as various spread positions between options and futures. Currently the level of these outright limits are 600 futures equivalent contracts in corn, wheat, soybean,³ 720 in soybean meal, 540 in soybean oil and 400 in oats. They would be doubled under the CBT proposal. The NYCE is not proposing to change its option limits.

The CBT also requests in its petition that the language in Regulation 150.3(3) be changed by removing the crop year restriction and increasing the level of allowable spread or arbitrage positions. Currently, additional positions may be held as spread or arbitrage positions between single months of a CBT futures contract outside of the spot month and in the same crop year, provided that such spread or arbitrage positions, when combined with outright positions in the single month, do not exceed twice the single month position limit.

Specifically, the CBT is requesting that Regulation 150.3(3) be changed to the following:

Spread or arbitrage positions between single months of a futures contract traded on the same board of trade outside of the spot month; provided however, that such spread or arbitrage positions, when combined with any outright positions in the single month, do not exceed the all-months combined net limit, and provided that in all-months combined the total of spread positions does not exceed the all-months combined net limit for the futures contract set forth in Regulation 150.2 of this part.

Petition of Rulemaking of the Chicago Board of Trade, dated April 16, 1991.

The CBT petition states that the Regulation changes are being recommended because of four general trends in the agricultural futures

markets. First, during the past 15 years, the concentration of large speculative positions near single month limits in individual futures months in the agricultural markets has increased dramatically, particularly since position limits were restructured in 1987. Second, the agricultural cash and futures markets have grown significantly since the most recent increase in single month limits in 1971 for corn, soybeans, soybean oil and soybean meal and in 1976 for wheat. In addition, ending stocks in these commodities have increased while restrictions on spread positions between crop years have been maintained. Third, continued growth in agricultural futures and options is expected as producers increase their use of futures and options to offset reductions in government price support programs required in the 1990 Farm Bill. Fourth, competition from hybrid products and imitation contracts traded on foreign exchanges (which usually do not have position limits) is increasing.

Furthermore, the Petitioner conducted a 12 month review of the effect of the structure of agricultural position limits on market performance. As a result of this review, the Petitioner reasoned that:

* * * the proposed increases in position limits will be essential factors which determine whether these markets are able to continue providing the liquidity required for efficient performance as the demand for contract usage as a pricing and hedging medium increases * * *. The proposed single month and all-months combined position limits * * * are justified based on the evidence of increasing concentration of positions near single month limits and the significant growth occurring in these cash and futures markets.

Petition of Rulemaking of the Chicago Board of Trade, dated April 16, 1991.

After an analysis of the cotton futures market, the NYCE reasoned that its regulation change is being requested because:

After the 1987 increase in speculative limits, volume increased, open interest increased, trade participation increased, and volatility decreased. It seems apparent that the increase in speculative limits contributed to a more efficient cotton futures market.

Petition of Rulemaking of the New York Cotton Exchange, dated July 16, 1990.

In light of the above two petitions, the Commission believes it is appropriate to re-examine Federal speculative position

limits at this time. In particular, the Commission is requesting public comment on the possible revision of current Federal speculative position limits and is requesting responses on the following specific issues. The Commission will evaluate these comments in conjunction with the data which the Commission itself develops concerning the appropriateness of current speculative position limits.

(1) What are the costs and benefits to the market and to market participants of increasing agriculture speculative position limits in the commodities covered by the two petitions? Are the proposed levels appropriate?

Commenters may wish to address the relative levels of open interest and trading volume in specific futures contracts on these commodities over the years. Commenters should discuss why higher speculative position limits in different maturities are appropriate and in particular, whether different levels for different maturities (spot versus deferred) may or may not be appropriate.

(2) Are there any adverse effects from raising speculative position limits to the overall regulatory purpose of these limits? Specifically, are there any adverse effects on the market and on market participants from raising these limits in the back months? Will raising these limits have an adverse impact on the ability to use these contracts for hedging or price basing?

(3) Speculative position limits have various regulatory effects. They can help ensure orderly liquidation of a contract; aid in preventing market manipulation; and help prevent market distortions and other pricing anomalies. To what extent do current speculative position limits achieve these effects and are there alternative regulatory tools which can better achieve these objectives?

(4) Should the Commission consider revising the speculative position limits for other actively traded agricultural contracts where federal limits are in effect?

The Commission is interested in determining whether the proposed levels should also apply to similar contracts traded on other exchanges such as the Kansas City Board of Trade and Minneapolis Grain Exchange wheat contracts.

³ A futures equivalent contract is a term frequently used with reference to speculative position limits for options on futures contracts. The futures equivalent of an option position is the number of options multiplied by the previous day's risk factor or delta for the option series. For example, 10 deep out-of-the-money options with a risk factor of 0.20 would be considered 2 futures equivalent contracts. The delta or risk factor used for this purpose is the same as that used in delta based margining and risk analysis systems.

(5) Should speculative position limits in grains, the soybean complex, and cotton be combined into a single limit for futures and options positions as they are in most other commodities?

Although the CBT and NYCE petitions do not propose to combine options and futures speculative position limits, commenters are requested to address this issue. In particular, commenters should note that in most contract markets for which there are no Commission set speculative position limits, the limits on futures and options are combined.

(6) The CBT is proposing to extend the higher limits on intracrop year spread to spread positions between crop years. The Commission is requesting comments on both the existence and level of this intercrop spread provision.

List of Subjects in 17 CFR Part 150

Arbitrage, Contract markets, Hedging, Speculative position limits, Commodity futures.

Issued in Washington, DC this 25th day of July 1991, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91-18321 Filed 8-1-91; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

New Mexico Permanent Regulatory Program

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

ACTION: Proposed rule; Public Comment Period and Opportunity for Public Hearing on Proposed Amendment.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the New Mexico permanent regulatory program (hereinafter, the "New Mexico program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of a change to the New Mexico rules pertaining to hydrologic balance as it relates to water quality standards and effluent limitations. The amendment is intended to revise the New Mexico program to be consistent with the corresponding Federal regulations. This notice sets forth the times and locations that the New Mexico program and proposed amendment to that program are available for public inspection, the

comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., m.d.t. September 3, 1991. If requested, a public hearing on the proposed amendment will be held on August 27, 1991. Requests to present oral testimony at the hearing must be received by 4 p.m., m.d.t. on August 19, 1991.

ADDRESSES: Written comments should be mailed or hand delivered to Robert H. Hagen at the address listed below.

Copies of the New Mexico program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Albuquerque Field Office.

Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW., suite 310, Albuquerque, NM 87102, Telephone: (505) 766-1486.

New Mexico Energy & Minerals Department, Mining and Minerals Division, 2040 South Pacheco Street, Santa Fe, NM 87505, Telephone: (505) 827-5970.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, Director, Albuquerque Field Office, telephone number (505) 766-1486.

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program

On December 31, 1980, the Secretary of the Interior conditionally approved the New Mexico program. General background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the New Mexico program can be found in the December 31, 1980, *Federal Register* (45 FR 86459). Subsequent actions concerning New Mexico's program and program amendments can be found at 30 CFR 931.15, 931.16, and 931.30.

II. Proposed Amendment

By letter dated July 9, 1991 (Administrative Record No. NM-642), New Mexico submitted a proposed amendment to its program pursuant to SMCRA. New Mexico submitted the

proposed amendment to satisfy a required program amendment at 30 CFR 931.16(b). The provision of the Coal Surface Mining Commission (CSMC) rules that New Mexico proposes to amend is CSMC Rule 80-1-20-42(a)(8), which concerns hydrologic balance as it relates to water quality standards and effluent limitations.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the New Mexico program.

Written Comments

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

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4 p.m., m.d.t. on August 19, 1991. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

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

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

Public Meeting

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

meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "ADDRESSES." A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 931

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 19, 1991.

Allen D. Klein,

Acting Assistant Director, Western Support Center.

[FR Doc. 91-18376 Filed 8-1-91; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[COTP Port Arthur, TX Regulation 90-03]

33 CFR Part 165

Safety Zone; Calcasieu Channel and Industrial Canal, Calcasieu River, Lake Charles, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard is considering a proposal to revise the existing safety zone in the turning basin of the Industrial Canal, Calcasieu River, Lake Charles, LA. The safety zone is necessary to safeguard vessels, personnel and property against the accidental release of liquefied natural gas (LNG) at the Trunkline LNG Terminal. Revising the existing safety zone will accurately reflect the hazardous areas of the turning basin and ensure public safety while allowing the public to continue to fish in one of the prime fishing areas in the Calcasieu River.

DATES: Comments must be received on or before September 16, 1991.

ADDRESSES: Comments should be mailed to U.S. Coast Guard Marine Safety Office, 2875 75th St. & Hwy. 69, Port Arthur, Texas (409) 723-6500. Comments may also be mailed to the U.S. Coast Guard Marine Safety Detachment, Port of Lake Charles, 150 Marine Street, Box 4, Lake Charles, LA 70601-5612. The comments will be available for inspection and copying at the Marine Safety Office, Port Arthur, TX and at the Marine Safety Detachment, Lake Charles, LA during

normal office hours between 7:30 a.m. and 4 p.m. Monday through Friday, except holidays. Comments may also be hand delivered to the Marine Safety Office, Port Arthur, TX or the Marine Safety Detachment, Lake Charles, LA.

FOR FURTHER INFORMATION CONTACT: LCDR Gilbert Kanazawa, Supervisor MSD Lake Charles at (318) 433-3765.

SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (COTP Port Arthur, TX Regulation 90-03) and the specific section of the proposal to which the comments apply, and give reasons for each comment. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid in the rulemaking process.

Drafting Information

The drafters of this notice are Lieutenant Commander Gilbert Kanazawa, and Lieutenant Junior Grade Gary Messmer, project officers for the Captain of the Port, and Lieutenant Wilson, Project Attorney, Eighth Coast Guard District Legal Office, New Orleans, Louisiana.

Discussion of Proposed Regulation

The Captain of the Port, Port Arthur, TX is proposing to modify the existing safety zone around the Trunkline LNG Terminal in the turning basin of the Industrial Canal, Calcasieu River, Lake Charles, LA. The Trunkline LNG Terminal has resumed operations after being dormant since 1984 when it terminated importing LNG from Algeria. In November 1989, Trunkline restarted terminal operations with a new contract for the importation of Algerian LNG. The area around the Trunkline LNG terminal has always been a very popular fishing area for local recreational fishermen. On any given day it is not uncommon to find as many as 30 to 50 fishing boats packed into one small corner of the turning basin. Two of the best fishing spots are directly underneath the transfer facility itself and the other is the far northeast corner of the turning basin. The present safety zone extends 150 feet offshore and runs parallel along the shoreline the whole

length of the Trunkline property. It also extends an additional 50 feet around a LNG tanker when moored at the terminal. During the time period the terminal was dormant, the safety zone was not enforced, since there was no hazard of a LNG release because LNG was not kept in storage or circulating through the piping. Since the restart up of terminal operations, the Coast Guard has resumed enforcing the safety zone regulations, citing several fishermen for violation of the safety zone. This resumption of enforcement of the safety zone has angered many of the fishermen who feel they should have the right to fish there and that there is no real addition of safety by having to stay 150 feet offshore when the safety zone only extends 50 feet from a LNG tanker when it is moored transferring LNG. After discussions with several local fishermen and fishing associations it was learned that 150 feet was too far offshore for the fishermen to cast up to the shoreline to where the fish could be caught. It was suggested that if the safety zone could be modified to only extend 50 feet offshore while still keeping the marine transfer facility off limits this would be an acceptable compromise. This was discussed with Trunkline LNG management and they felt it was hard to justify keeping a 150 foot safety zone at the far northeast corner of the turning basin since no LNG is stored there and no LNG piping is located in that area. They indicated that a 50 foot safety zone at the far northeast corner of the turning basin while keeping the marine transfer facility off limits was acceptable.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and Procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The users of the port of Lake Charles fall into four main categories; Commercial Shipping, Commercial Fishing Vessels, Small Passenger Boats and Pleasure Boats. Since this zone is actually reducing the area encompassed in an already existing safety zone, there should be no adverse impact on harbor use. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Impact

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g.5 of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 165

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

Proposed Regulation

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.48 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 160.5.

2. In § 165.805, paragraph (a) is revised to read as follows:

§ 165.805 Calcasieu Channel and Industrial Canal, Calcasieu River, Lake Charles, LA.

(a) The waters and waterfront facility located within the area described by the following boundaries constitute a safety zone when:

(1) a Liquefied Natural Gas (LNG) vessel is moored at Trunkline LNG facility: Beginning at the west side property line at position 30 06'31.9" N., 93 17'37" W. a line extending in an eastward direction and 50 feet from shore to a point 50 feet west of mooring dolphin #1; then due south to a line running in an eastward direction and 50 feet south of the moored LNG vessel to a line running due north to a point 50 feet east of mooring dolphin #13; and then a line extending in an eastward direction and 50 feet from shore to the end of the turning basin.

(2) an LNG vessel is not moored at the Trunkline LNG facility: Beginning at the west side property line at position 30 06'31.9" N., 93 17'37" W. a line extending in an eastward direction and 50 feet

from shore to a point 50 feet west of mooring dolphin #1; then a continuous uniform line extending 50 feet outside of all facility docks and structures to a point 50 feet east of mooring dolphin #13; and then a line extending in an eastward direction and 50 feet from shore to the end of the turning basin.

* * * * *

Dated: July 25, 1991.

J.L. Robinson,

Captain, U.S. Coast Guard, Captain of the Port, Port Arthur, Texas

[FR Doc. 91-18383 Filed 8-1-91; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900-AF26

Disability Evaluations for HIV-Related Illnesses

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its rating schedule for evaluation of disabilities caused by the human immunodeficiency virus (HIV). This change is necessary because current provisions in the rating schedule do not adequately describe all levels of impairment which may be associated with these disabilities. The change will reflect current medical knowledge regarding HIV-related diseases and allow more equitable evaluations.

DATES: Comments must be received on or before September 3, 1991. Comments will be available for public inspection until September 11, 1991. This change is proposed to be effective the date of publication of the final rule.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this change to Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. All written comments will be available for public inspection only in the Veterans Services Unit, room 132, at the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays), until September 11, 1991.

FOR FURTHER INFORMATION CONTACT: Bob Seavey, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, (202) 233-3005.

SUPPLEMENTARY INFORMATION:

Currently, VA uses three diagnostic codes for rating HIV-related illnesses; Diagnostic code 6351, acquired immunodeficiency syndrome (AIDS); diagnostic code 6352, AIDS related complex (ARC); and, diagnostic code 6353, HIV antibody positive. Diagnostic codes 6351 and 6352 are rated according to the severity of the "underlying disease(s)," which means the constitutional disease, neurologic disease, opportunistic infection, secondary cancers, or other conditions such as chronic lymphoid interstitial pneumonitis which may be associated with HIV-related illnesses. Evaluations from 0 to 100 percent are permissible for these disabilities, which are rated by reference to the same or analogous disorders in other sections of the rating schedule. Diagnostic code 6353 is assigned a zero percent evaluation, since no disabling symptoms are recognized by the schedule at this level.

The need for more specific rating criteria is clear when the multitude and complexity of the underlying diseases are considered. The aggregate impairment of these disabilities is often more than the simple sum of the multiple complications separately considered. Constitutional and neurological diseases can be created under a variety of diagnostic codes, and since several analogies may be possible, inconsistent evaluations may result. Opportunistic infections may resolve with minimal chronic impairment of the affected body system, but the patient's quality of life and employment potential are markedly comprised and average life expectancy is shortened. Although the HIV infection may not have progressed to a specific stage, a patient may nevertheless be symptomatic and partially disabled.

VA is proposing to rate HIV-related illnesses under a single diagnostic code, 6351. We believe that eliminating the necessity for rating by analogy will result in more consistent evaluations. Under diagnostic code 6351, minimum evaluations of 30 and 60 percent would be established for specified clinical stages of HIV-related illness. Minimum evaluations are warranted for these stages due to the progressive nature of the disease, probable difficulties with employment, and shortened lifespan. Recognizing that symptoms are not confined to AIDS alone, certain levels of symptomatology would also be considered as 0, 10, 30, 60, or 100 percent disabling. The proposed revision allows for rating by staging or symptomatology, whichever permits a higher evaluation. Separate evaluations under other diagnostic codes for manifestations of

the disease would also be permitted if a higher overall evaluation would thereby result.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-602. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual impact on the economy of \$100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprise in domestic or export markets.

(The Catalog of Federal Domestic Assistance numbers are 64.104 and 64.109.)

List of Subjects in 38 CFR Part 4

Handicapped, Pensions, Veterans.

Approved: May 16, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 4, subpart B, is proposed to be amended as set forth below:

PART 4—SCHEDULE FOR RATING DISABILITIES

Subpart B—Disability Ratings

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

Authority: 72 Stat. 1125; 38 U.S.C. 355.

2. Section 4.88a is amended by removing diagnostic codes 6352 and 6353; and revising the heading and diagnostic criteria for diagnostic code 6351 to read as follows:

§ 4.88a Schedule of ratings—systemic diseases.

* * * * *

6351 HIV-Related Illness:

AIDS with recurrent opportunistic infections or with secondary diseases afflicting multiple body systems; HIV-related illness with debility and progressive weight loss, without remission, or few or brief remissions.....	100
Refractory constitutional symptoms, diarrhea, and pathological weight loss; or minimum rating following development of AIDS-related opportunistic infection or neoplasm....	60
Recurrent constitutional symptoms, intermittent diarrhea, and on approved medication(s); or minimum rating with T4 cell count less than 200, or Hairy Cell Leukoplakia, or Oral Candidiasis.....	30
Following development of definite medical symptoms, T4 cell count less than 500, and on approved medication(s); or with evidence of depression or memory loss with employment limitations.....	10
Asymptomatic, following initial diagnosis of HIV infection, with or without lymphadenopathy or decreased T4 cell count.....	0

Note (1): The term "approved medication(s)" includes medications prescribed as part of a research protocol at an accredited medical institution.

Note (2): Central nervous manifestations, opportunistic infections, and neoplasms may be rated separately under appropriate codes if higher overall evaluation results, but not in combination with percentages otherwise assignable above.

[FR Doc. 91-18347 Filed 8-1-91; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 441, 488, and 489

[HSQ-169-P]

Medicare and Medicaid Programs; Survey and Enforcement Requirements and Alternative Sanctions for Home Health Agencies

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

ACTION: Proposed rule.

SUMMARY: These rules would—

- Establish requirements for periodic, unannounced surveys of home health agencies (HHAs); and
- Provide a number of sanctions that may be imposed when HHAs are out of compliance with Federal requirements. The alternative sanctions would be imposed in lieu of immediate termination of the HHA's participation

in the Medicare program, and would remain in effect until the HHA achieves compliance or HCFA terminates the provider agreement because the HHA does not achieve compliance.

These rules are necessary to implement changes made by several sections of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87).

The purpose of the amendments is to encourage and assist HHAs to come into compliance with Federal requirements so that they can continue to participate in the program without risk to the health and safety of the patients to whom they provide services.

DATES: To ensure consideration, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5 p.m. on October 1, 1991.

ADDRESSES: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HSQ-169-P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave. SW., Washington, D.C., or
Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code HSQ-169-P. Comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in room 309-G of the Department's offices at 200 Independence Ave. SW., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Irene Gibson (301) 966-6768. To order a copy of the Federal Register containing this document, enclose a check for \$1.50, made out to the Superintendent of Documents, or enclose your Visa or Mastercard Number and expiration date, and send your request to Superintendent of Documents, Washington, D.C. 20402-9325. Your order should specify the date of the requested Federal Register. If you prefer, you may Fax your credit card order using (202) 275-6802.

SUPPLEMENTARY INFORMATION:

I. Background

An HHA, as defined in section 1861(o) of the Social Security Act (the Act), is a public agency or private organization

that is primarily engaged in providing skilled nursing services and other therapeutic services. In order to be covered under Medicare, these services must be furnished—

- To an individual who is confined to the home, under the care of a physician, and in need of services specified by the Act;

- Under a plan of treatment established and periodically reviewed by a physician; and

- By an HHA that is approved as meeting the Federal requirements for participation in the Medicare program.

State survey agencies, under contract with HCFA, and the State Medicaid agency, survey HHAs periodically and certify their findings to HCFA and to the State agency. For Medicare, the survey agency certification of compliance is a recommendation upon which HCFA bases its determination to grant, deny, or terminate provider agreements. For Medicaid, a survey agency certification of compliance with Federal requirements is a final determination of the HHA's eligibility to participate in that program. (A Medicaid agency may not enter into a provider agreement with an HHA for which the survey agency has not certified compliance, but is not required to enter into agreements with all that are so certified.)

Previous law and current regulations in parts 488 and 489 of the Medicare rules—

- Do not require that surveys be unannounced and that penalties be imposed when an HHA is notified of an impending survey, or specify how often surveys must be performed;

- Do not, in the case of a non-complying HHA, provide for any sanctions other than termination of the HHA's provider agreement after 15-day notice; and

- Do not provide for shorter notice when an HHA's deficiencies pose immediate jeopardy to patient health and safety.

We note that, with minor exceptions, these regulations apply to the Medicare program and not to the Medicaid program. The exceptions are:

- The amendments to § 441.11, which provide for continuation of Federal financial participation (FFP) in Medicaid payments for home health services; and

- New § 448.440(d) which provides for denial of FFP in Medicaid payments to an HHA that has been terminated from Medicare but continues to participate in Medicaid.

These exceptions are discussed in section III.B. 12 and 13 of this preamble.

II. Statutory Provisions

Section 4021 of OBRA '87 added to the Act section 1891, which specifies the conditions of participation for HHAs. OBRA '87 sections 4022 and 4023 amended the new section by adding several subsections.

A. Survey Requirements

1. In summary, subsection (c) of section 1891 of the Act—

- a. Establishes requirements for type and periodicity of surveys;

- b. Requires that standard surveys be unannounced;

- c. Provides for a civil money penalty of up to \$2000 for anyone who notifies an HHA or causes an HHA to be notified of the scheduled time or date of a standard survey, and

- d. Requires the Secretary to review State survey agency procedures to ensure that the agency has taken all reasonable steps to avoid giving such notice to HHAs through those procedures.

2. More specifically, subsection (c) provides that—

- a. Participating HHAs are subject to a standard survey not later than 15 months after the date of the previous standard survey and that, for all HHAs that participate in Medicare, the Statewide average interval between standard surveys may not exceed 12 months.

- b. A standard survey or an abbreviated standard survey may be conducted within 2 months of any change in ownership, administration, or management of the HHA to determine whether the change has resulted in any decline in the quality of care furnished;

- c. A standard survey or abbreviated standard survey shall be conducted within 2 months after a significant number of complaints concerning an HHA have been reported to the Secretary, the State, the entity responsible for licensing of the agency, the State or local agency responsible for maintaining a toll-free hot line and investigative unit (under section 1864(a) of the Act) or any other appropriate Federal, State or local agency.

- d. If an HHA is found, under a standard survey, to have furnished substandard care, an extended survey of that HHA, to review and identify the policies and procedures that produced the substandard care, shall be conducted immediately after the standard survey or, if that is not possible, within 2 weeks after completion of the standard survey;

- e. HCFA or the State survey agency may subject any HHA to an extended or partial extended survey when

conditions other than the furnishing of substandard care are found during a standard survey; and

- f. Nothing in paragraph (c)(2) of section 1891 of the Act shall be construed as requiring an extended or partial extended survey as a prerequisite for imposition of a sanction on the basis of a standard survey.

B. Alternative Sanction Provisions

(We note that although section 1891 uses the term "intermediate", these proposed rules, for consistency with other sanction rules, use the term "alternative", which we consider to have the same meaning.)

1. In summary, subsections (e) and (f) of section 1891 of the Act provide as follows:

- a. Require the Secretary to—

- Take immediate action to remove the jeopardy and correct deficiencies that immediately jeopardize patient health and safety, or terminate the provider agreement.

- Develop and implement a range of intermediate sanctions, including civil money penalties, suspension of all or part of the payments to a noncomplying HHA, and temporary management;

- Promulgate specific procedures with respect to the situations in which each intermediate sanction is to be applied; and

- Establish procedures for appealing determinations regarding the imposition of intermediate sanctions.

- b. Authorize the Secretary to impose intermediate sanctions in lieu of termination of the HHA's provider agreement if the deficiencies do not immediately jeopardize patient health and safety.

2. More specifically, subsection (e) requires the Secretary to take the following actions with respect to a participating HHA that is found, during any survey, to no longer be in compliance with the requirements of sections 1861(o) and 1891(a) of the Act:

- a. If the deficiencies of an HHA approved for participation in Medicare immediately jeopardize the health and safety of the individuals it serves, the Secretary—

- Shall take immediate action to remove the jeopardy and correct the deficiencies through appointment of temporary management, or terminate the HHA's participation; and

- May impose any of the intermediate sanctions specified in the law or additional sanctions promulgated by the Secretary.

- b. If the deficiencies do not pose immediate jeopardy, the Secretary may terminate the HHA's provider

agreement or, for a period of not more than 6 months, impose any of the intermediate sanctions developed under subsection (f), in lieu of termination.

c. If a provider that is currently in compliance with the conditions of participation is found to have been out of compliance for a previous period, the Secretary may impose a civil money penalty for that previous period of noncompliance.

d. The Secretary may continue Medicare payments for up to 6 months to an HHA that is subject to intermediate sanctions if—

- The State or local survey agency finds that it is more appropriate to take alternative action to assure the HHA's compliance with the requirements than to terminate its participation in the program.

- The HHA has submitted and the Secretary has approved a correction plan and timetable for corrective action; and

- The HHA agrees to refund any payments received during implementation of the correction plan if the deficiencies are not corrected in accordance with the approved plan and timetable.

e. If after 6 months the HHA is not in compliance with all of the conditions of participation, the Secretary must terminate the provider agreement.

3. More specifically, subsection (f)—

a. Requires the Secretary to—

- Develop and implement a range of intermediate sanctions that includes civil money penalties for each day of noncompliance, suspension of all or part of the payments for services furnished by the HHA on or after the effective date of the sanction, and appointment of temporary management; and

- Specify procedures with respect to the circumstances under which each of the intermediate sanctions is to be applied; and

- Develop and implement appropriate procedures for appealing the imposition of intermediate sanctions.

b. Specifies that—

- Temporary management shall not be terminated until the Secretary has determined that the HHA has the management capability to ensure continued compliance with all the requirements of sections 1861(o) and 1891(a);

- Suspension of all or part of the payment shall not be terminated until the Secretary finds that the HHA is in substantial compliance with all requirements specified in, or developed in accordance with, sections 1861(o) and 1891(a); and

- The intermediate sanctions are in addition to any other sanctions available under Federal or State law.

Changes in the Regulations

In order to implement the statutory changes discussed above, we propose to add new subparts, H, I, and N to part 488 of the HCFA rules and to make technical amendments in several other sections of part 488.

A. Survey Requirements for HHAs.

The survey requirements are contained in the new subpart H (§§ 488.350–488.360).

1. *Kinds of surveys.* Sections 488.350 and 488.352 set forth the statutory basis and the scope of the subpart, and define frequently used terms. Since the law discusses abbreviated, standard, partial extended, and extended surveys, we have provided definitions in § 488.352 to distinguish among the several types of surveys. A standard survey is conducted routinely, on the average of once a year. Special surveys are discussed under section A4 of this preamble.

Both the abbreviated survey and partial extended survey are limited in their scope and do not cover all of the aspects of HHA operations and services that are covered in a standard or extended survey. Rather they focus on particular aspects that need extensive review. They usually focus on a particular condition of participation rather than on all of them.

For a "standard survey", the law requires use of—

- A case-mix stratified sample of individuals to whom the HHA furnishes services; and

- A Functional Assessment Instrument (FAI) developed, tested, and validated by HCFA.

The FAI, which will ensure consistency in surveying techniques, contains standardized procedures and instructions for assessing specific aspects of the quality of care and services furnished. The FAI, with instructions for its use, will be published as part of HCFA general instructions, in the State Operations Manual. We propose that the definition of standard survey will include an assessment of nurse and home health aide services. Section 1891(a)(3)(A) (i) and (ii) of the Act requires an HHA to use only aides who have completed a training and competency evaluation program, or a competency evaluation program, and who are competent to provide home health services. We believe that the standard survey is the most appropriate method and time to ensure that the HHA is meeting these requirements. We are proposing a random sampling

methodology for this aspect of the standard survey because of the demonstrated effectiveness and validity of this approach in dealing with other aspects reviewed during surveys.

2. *Unannounced surveys.* Section 488.354 requires unannounced surveys, although the law requires only that "standard" surveys be unannounced, § 488.354 extends this requirement to all surveys. We believe that this is necessary to ensure the validity of any survey. We realize that the rule will have no effect for extended surveys that are conducted immediately after a standard survey. However, since there is a leeway of up to two weeks, we believe that the reasons for requiring standard surveys to be unannounced also make it important that the HHA not know the exact date and time when the extended survey will be done.

This section also specifies that HCFA—

- Reviews State scheduling and survey procedures once a year to ensure that the agency has taken all reasonable steps to avoid giving notice of impending surveys through these procedures.

- Takes its own corrective action when it is a State survey agency that has given an HHA notice of an impending survey through survey scheduling practices; and

- Refers to the Office of the Inspector General (OIG) any individuals who violate the announced survey policy, for possible imposition of a civil money penalty.

Congress felt it necessary, in order to enforce the unannounced survey provision for standard surveys to provide that a civil money penalty, not to exceed \$2000, be imposed against any individual who gives notice of an impending standard survey. The OIG will enforce this provision. Since we have extended the unannounced survey provision to include all types of surveys as opposed to just standard surveys, we believe that the civil monetary penalty should also be extended to include all types of surveys. This would discourage individuals from giving advance notice for any type of survey.

3. *Timing and Frequency of Surveys.* Section 488.358—

- Requires State survey agencies to survey each participating HHA at least every 15 months and maintain a Statewide average survey frequency of 12 months for all standard surveys of participating HHAs; and

- Provides for HCFA to determine a State's average survey frequency at the end of each fiscal year, and take action

to ensure that States meet the 12-month average.

When a State does not meet the 12-month average, HCFA may take one or more of the following actions:

- Require the State survey agency to take corrective action.

- Provide technical assistance or actually direct the scheduling of the surveys.

- Provide training to individual employees on proper methods of scheduling without alerting the HHA.

4. *Special surveys.* Section 488.358 specifies types of special surveys and when they are used. Special surveys are in addition to the periodic standard surveys discussed above in connection with § 488.356. A special survey (which may be standard or abbreviated in scope) may be conducted when there is a change in ownership, administration, or management, and must be conducted in response to one or more significant complaints against the HHA. Extended or partial extended surveys are also classified as special surveys and must be conducted when an HHA is found to have furnished substandard care (that is, care furnished while out of compliance with condition level requirements), and may be conducted for other reasons, at HCFA's discretion.

We have interpreted Congress' use of the term "substandard care" to refer to care furnished by an HHA that is not in compliance with the conditions of participation set forth in part 484 of the HCFA rules.

We believe this is an appropriate interpretation because—

- Congress has linked the imposition of sanctions with the requirements of sections 1861(o) and 1891(a) of the Act; and

- Those requirements are set forth as conditions of participation in part 484 of the HCFA rules.

Furthermore, since these are deficiencies that must be monitored to ensure that they are corrected within 6 months, we believe that an extended survey is necessary to ensure that the cause of the deficiencies is fully understood.

Section 1891(c)(2)(B)(ii) of the Act states that a standard or abbreviated survey must be conducted when "a significant number of complaints" has been received. We believe that, in order to protect the health and safety of individuals served by the HHA, we must also require that surveys be conducted in response to even one complaint that is determined to be significant. This approach is supported by the broad authority given the Secretary by section 1891(b) of the Act.

5. *Requirements for surveys and surveyors.* Section 488.360 specifies as follows:

a. The purpose of surveys is to—

- Evaluate the quality and scope of services furnished; and
- Determine compliance with the Federal conditions of participation and other requirements.

b. Surveyors must use Federal forms, procedures, and survey methods approved by HCFA.

c. Surveys must be performed by a registered nurse or a team that includes a registered nurse.

d. Except when employed by the Federal government, the registered nurse must be licensed in the State in which the survey is performed.

e. All individuals conducting a survey must have completed the training program specified in § 488.360(b).

Section 1891(c)(2)(C)(iii) of the Act requires that surveys be performed by "an individual who meets the minimum qualifications established by the Secretary". We proposed to allow more than one individual to conduct surveys because, in a large HHA, more than one surveyor may be needed in order to complete the survey in a timely manner.

We are proposing that sole surveyors be registered nurses, and that survey teams include a registered nurse, because HHA's are, by definition, agencies engaged primarily in providing skilled nursing services. Since a nurse plays a unique and critical role in the provision of home health services, we believe that nurses are necessary in order to assess the services furnished by an HHA.

f. Either of the following circumstances disqualifies a surveyor for surveying a particular HHA:

- The surveyor currently serves, or within the previous two years served, on the staff of, or as a consultant to, that HHA.

- The surveyor, or an immediate relative of the surveyor, has a significant ownership interest in the HHA, that is, has a direct or indirect ownership or controlling interest of 5 percent or more in the capital, the stock, or the profits of the HHA, or has an ownership interest of 5 percent or more in any mortgage, deed of trust, note, or other obligation that is secured by the HHA, if that interest equals 5 percent or more of the HHA's assets.

The second disqualifying factor above is consistent with the provision of § 424.22 of the Medicare rules. That section aims to preclude conflict of interest for physicians who certify need for home health services or establish and review plans of treatment. The procedures for determining indirect

interest are those set forth at § 420.202(a) of the Medicare rules.

We propose to define "Immediate relative" to mean husband or wife; natural or adoptive parent, child, or sibling; step-parent, step-child, step-brother or step-sister; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law; grandparent or grandchild; and spouse of grandparent or grandchild. We believe this definition is appropriate and reasonable because it includes all the relatives who could possibly compromise the integrity of the survey process or reduce the objectivity of a surveyor's professional judgement.

In addition, this definition copies the definition of "immediate relative" as used in the rule that excludes from Medicare payment charges imposed by an immediate relative. We have used the same definition as that set forth at § 411.12 because the concerns of the two regulations are similar. Specifically, § 411.12 (of final rules published on October 11, 1989 at 54 FR 41736) is designed to preclude loss of objectivity in treatment decisions, and these proposed rules are designed to preclude loss of objectivity in survey findings.

Section 488.360 also sets forth the specific training and experience requirements for surveyors.

B. Alternative Sanctions

The rules for alternative sanctions other than civil money penalties are set forth in the new subpart I (§§ 488.400–488.440).

Section 488.400 and 488.402 set forth the basis and scope of the subpart and define terms, and § 488.404 sets forth the general rules on alternative sanctions.

1. *Imposition of sanctions.* Under section 1891(e)(1) of the Act, in immediate jeopardy situations, we are authorized to impose other alternative sanctions in addition to appointing a temporary manager or terminating the HHA's participation in Medicare. When there are condition level deficiencies but they do not pose immediate jeopardy, section 1891(e)(2) of the Act speaks to imposing alternative sanctions in lieu of termination. If there is no immediate jeopardy, and HCFA has imposed alternative sanctions, we believe that those sanctions ought not be discontinued in order to initiate termination proceedings. The statute does not require HCFA to discontinue alternative sanctions if termination becomes necessary. Therefore, we believe that in order to protect the health and safety of individuals receiving services from the HHA,

alternative sanctions should continue in effect until termination is effective.

However, since the law does not provide explicit authority to initiate termination action while alternative sanctions are in effect, we are proposing that, when alternative sanctions have been imposed on the basis of the original survey, termination procedures would be initiated on the basis of a revisit which indicates that the HHA is still out of compliance.

Alternative sanctions, which are based on the findings of the initial inspection, would continue until termination of the HHA's provider agreement is effective.

If a revisit is not made, because the HHA does not make a credible allegation of compliance, HCFA would assume noncompliance on the basis of both the initial inspection findings and the failure to make a credible allegation of compliance. This assumption would constitute the combined basis for HCFA to initiate termination procedures.

2. Choice of sanctions. The selection of particular sanctions is based on the nature of the deficiencies and the likelihood that they can achieve timely correction of those deficiencies. Since sanctions must be chosen according to the overall circumstances surrounding the deficiencies at a particular time, we have developed a list of factors that we will consider in order to determine the most effective sanctions.

The choice of sanction depends on one or more of the following:

- The severity of the deficiencies or noncompliance.
- The scope of the deficiencies or noncompliance.
- The relationship of one deficiency or group of deficiencies to other deficiencies.
- The HHA's previous compliance history in general, and specifically with reference to the cited deficiencies.
- The corrective and long-term compliance outcomes that HCFA hopes to achieve through application of the sanction.
- Whether the deficiencies pose immediate jeopardy to patient health and safety.
- Whether the deficiencies are directly related to patient care.

3. Duration of sanctions. Under section 1891(e)(2) of the Act, we are—

- Authorized to impose alternative sanctions for a period "not to exceed 6 months"; and
- Required to terminate the certification of an HHA that, at the end of the 6-month period, is still out of compliance with the requirements and conditions of sections 1861(o) and

1891(a) of the Act, as set forth in part 484 of this chapter.

However, section 1866(b) of the Act authorizes us to terminate the provider agreement at any time after a provider is found to be out of compliance with the conditions of participation.

Since section 1891(e)(2) of the Act does not impose a minimum duration for alternative sanctions, and section 1866(b) of the Act authorizes us to terminate at any time, we are proposing, in § 488.404(c)(5) to establish the last day of survey, rather than the effective date of the sanction, as the starting point for counting the 6-month period. This is consistent with HCFA policies on other termination actions, which use the last day of survey as the starting point for counting, for instance, the 23-day limit for immediate jeopardy situations that are not corrected immediately.

4. Advance notice. We propose to give HHAs notice of sanction 5 days before the effective date of sanction in immediate jeopardy situations, and 15 days before the effective date of sanction when there is not immediate jeopardy.

Current rules on termination (§ 489.53(c) of the rules on Medicare provider agreements) specify 15-day advance notice of termination and shorten the period to 2 days for skilled nursing facilities in immediate jeopardy situations. We propose to amend § 489.53(c) to increase the timeframe to 5 days because we have found a 2-day period to be impracticable. The change to 5 days would be applicable to all providers with deficiencies that pose immediate jeopardy.

We propose that within 5 days from the last day of a survey, HCFA would give the HHA notice of intent to impose a sanction. HCFA needs the flexibility of having 5 days from the last day of survey to permit time for the transmittal of survey documentation to the appropriate agencies (the State Survey Agency and the HCFA Regional Office), for the agencies to review the documentation and make decisions concerning the HHA's compliance or noncompliance with the requirements, and to provide notice of intent to impose a sanction. For example, the findings of a survey that is conducted in a remote part of a State must be sent initially to the State Survey Agency for review and a certification of compliance or noncompliance as explained earlier in this preamble. The survey documentation along with the State Survey Agency's recommendation must be transmitted to HCFA's Regional Office for its review, decision concerning the imposition of an

alternative sanction, if appropriate, and final determination to grant, deny, or terminate the HHA's provider agreement. Therefore, the 5-day period is needed to ensure enough time for implementing this process.

Further, we propose that HCFA would give the HHA notice of the sanction at least 2 days but not more than 4 days before the effective date of the sanction in immediate jeopardy situations, and at least 15 days before the effective date of sanction when there is no immediate jeopardy. Therefore, in practice, in immediate jeopardy situations, the sanction could not be imposed anytime after the minimum 2 day notification period but no later than the 10th day after the last date of survey. This allows for up to 5 days for HCFA to send the notice and an additional 2 to 4 days before the sanction is imposed.

Current rules on termination (§ 489.53(c) of the rules on Medicare provider agreements) specify at least 15 days advance notice of termination and shorten the period to at least 2 days for skilled nursing facilities (SNFs) in immediate jeopardy situations. We propose to make the termination notification requirement of "at least 2 days" in immediate jeopardy situations applicable to all providers.

5. Appeals procedures. Section 1891(f)(1)(B) of the Act requires us to develop and implement appropriate procedures for appealing determinations relating to the imposition of alternative sanctions. HHAs that participate in Medicare are already covered by the provisions of part 498 of the HCFA rules (Appeals from Determinations that Affect Participation in Medicare) when HCFA denies or cancels a provider agreement with an HHA. We now propose to extend the part 498 provisions—specifically, the provisions for ALJ hearings and Appeals Council review—to the imposition of alternative sanctions. We believe this is appropriate because—

- The system of due process for certification related disputes has already been established in regulations and upheld by case law;
- The proposal would establish appeal procedures for an HHA dissatisfied with the imposition of a sanction, regardless of which particular sanction is imposed;
- The existing appeal mechanisms in part 498 are implemented by an entity that is not affiliated with HCFA. Since HCFA makes the determination to impose sanctions, we believe it is important to have a non-related party handle any appeals to ensure objectivity.

6. *Effect of pending appeals.* All sanctions except civil money penalties may be imposed while a requested hearing or the hearing decision is pending. Section 1891(f)(2)(A)(iii) of the Act, by citing section 1128A of the Act, prohibits the imposition of civil money penalties until after a hearing decision has been issued. However, the statute does not contain a similar reference with respect to the imposition of other alternative sanctions. Section 1891(f)(3) of the Act requires us to use procedures that minimize the time between the identification of deficiencies and the imposition of sanctions. We believe, therefore, that the imposition of sanctions must not be delayed because of the appeals process except when required by the statute.

7. *Judicial review.* As noted above, section 1891(f) of the Act incorporates by reference certain provisions of section 1128A of the Act. One of those provisions provides for judicial review when the sanction is a civil money penalty. The statute is silent with respect to judicial review for the other alternative sanctions. We believe, therefore, that Congress intended to foreclose further review of appeals under section 1891(f)(1)(B) of the Act. The omission of judicial review for the other sanctions is further supported by section 205(h) of the Act (made applicable to Medicare by section 1872 of the Act) which provides, in part, that the Secretary's decision after a hearing shall not be reviewed by any tribunal except as provided in the Act. Since the Act has not explicitly provided for judicial review, we believe that such review is not warranted.

It can also be argued that, if judicial review were made available for imposition of alternative sanctions, the resources of the Federal court system would be unduly taxed. By precluding judicial review except when it is mandated by statute—that is for termination and for civil money penalties—we can prevent the overloading of that system.

8. *Available sanctions.* Section 488.410 lists the available alternative sanctions, which are—

- a. Appointment of temporary manager;
- b. Imposition of civil money penalties in accordance with subpart N of part 488;
- c. Suspension of payment for all new admissions;
- d. Suspension of payment for new admissions who require particular types of services;
- e. State survey agency monitoring; and
- f. Directed plan of correction.

Section 1891(f)(2)(A) of the Act specifies that the range of sanctions shall include temporary management, civil money penalties, and suspension of all or part of the payments to which the HHA would otherwise be entitled under title XVIII of the Act. We propose to implement the "suspension" provision through two sanctions: suspension of payments for all new admissions, and suspension of payment for certain new admissions, specifically those requiring particular types of services. The latter sanction would protect patients from substandard care in the areas in which the HHA is deficient, while permitting continuation of payment for new admissions who require the types of services that are not adversely affected by the deficiencies.

Further, section 1891(f)(2)(C) of the Act provides that a suspension of payment sanction shall terminate when HCFA finds that the HHA is in substantial compliance with all of the requirements specified in, or developed in accordance with, sections 1861(o) and 1891(a) of the Act. The cited requirements are set forth in part 484 of the HCFA rules as "conditions of participation", and § 488.402 of these proposed rules would define "condition level deficiency" as noncompliance with any of the conditions, as contrasted with "lower level" deficiencies, i.e., deficiencies in one or more of the standards that make up each condition. Since alternative sanctions are imposed only when an HHA has "condition level" deficiencies, we have interpreted the term "substantial compliance" to mean compliance with all condition level requirements. In other words, the suspension of payment sanction would end when the HHA had corrected all condition level deficiencies.

State monitoring and directed plan of correction are included among the statutory provisions applicable to other types of health care facilities. We believe that State survey agency monitoring and directed plans of correction will also be effective in encouraging home health agencies to correct deficiencies so that they can continue to participate in the program.

9. *Action depending on nature of deficiencies.* The next three sections of the regulations specify the actions to be taken when—

- An HHA's deficiencies pose immediate jeopardy to patient health and safety (§ 488.416);
- There is no immediate jeopardy (§ 488.418); and
- The deficiencies are not at the condition of participation level, but only at the level of some of the standards

that make up each of the conditions (§ 488.420).

10. *Continuation of payments to HHAs with deficiencies.* Section 1891(e)(4) of the Act establishes three conditions for continuation of Medicare payments to HHAs with deficiencies:

- The survey agency finds it more appropriate to take alternative action to assure compliance than to terminate the HHA;
- The HHA submits a plan and timetable for corrective action and the Secretary approves the plan and timetable;
- The HHA agrees that, if it does not correct the deficiencies within the timeframe of the approved plan, it will refund any Medicare payments received for services furnished during the correction period. (§ 488.422)

We propose to add a fourth requirement—that the HHA not charge the beneficiary for the services for which it refunds the Medicare payments. Support for this additional requirement is derived from section 1866(a)(1)(A) of the Act and implementing regulations in subpart B of part 489 of the Medicare rules pertaining to Medicare provider agreements. Under these provisions, a provider must agree not to charge a beneficiary for any services for which he or she would be entitled to have Medicare payment made if the provider "had complied with the procedural and other requirements under or pursuant to this title * * *" (emphasis supplied).

Since the situation arises because the HHA is out of compliance with the conditions of participation, it is evident that, under section 1866, the HHA may not charge the beneficiary. Moreover, the additional requirement is consistent with the intent of the alternative sanction approach—to encourage prompt correction of deficiencies. Refund of Medicare payments would not constitute an incentive for prompt correction if the HHA could charge the beneficiary the amounts refunded.

11. *Rules for particular sanctions.* The next seven sections deal with each particular sanction and the procedures for imposing them.

a. *Temporary management.* Section 488.426 specifies when and how HCFA appoints temporary managers, the qualifications for temporary managers, and the duration of this sanction.

The statute provides that when deficiencies pose immediate jeopardy, HCFA must take immediate action to remove the jeopardy and correct the deficiencies through temporary management, or terminate the provider

agreement. In addition, HCFA may impose one or more other sanctions.

The statute provides that when deficiencies are found that do not pose immediate jeopardy, HCFA may impose, in lieu of termination, one or more sanctions, which include temporary management, civil money penalties, and suspension of payments.

While Congress broadly outlines the temporary management provision in the statute, we are proposing more specific criteria and procedures to facilitate the application of this sanction. We are also recommending that the temporary manager be given blanket authority to appropriately manage a facility, to remove the threat or jeopardy, if necessary, and to ensure that the necessary action is taken to achieve compliance within the timeframes set forth in the plan of correction. We have interpreted the role of the temporary manager to be tantamount to that of a facility administrator. We are proposing to add the following:

- The temporary manager would have the authority to hire, terminate, and reassign staff; obligate funds, alter the facility's administrative procedures; and otherwise manage the HHA to correct the deficiencies and to protect and assure patient health and safety.
- The HHA would pay the temporary manager's salary.

The salary would have to—

- Be commensurate with salaries paid to other HHA managers in the geographic area where the HHA is located; and
- Include additional costs (such as travel allowance) that would reasonably be incurred by the manager and would be included if he or she were a regular employee of the HHA.

In order to be appointed temporary manager of an HHA, an individual would have to:

- Be licensed as an HHA administrator if licensing is required in the State in which the HHA is located; or
- In lieu of licensure, have at least two years of experience as an HHA administrator; and
- Be able to provide at least 20 hours a week of services to the HHA.

The procedures for installing a temporary manager when deficiencies pose immediate jeopardy are as follows:

- Within 5 days from the last day of a survey, HCFA would give the HHA notice of intent to appoint a temporary manager.

- In the notice, HCFA would give the HHA the option of accepting temporary management and making available to the manager sufficient funds and

management support to bring the facility into compliance, or accepting termination of its provider agreement.

- If the HHA accepts temporary management, HCFA would approve the selection of a temporary manager based on the State's recommendation and would install the temporary manager within 10 days from the last day of survey. This allows for a total of 10 days for administrative processing of the survey findings, (i.e., review in the survey agency and the regional office), for notice as required before imposing a sanction in immediate jeopardy situations, for the HHA to respond to the notice, and for the actual installation of the temporary manager.

When deficiencies do not pose immediate jeopardy, HCFA sends the notice of the imposition of a temporary manager within 5 days after the last day of survey. The notice states that the temporary manager, if available, will be installed no earlier than 15 days from the date of the notice.

The temporary management terminates when HCFA—

- Determines that the HHA is in compliance with all conditions of participation and has the capability to remain in full compliance; or
- Terminates the provider agreement because:

—The provider requests discontinuance of temporary management while still not in compliance with the conditions of participation; or

—HCFA determines that the HHA compliance has deteriorated to the point of precluding continued participation in the program.

HCFA may also, concurrent with appointment of temporary manager, impose any of the other sanctions specified in § 488.410.

We believe that the regulations we are proposing at § 488.426 would provide the temporary manager with the authority, training and experience necessary to manage the facility and precipitate positive change. However, temporary management is meant to be more than just assistance to the facility. Congress included it with the list of intermediate sanctions which implies that it is a form of penalty. Therefore, it should not be provided free of charge to the facility, but rather at the facility's expense. Otherwise, providing free managerial staff would, in essence, be a reward to deficient facilities. The timeframes and appeal mechanisms are consistent with those established for other sanctions and those pre-existing in the regulations.

- b. *Civil money penalties.* Section 488.428 refers the reader to subpart N of

part 488, which contains the rules for imposition of civil money penalties.

c. *Suspension of payment for new admissions.* We propose to impose suspension of payment for all new admissions (§ 488.430), if the HHA is found to still be out of compliance 90 days after the survey that first identified the deficiencies. We propose that the survey agency conduct a revisit of the HHA no later than 60 days from the last day of survey, to assess whether the condition level deficiencies have been corrected. The monies withheld would not be recouped by the HHA. The suspension of payment sanction would end only when HCFA found the HHA to be in substantial compliance with all of the requirements specified in, or developed in accordance with, sections 1861(o) and 1891(a) of the Act. At such time, HCFA would resume payment to the HHA (§ 488.430). As part of this sanction, the HHA would be required to notify the beneficiary, before initiating care, of the fact that Medicare payment is not available because of the suspension sanction, and the HHA would be precluded from charging the beneficiary for those services unless it could show that it had notified the beneficiary in writing before initiating care.

Support for these additional requirements is found in section 1891(a)(1)(E)(iii) of the Act and implementing regulations at § 484.10(e) of the Medicare rules, which provide that the patient has a right to be informed orally and in writing, before care is initiated, as to the services that will be paid for by Medicare and those for which the patient will be responsible.

d. *Suspension of payment for new admissions who require particular types of services.* Section 488.432 specifies applicability and duration of suspension of payment for particular types of services, such as physical therapy or speech pathology services. We are proposing this sanction to protect patients from substandard care in those areas in which an HHA is deficient, while permitting continuation of payment for the types of services that are not affected by the deficiencies.

The requirements for terminating the sanction when the HHA is in substantial compliance with the condition level requirements and for notifying the beneficiary of a suspension of payment sanction and the limitation on charges to the beneficiary, discussed in connection with suspension of payment for all new admissions, apply also with respect to suspension of payment for new

admissions who require particular types of services.

e. *State survey agency monitoring and directed plan of correction.* Sections 488.436 and 488.438 pertain to State survey agency monitoring and directed plans of correction, respectively. State survey agency monitoring is a procedure that is already in place as part of the revisit process for monitoring progress towards the correction of deficiencies. However, State survey agency monitoring as a sanction would enable the State survey agency or HCFA, or both, to monitor progress towards compliance more frequently when the nature and severity of the deficiencies justify closer oversight. We propose to use State agency monitors who have expertise in the area or areas in which the HHA has deficiencies. However, they would function as observers only, not as consultants or managers.

Imposing directed plans of correction as a sanction would enable the State agency, temporary manager, or HCFA to develop a plan of correction which would require a facility to take correction action within specified timeframes. We propose to establish State monitoring and directed plans of correction in accordance with our authority under section 1891(f)(2)(B), which states that, "the sanctions specified in Subparagraph A are in addition to sanctions otherwise available under State or Federal law and shall not be construed as limiting other remedies, including any remedy available to an individual at common law." Both state monitoring and directed plans of correction are available under the authority of other sections of Federal law, for other types of facilities. In an effort to maintain consistency of enforcement approach wherever possible, among all providers and suppliers, we are proposing extending such sanctions to HHAs.

Both State monitoring and directed plans of correction would allow the State agency or HCFA, or both, to become directly involved in the establishment and oversight of the correction process.

12. *Termination of provider agreement.* Section 488.440 makes clear that termination of a provider agreement effectively terminates continuation of payments and any alternative sanctions that were imposed, regardless of the timeframes previously specified for continuation of payments and for alternative sanctions. This section also sets forth the following:

- The basis and timeframes for termination of a provider agreement, are based on section 1891(e) of the Act and § 489.53 of the Medicare rules. (The

HHA's provider agreement is terminated if condition level deficiencies have not been corrected within 6 months from last day of survey.)

- The effect of termination of the Medicare provider agreement of an HHA that also participates in Medicaid.

- The advance notice periods, which are based on the timeframes established in § 489.53(c) of the Medicare rules.

In the latter situation, HCFA notifies the State Medicaid agency of—

- The reason for, and effective date of, termination from Medicare; and

- The fact that, with one exception, Federal financial participation (FFP) is not available in State payments for services furnished by that HHA after the effective date of termination from Medicare.

Denial of FFP is based on § 440.70 of the Medicaid rules, which defines "home health agency" as an agency or organization "that meets the requirements for participation in Medicare". Services furnished by an HHA which does not meet those participation requirements are not subject to FFP because they are not "home health services", and cannot be considered "medical assistance".

13. *Continuation of FFP for home health services.* In connection with this provision, we are proposing an exception under which FFP would be available, for up to 30 days after the HHA is terminated from Medicare, as necessary for the HHA to discharge Medicaid patients from care or refer them to other HHAs. This proposed exception constitutes a change from current policy under which—

- Medicare payments may be made for home health services (as well as for inpatient care in a hospital or a long-term care facility) furnished under a plan of care established before the effective date of termination of the Medicare provider agreement (§ 489.55 of the rules on Medicare provider agreements); but

- FFP in Medicaid payments for services furnished within 30 days after termination of a Medicaid provider agreement is limited to payment for institutional services, i.e., services furnished in inpatient facilities (§ 441.11 of the Medicaid rules).

The proposed change would make the Medicaid rules consistent with the Medicare rules and would recognize the fact that Medicaid patients need time for orderly transfer just as much as Medicare patients do. The proposed change is reflected in amendments to § 441.11.

14. *Civil money penalties.*

Note: Because civil money penalty provisions are more complex than the provisions of other alternative sanctions, we propose to put those provisions in a separate subpart N (§§ 488.700–488.718).

Section 1891(f)(3) of the act requires the Secretary to develop and implement specific procedures for determining the conditions under which intermediate sanctions are to be applied, including the amount of any fines and the severity of each sanction. Section 1891(f)(2) of the Act specifies that the sanctions shall include civil money penalties in an amount not to exceed \$10,000 for each day of noncompliance. Because the law directs us to establish the amounts of fines and the levels of severity, we propose the following range of penalty amounts, based on two levels of severity:

a. For a condition level deficiency that poses immediate jeopardy to patient health and safety, the range would be from \$3,050 to \$10,000 per day of noncompliance.

b. For a condition level deficiency that does not pose immediate jeopardy, the range would be from \$50 to \$3,000 per day of noncompliance.

Since deficiencies take on greater or lesser significance depending on the specific circumstances at a particular time it would be impossible to assign a specific monetary amount for each type of noncompliance that is found. The amount of the penalty must reflect the seriousness of each particular violation. We believe that consideration of certain specified factors will enable us to select the amount that is appropriate for each situation.

We believe that these penalty amounts would provide the economic motivation for providers to achieve compliance and would decrease any monetary advantage that might result from remaining out of compliance.

Sections 488.700 and 488.702 set forth the basis and scope of civil money penalties and define terms.

Section 488.705 provides that HCFA may impose a civil money penalty—

- When the provider is found to have condition level deficiencies, regardless of whether they pose immediate jeopardy to patient health and safety; and

- In addition to any other alternative sanctions.

Section 488.708 sets forth—

- The factors that HCFA considers when determining the amount of the penalty;

- The range and specific daily amounts of civil money penalties; and

- The fact that HCFA may increase or decrease the daily penalty amount

depending on specified circumstances. This responds to the requirement (section 1891(f)(3) of the Act) that HCFA provide for more severe fines for repeat or uncorrected deficiencies.

The factors to be considered in setting the daily penalty amount include the facility's culpability, previous compliance history, and financial condition, as well as the nature and duration of noncompliance and the category of requirements with which the facility is out of compliance.

Section 488.710 sets forth the procedures for imposing civil money penalties (which include notice of intent); the appeals procedures; and the fact that HCFA may reduce the penalty amount by 35 percent if the facility waives its right to an ALJ hearing and appeals council review.

Written notice of intent is sent at least 2 days but not more than 4 days before the effective date of the penalty in immediate jeopardy situations and at least 15 days before the effective date in all other situations. The purpose of the advance notice is to afford the HHA an opportunity to correct deficiencies, and is consistent with notice provided to other types of facilities.

For civil money penalties, the law makes applicable the provisions of section 1128A of the Act which, in effect, provide for an ALJ hearing and for judicial review by a U.S. Court of Appeals. As noted in sections B5 and B7 of this preamble, we propose to—

- Make the appropriate provisions of part 498 of the HCFA rule (ALJ hearings and Appeals Council review) applicable to the imposition of any alternative sanctions; and
- Specify that judicial review is available only for civil money penalties, as provided in the statute.

We believe that the 35 percent reduction in the penalty amount reflects a savings of costs that would otherwise be incurred, by the facility and the government, to formally adjudicate the dispute. However, the provider is free to reject the option to waive the right to a hearing.

Section 488.712 provides that—

- The effective date of the penalty is 10 days after the last day of the survey that found the deficiencies if there is immediate jeopardy to patient health and safety, and 20 days after last day of survey when there is no immediate jeopardy; and
- The penalty ends the day before the deficiencies are corrected or, if they are not corrected, the day before program participation ends.

Since the imposition of a civil money penalty is postponed during the

pendency of a hearing, the penalty must be made retroactive in these types of situations. Therefore, we propose to make the penalty retroactive to the 10th day after the last day of the survey if there is immediate jeopardy, and the 20th day after the last day of the survey if there is no immediate jeopardy. The 10 day and 20 day timeframes take into consideration the 2–4 day and 15 day notification requirements set forth in § 488.710.

Sections 488.714 and 488.716 set forth the rules for timing, computation, and notice of total penalty amount, and specify the due date for payment of that amount, plus interest accrued on unpaid balance. The addition of interest is intended to motivate prompt payment.

Section 488.718 provides that—

- The penalty amount may be deducted from any sums owed by the United States to the sanctioned provider;
- Interest accrues on the unpaid balance beginning on the due date; and
- HCFA may settle any case at any time before the ALJ issues a hearing decision.

C. Part 489 amendments

These amendments would revise the authority citation, change the notice period in immediate jeopardy situations, and correct outdated cross-references.

D. Technical amendments

The technical amendments to part 488 are necessary to update a definition and correct internal cross references. Changes to part 498 will be developed in a separate regulation.

IV. Regulatory Impact Statement

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

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

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 602), unless the Secretary certifies that a regulation will not have a

significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all HHAs as small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital which is located outside of a metropolitan statistical area and has fewer than 50 beds.

For the most part, these regulatory amendments conform the regulations to the legislative provisions. We expect some incremental increases in expenditures beyond those that have already occurred, subsequent to the implementation of the legislative provisions. At this time we are unable to calculate these costs because of the lack of data. However, we encourage comments and submission of any applicable data concerning these regulations, particularly if there is a perception that they may result in significant increased costs. We believe that these proposed regulations do not meet any of the criteria for a major rule under E.O. 12291. In addition, for the above reasons, we believe, and the Secretary certifies, that this proposed rule would not have a significant economic impact on a substantial number of small entities or small rural hospitals. We have, therefore, not prepared a regulatory flexibility analysis or rural impact analysis.

V. Paperwork Reduction Act

Sections 488.354(d) and 488.420 of these rules require submission of plans of correction that involve collection of information and are, therefore, subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. When OMB approves these requirements, we will publish a **Federal Register** notice to that effect. It is estimated that the development of a plan of correction requires an average of 5 hours. If you comment on this requirement, please send a copy of those comments directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3002, New Executive Office Bldg., Washington, DC 20503, attention: Allison Herron, Desk Officer for HCFA.

VI. Response to Comments

Because of the many comments we receive, we cannot respond to them individually. However, in the preamble to the final rule we will discuss all timely comments.

List of Subjects**42 CFR Part 441**

Family planning, Grant programs—health, Infants and children, Medicaid, Penalties, Prescription drugs, Reporting and recordkeeping requirements.

42 CFR Part 488

Health facilities, Survey and certification, Forms and guidelines.

42 CFR Part 489

Health facilities, Medicare.

42 CFR chapter IV would be amended as set forth below:

**PART 441—SERVICES:
REQUIREMENTS AND LIMITS
APPLICABLE TO SPECIFIC SERVICES**

1. The authority citation continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 441.11 is amended to revise the heading and paragraph (a)(1) and add a new paragraph (c)(9), to read as follows:

§ 441.11 Continuation of FFP for certain services.

(a) *Basic conditions for continuation of FFP.* * * *

(1) The Medicaid payments are for recipients admitted to the facility or accepted for care before the effective date of termination or expiration.

* * * * *

(c) *Services for which FFP may be continued.* * * *

(9) Home health services.

1. The heading of part 488 is revised to read as set forth above.

**PART 488—SURVEY AND
CERTIFICATION PROCEDURES;
ALTERNATIVE SANCTIONS FOR
CERTAIN PROVIDERS AND
SUPPLIERS**

2. In part 488 the table of contents is amended by adding subparts H, I and N and the authority citation is revised as follows:

* * * * *

Subparts D–G [Reserved]**Subpart H—Survey Requirements for Home Health Agencies**

Sec.

488.350 Basis and scope.

488.352 Definitions.

488.354 Unannounced surveys.

488.356 Timing and frequency of standard surveys.

488.358 Special surveys.

488.360 Requirements for all surveys and for surveyors.

Subpart I—Alternative Sanctions for Home Health Agencies (HHAs)

488.400 Basis and scope.

488.402 Definitions.

488.404 General considerations.

488.410 Available alternative sanctions.

488.416 Action when deficiencies pose immediate jeopardy to patient health and safety.

488.418 Action when there are deficiencies at the condition level but they do not pose immediate jeopardy to patient health and safety.

488.420 Action when deficiencies are below the condition level.

488.422 Continuation of payments to HHAs with deficiencies.

488.426 Temporary management.

488.428 Civil money penalties.

488.430 Suspension of payment for new admissions.

488.432 Suspension of payment for new admissions who require particular types of services.

488.436 State survey agency monitoring.

488.438 Directed plan of correction.

488.440 Termination of provider agreement.

Subparts J–M [Reserved]**Subpart N—Civil Money Penalties**

488.700 Basis and scope.

488.702 Definitions.

488.705 Basis for imposing a civil money penalty.

488.708 Amount of penalty.

488.710 Procedure for imposition of civil money penalty.

488.712 Effective date and duration of penalty.

488.714 Computation and notice of total penalty amount.

488.716 Due date for payment of penalty.

488.718 Collection and settlement.

Authority: Secs. 1102, 1814, 1846, 8161, 1864, 1965, 1866, 1871, 1880, 1881, 1883, and 1891 of the Social Security Act (42 U.S.C. 1302, 1395f, 1395w–2, 1395x, 1395aa, 1395bb, 1395cc, 1395hh, 1395qq, 1395rr, 1395tt, and 1395bbb).

3. New subparts H, I, and N are added, to read as follows:

Subpart H—Survey Requirements for Home Health Agencies**§ 488.350 Basis and scope.**

(a) *Statutory basis:* This subpart is based on section 1891(c) of the Act, which establishes specific requirements for surveys of HHAs.

(b) *Scope.* This subpart establishes specific rules for survey of HHAs by State survey agencies and explains HCFA's participation with respect to those rules.

§ 488.352 Definitions.

Abbreviated survey means a survey that does not cover all the aspects covered in a standard or extended survey, but rather focuses on particular aspects that relate, for example, to change in ownership of the HHA or complaints received.

Condition level deficiency means noncompliance with any of the conditions sets forth in part 484 of this chapter, and *Lower level deficiency* or *Deficiency below the condition level* means noncompliance with any of the standards that make up each condition.

Extended survey means a survey that focuses on the HHA's policies and procedures to determine the cause of one or more condition level deficiencies or of any other conditions that make further examination desirable. An extended survey further documents the actual care being provided or the patient outcomes, and explores the extent to which structure and process factors such as written policies and procedures, staff qualifications and functions, and specific agreements and contracts of the HHA may have contributed to the outcomes.

Home health agency means a public agency or private organization, or a subdivision of such an agency or organization that meets the requirements that meets the requirements of section 1861(o) of the Act.

Partial Extended Survey means a limited survey that does to cover all of the HHA's policies and procedures as in a full extended survey, but rather focuses on specific structure or process features to determine the cause of a condition level deficiency or any other circumstance that makes further examination desirable.

Standard survey means a survey that includes the following:

- (1) Review of a sample of clinical records and plans of care.
- (2) Case-mix stratified sampling of home visits, using functional assessment instruments developed, tested, and validated by HCFA to assess the quality of care and services furnished (including nurse and home health aide services), as measured by indicators of medical, nursing, and rehabilitative care.
- (3) Review of patient rights.
- (4) Review of compliance with Federal, State and local laws, disclosure and ownership information, and

accepted professional standards and principles.

§ 488.354 Unannounced surveys.

(a) All surveys of a participating HHA must be unannounced.

(b) Once a year HCFA reviews each State's scheduling and surveying procedures to determine whether those procedures include reasonable safeguards against giving HHAs notice of impending surveys.

(c) If HCFA finds that a survey agency representative or any other person has given such notice to one or more HHAs, it refers the matter to the OIG. The OIG—

(1) Administers civil money penalties, which may be up to \$2000 for each individual who notifies an HHA or causes an HHA to be notified of the date or time of a scheduled survey; and

(2) Provides for appeals from, and hearings on, imposition of those penalties, in accordance with part 1003 of this title (Hearings are before an Administrative Law Judge of the Departmental Appeals Board.)

(d) If a survey agency gives notice of an impending survey through its scheduling and surveying procedures, HCFA takes corrective action, which may include the following:

(1) Require the State to submit a corrective action plan.

(2) Provide technical assistance on, or actually direct the scheduling of surveys.

(3) Provide training to individual employees on proper methods of scheduling without alerting the HHA.

§ 488.356 Timing and frequency of standard surveys.

(a) *Frequency.* (1) The State survey agency must perform a standard survey of each participating HHA at least every 15 months.

(2) The average survey frequency for all standard surveys of HHAs in each State may not exceed 12 months.

(3) The State survey agency on HCFA may perform surveys as often as necessary to ascertain compliance or confirm correction of deficiencies under a plan of correction.

(b) *Monitoring by HCFA.* (1) HCFA determines each State's statewide average interval at the end of each fiscal year by comparing the last date of the most recent standard survey with the last date of the preceding standard survey for each participating HHA. (Abbreviated surveys are not included in this determination.)

(2) HCFA provides technical or educational assistance to ensure that State survey agencies comply with the 12-month average interval requirement.

(3) HCFA may require the State survey agency to submit a plan to ensure compliance with the 12-month average interval.

§ 488.358 Special surveys.

(a) *General rules.*—(1) *Scope of special surveys.* A special survey may, depending on the circumstances, be a "standard" survey, an abbreviated survey, a partial extended survey or an extended survey. It is conducted in response to a triggering event or particular occurrence as set forth in paragraph (a)(2) of this section. If a special survey is conducted, it is in addition to the standard survey required in § 488.356.

(2) *Triggering events.* A special purpose survey is usually performed when there is a change in ownership, administration, or management, or when circumstances other than deficiencies at the condition of participation level are found; it is always performed when—

(i) During a standard survey, an HHA is found to have furnished substandard care; or

(ii) Significant complaints against the HHA are received.

(b) *Survey after change in ownership, administration, or management.* (1) The purpose of this special survey is to determine whether the change has caused any decline in the quality of services.

(2) The State agency decides whether to perform a special survey. If a special survey is conducted, the State agency conducts a standard survey unless specific information indicates that no decline in the quality of services has occurred, in which case an abbreviated survey is performed to verify the information. If the agency decides to perform a special survey, it must carry out that survey within 60 days after the change in ownership, administration, or management.

(c) *Survey with HHA has furnished substandard care.* For each HHA that is found, at the completion of a standard survey, to be furnishing substandard care, that is, to have deficiencies at the condition level, the State survey agency must perform an extended or partial extended survey within 2 weeks after completion of the standard survey. The State survey agency decides whether to perform an extended or a partial extended survey depending on the scope and severity of the substandard care. When there is an indication of inadequate home health aide services, the extended or partial extended survey includes a random sampling of home health aide training and competency evaluation files and interviews to determine whether home health aides

have completed required training and inservice education and met competency requirements.

(d) *Survey in response to significant complaints.* (1) A complaint is considered significant if the reported circumstance or practice has the potential to affect adversely the quality of patient care furnished by the HHA.

(2) The State survey agency must perform a standard or abbreviated survey within 60 days after one or more significant complaints have been received from any source, by HCFA or by any of the following:

(i) The State.

(ii) The entity responsible for licensing of HHAs.

(iii) The State or local agency responsible for maintaining a toll-free hot line and investigative unit under section 1864(a) of the Act.

(iv) Any other appropriate Federal, State, or local agency.

§ 488.360 Requirements for all surveys and for surveyors.

(a) *General rules.* (1) Surveys are conducted by State survey agency or HCFA surveyors who use their professional judgment, in concert with Federal forms and procedures, to—

(i) Evaluate the quality and scope of services furnished; and

(ii) Determine compliance with the Federal conditions of participation and other requirements.

(2) Surveyors are required to use Federal forms, procedures, and survey methods, as prescribed by HCFA, to ensure uniformity and consistency in the interpretation and application of Federal requirements.

(3) Surveys must be performed by a registered nurse or a team that includes a registered nurse.

(4) All surveyors must have completed the training and assessment program specified in paragraph (b) of this section. However, the survey agency may permit an individual who has not completed the training program, to observe survey activities under the supervision of a surveyor who has successfully completed the required program.

(5) Either of the following circumstances disqualifies a surveyor for surveying a particular HHA:

(i) The surveyor currently serves, or within the previous two years served, on the staff of, or as a consultant to, that HHA.

(ii) The surveyor or an immediate relative of the surveyor has a direct or indirect ownership or controlling interest of 5 percent or more in the capital, the stock, or the profits of the

HHA, or has an ownership interest of 5 percent or more in any mortgage, deed of trust or other obligation that is secured by the HHA and that equals 5 percent or more of the HHA's assets.

(6) *Terminology and procedures.* (i) As used in paragraph (a)(6) of this section, *immediate relative* means husband or wife; natural or adoptive parent, child, or sibling; stepparent, stepchild, stepbrother or stepsister; father-in-law, mother-in-law, son-in-law, daughter-in-law; grandparent or grandchild; and spouse of grandparent or grandchild.

(ii) The procedures for determining indirect interest are those set forth in § 420.202(a) of this chapter.

(b) *Specific requirements for surveyors.* A surveyor must—

(1) Have experience in investigating, evaluating, and reporting official findings on health care facilities; and

(2) Have successfully completed a training program in the conduct of standard and extended surveys, including the use of the functional assessment instrument.

Subpart I—Alternative Sanctions for Home Health Agencies (HHAs).

§ 488.400 Basis and scope.

(a) *Statutory basis.* Section 1891 of the Act requires the Secretary to develop and implement—

(1) A range of intermediate sanctions to apply to HHAs that are not in compliance with the conditions of participation in Medicare;

(2) Appropriate procedures for appealing determinations to impose those sanctions; and

(3) Specific procedures on when and how each intermediate sanction is to be applied, the amounts of any fines and the severity of each penalty. The procedures must be designed so as to minimize the time between identification of violations and imposition of the sanctions, and provide for imposition of incrementally more severe fines for repeated or uncorrected deficiencies.

(b) *Scope.* (1) This subpart sets forth procedures that HCFA follows to impose sanctions alternative to termination of a provider agreement when an HHA no longer complies with the conditions of participation set forth elsewhere in this chapter.

(2) The rules that govern imposition of civil money penalties are those set forth in subpart N of this part.

(3) The procedures for termination of a provider agreement are those set forth in subpart E of part 489 of this chapter.

§ 488.402 Definitions.

As used in this subpart—

Condition level deficiency means noncompliance with any of the conditions set forth in part 484 of this chapter, and *Lower level deficiency* or *Deficiency below the condition level* means noncompliance with any of the standards that make up each condition.

Immediate jeopardy means a situation in which immediate corrective action is necessary because the HHA's noncompliance with one or more conditions of participation has already caused, or is very likely to cause, at any time, serious injury or harm to the patients served by the HHA.

New admission means a patient who is accepted for home health services on or after the effective date of the suspension of payment and who had not been accepted before that date or, if previously accepted, had been discharged from care before that effective date. The term does not include an individual who was receiving services before the effective date of a suspension of payment sanction and who—

(1) Becomes eligible for Medicare after that effective date; or

(2) Interrupts treatment when admitted to an inpatient facility (regardless of whether the interruption occurs before or after the effective date of sanction) and resumes treatment after that effective date.

Plan of correction means an action plan submitted by an HHA with deficiencies, describing the steps the HHA will take to correct the deficiencies, and the expected completion dates for each step.

§ 488.404 General considerations.

(a) *Purpose.* The application of sanctions has a dual purpose—

(1) To protect Medicare beneficiaries against substandard quality care; and

(2) To encourage and assist providers to comply with the conditions of participation so that they may continue to provide quality services to Medicare beneficiaries.

(b) *Basis for decision to impose sanctions.* HCFA's decision to impose sanctions is based either on deficiencies found during surveys performed by State survey agencies and reported to HCFA with the agency's recommendations for corrective action, or on deficiencies found during HCFA's own surveys.

(c) *Imposition of sanctions.*—(1) *General rules.* (i) HCFA may impose one or more of the sanctions specified in § 488.410 when HCFA or a State survey agency finds that an HHA has

deficiencies at the condition of participation level.

(ii) Alternative sanctions may be imposed in lieu of termination of the provider agreement or concurrent with termination procedures, to continue until the day before the day termination is effective or compliance is achieved.

(2) *Choice of sanction: Factors considered.* The choice of sanction depends on one or more of the following:

(i) The severity of the deficiencies or noncompliance.

(ii) The scope of the deficiencies or noncompliance.

(iii) The relationship of one deficiency or group of deficiencies to other deficiencies.

(iv) The HHA's previous compliance history in general, and specifically with reference to the cited deficiencies.

(v) The corrective and long-term compliance outcomes that HCFA hopes to achieve through application of the sanction.

(vi) Whether the deficiencies pose immediate jeopardy to patient health and safety.

(vii) Whether the deficiencies are directly related to patient care.

(viii) The HHA's financial condition.

(3) *Number of sanctions.* HCFA may impose a separate sanction for each condition level deficiency, or a single sanction for all condition level deficiencies that are interrelated and subject to correction by a single remedy.

(4) *Notice of sanctions.* HCFA gives the HHA notice of the reasons for and the effective date of sanction at least 2 days but not more than 4 days before the effective date in immediate jeopardy situations, and at least 15 days before the effective date in all other situations.

(5) *Duration of alternative sanctions.* In the notice of sanction, HCFA informs the HHA that the sanction will continue for 6 months from the last day of the survey unless, before the end of that period HCFA finds that—

(i) The HHA has corrected the condition level deficiencies and is making a good faith effort to correct lower level deficiencies; or

(ii) The deficiencies are such that HCFA finds it necessary to terminate the provider agreement.

(6) *Appeals procedures.* Imposition of any of the alternative sanctions specified in § 488.410 is subject to the appeals provisions for part 498 of this chapter.

(7) *Effect of pending appeals.* The effective date of an alternative sanction other than civil money penalty is not delayed because the provider has

appealed and the hearing or the hearing decision is pending.

§ 488.410 Available alternative sanctions.

The available alternative sanctions include the following.

- (a) Appointment of a temporary manager.
- (b) Imposition of civil money penalties, in accordance with subpart N of this part.
- (c) Suspension of payment for new admissions.
- (d) Suspension of payment for new admissions.
- (e) Suspension of payment for new admissions who require particular types of services.
- (f) State survey agency monitoring.
- (g) Directed plan of correction.

§ 488.416 Action when deficiencies pose immediate jeopardy to patient health and safety.

(a) *Basic rule.* If an HHA's deficiencies pose immediate jeopardy to patient health and safety, HCFA determines whether to take immediate action to remove the jeopardy and correct the deficiencies through appointment of a temporary manager or to terminate the provider agreement.

(b) *Procedures.* (1) When HCFA immediately terminates the provider agreement rather than impose temporary management, it follows the termination procedures in § 489.53 of this chapter.

(2) When HCFA imposes temporary management, the following rules apply:

- (i) Within 5 days from the last day of the standard or special survey, HCFA gives the HHA notice of intent to appoint a temporary manager.
- (ii) The notice gives the HHA the option of accepting temporary management and making available to the manager sufficient funds and management support to bring the facility into compliance, or accepting termination of its provider agreement.
- (iii) If the HHA accepts temporary management—

(A) It must notify HCFA to that effect by the 7th day after the last day of survey; and

(B) If HCFA receives timely notice, HCFA approves the selection of a temporary manager based on the State's recommendation, and installs the temporary manager within 10 days from the last day of survey.

(c) *Other actions.* HCFA may also, concurrent with appointment of a temporary manager, impose any of the other sanctions specified in § 488.410.

(d) *Effect on continued program participation.* HCFA terminates the Medicare provider agreement as follows:

(1) Effective on the 23rd day after the last day of survey if—

- (i) The HHA does not accept temporary management; or
- (ii) Despite the HHA's acceptance, a temporary manager has not been appointed, and the immediate jeopardy has not been removed.

(2) Effective on the 23rd day after the appointment of the temporary manager unless, before that day, the HHA eliminates the conditions and practices that pose immediate jeopardy to patient health and safety.

§ 488.418 Action when there are deficiencies at the condition level but they do not pose immediate jeopardy to patient health and safety.

If an HHA no longer meets one or more of the conditions of participation, but the deficiencies do not pose immediate jeopardy to patient health and safety, the following rules apply:

(a) *Termination.* HCFA may terminate the provider agreement.

(b) *Alternative sanctions.* HCFA may impose any of the alternative sanctions listed in § 488.410 in lieu of termination.

(c) *Monitoring of the correction plan.* The State survey agency revisits the HHA no later than 60 days after the last day of survey to assess the HHA's progress in correcting the cited deficiencies.

(d) *Action by HCFA.* (1) If there are still condition level deficiencies, HCFA imposes the suspension of payment for new admissions sanction, effective no later than 90 days after the last day of survey.

(2) If the remaining deficiencies are below the condition level, HCFA may request a revised plan of correction, which must be designed to encourage prompt correction and must provide for achievement of full compliance no later than 12 months after the last day of survey.

(3) If the condition level deficiencies remain uncorrected, HCFA terminates the HHA's provider agreement effective no later than 6 months after the last day of survey.

§ 488.420 Action when deficiencies are below the condition level.

(a) *Basic requirement.* If an HHA has deficiencies only below the condition level, it must, as a condition for continued participation in Medicare, submit a correction plan that is acceptable to HCFA in content and time frames.

(b) *Time frames.* The time allowed (not to exceed 12 months from the last day of the survey) for correcting deficiencies depends on the nature of the deficiencies and on HCFA's

evaluation of the HHA's capability to furnish adequate and safe care.

(c) *Monitoring the correction plan.* The State survey agency revisits and the HHA after the projected date for completion of all corrections under the plan.

(1) If there are still deficiencies and there has not been significant progress in correcting all deficiencies, HCFA may terminate the provider agreement.

(2) If there has been significant progress, HCFA may request a revised correction plan.

(3) The revised plan may not extend beyond 12 months from the last day of the survey.

§ 488.422 Continuation of payments to HHAs with deficiencies.

(a) *HHAs with deficiencies that pose immediate jeopardy to patient health and safety.* If the HHA's deficiencies pose immediate jeopardy to patient health and safety, payment continues until HCFA terminates the HHA's provider agreement in accordance with § 488.416(d).

(b) *HHAs with deficiencies that do not pose immediate jeopardy to patient health and safety.* HCFA may continue Medicare payments to an HHA with deficiencies that do not pose immediate jeopardy for up to 6 months from the last day of the survey, but only if the following conditions are met:

(1) The State survey agency recommends alternative sanctions in lieu of termination.

(2) The HHA has submitted a plan of correction that is approved by HCFA.

(3) The HHA agrees that if the corrections are not made in accordance with the approved plan and timetable, the HHA—

(i) Will refund any Medicare payments received for services furnished during the time period covered by the correction plan; and

(ii) Will not charge the beneficiary for any services for which the HHA refunds the Medicare payments.

§ 488.426 Temporary management.

(a) *Application.* (1) HCFA uses temporary management in immediate jeopardy situations.

(2) When there are condition level deficiencies that do not pose immediate jeopardy, HCFA may appoint a temporary manager to substitute for the HHA's manager or administrator and assist the provider to improve procedures and practices so as to comply with all conditions of participation.

(3) The temporary manager has the authority to hire, terminate, or reassign

staff; obligate funds; and otherwise manage the HHA to correct the deficiencies and protect and ensure patient health and safety.

(4) The HHA pays the temporary manager's salary, which must be commensurate with salaries paid to other HHA managers in the geographic area.

(b) *Qualifications of temporary managers.* In order to be appointed temporary manager of an HHA an individual must—

(1) Be licensed as an HHA administrator if licensure is required in the State in which the HHA is located; or

(2) In lieu of licensure, have at least two years of experience as an HHA administrator.

(3) Be able to provide at least 20 hours a week of services to the provider.

(c) *Procedures for installation of a temporary manager.* The procedures are the same as those set forth in § 488.416, with one exception. When the deficiencies do not pose immediate jeopardy to patient health and safety, the timeframe for notice is at least 15 days instead of the 2 to 4 day period, and the timeframe for installation of the temporary manager is at least 20 days instead of 10.

(d) *Duration of temporary management.* Temporary management terminates when HCFA—

(1) Determines that the HHA is in compliance with all conditions of participation and has the capability to remain in full compliance; or

(2) Terminates the provider agreement because—

(i) The provider requests discontinuance of temporary management while still not in compliance with the conditions of participation; or

(ii) HCFA determines that the HHA is not in compliance with the conditions of participation at the end of the time specified in the plan of correction for the elimination of deficiencies.

§ 488.428 Civil money penalties.

The rules for imposition of civil money penalties are set forth in subpart N of this part.

§ 488.430 Suspension of payment for new admissions.

(a) *Application.* HCFA may use this sanction when there are condition level deficiencies, regardless of whether those deficiencies pose immediate jeopardy. HCFA always uses suspension of payment in the following situations:

(1) When an HHA has not corrected any of deficiencies covered by the plan of correction within 90 days after the

last day of the survey. (This 90-day period includes the 60-day period for correction of deficiencies and the minimum 15-day period for giving the provider advance notice of the imposition of the sanction and the effective date of sanction.)

(2) When an HHA has been out of compliance with one or more conditions of participation for three consecutive standard surveys.

(b) *Effect of sanction.* (1) As required by § 484.10(e) of this chapter, the HHA must give all new admissions oral and written notice of the suspension of payment sanction and of the fact that Medicare payment is not available for them.

(2) The HHA may not charge a newly admitted beneficiary for Medicare covered services for which Medicare payment is suspended unless the HHA can show that, before initiating care, it gave the beneficiary oral and written notice as required under paragraph (b)(1) of this section.

(c) *Duration.* The suspension of payment continues in effect until the HHA's compliance is verified or until HCFA terminates the HHA's provider agreement, no later than 6 months after the last day of survey, because the HHA still has condition level deficiencies.

§ 488.432 Suspension of payment for new admissions who require particular types of services.

(a) *Application.* HCFA may suspend payment for new admissions who require particular types of services (for example, physical therapy or speech pathology services) when HCFA or the State survey agency finds that the HHA is not currently able to provide those services safely and adequately.

(b) *Effect of sanction.* (1) As required under § 484.10(e) of this chapter, the HHA must give all new admissions oral and written notice of the type of services for which Medicare payment is not available because a suspension of payment sanction is in effect for those services.

(2) The HHA may not charge a newly admitted beneficiary for any of the particular services for which Medicare payment is suspended unless the HHA can show that, before initiating care, it gave the beneficiary oral and written notice as required by paragraph (b)(1) of this section.

(c) *Duration.* The suspension of payment continues in effect until the HHA's compliance is verified or until HCFA terminates the HHA's provider agreement, no later than 6 months after the last day of survey, because the HHA still has condition level deficiencies.

§ 488.436 State survey agency monitoring.

(a) *Application.* HCFA may require onsite, continuous or intermittent monitoring of an HHA in order to oversee implementation of a plan of correction that involves condition level deficiencies.

(b) *Requirements and limitations.* (1) State monitors are either employed by, or under contract to, the State survey agency.

(2) State monitors do not have managerial authority, do not serve as consultants, and do not advise the HHA on the best way to correct deficiencies. Their function is to observe and verify the correction of deficiencies.

(3) State monitors are paid by the HHA.

(c) *Duration.* State monitoring continues for as long as a plan of correction for condition level deficiencies is being carried out.

§ 488.438 Directed plan of correction.

(a) *Application.* HCFA may impose a directed plan of correction when an HHA fails to submit an acceptable plan of correction for condition level deficiencies or when HCFA believes that the severity of the deficiencies warrants HCFA's directing the HHA to take specific actions.

(b) *Procedures.* A directed plan—

(1) Is developed by HCFA, or developed by the State survey agency, or the HHA's temporary manager and approved by HCFA; and

(2) Specifies the outcomes to be achieved, the corrective actions necessary to achieve those outcomes, and the time frame for achieving them.

§ 488.440 Termination of provider agreement.

(a) *Effect of termination.* Termination of the provider agreement terminates continuation of payment, and any alternative sanctions imposed, regardless of the time frames originally specified for continuation of payment and for the alternative sanctions.

(b) *Basis and time frames for termination.* (1) *Failure to accept and use temporary management.* HCFA terminates the Medicare provider agreement in accordance with § 488.416, or § 488.426, if the HHA does not accept and use temporary management.

(2) *Failure to correct condition level deficiencies.* If there are condition level deficiencies that remain uncorrected, HCFA terminates the HHA's provider agreement as follows:

(i) In immediate jeopardy situation, not later than 23 days after the last day of survey, or after the day the temporary

manager is appointed, as specified in § 488.416.

(ii) If there is not immediate jeopardy, no later than 6 months after the last day of survey, as specified in § 488.418. (The 6-month period includes the 15 days required for the advance notice of termination that HCFA gives the public and the provider.)

(3) *Failure to submit an acceptable plan of correction.* HCFA terminates the Medicare provider agreement if the HHA fails to submit an acceptable plan of correction within time frames specified by HCFA in general instructions.

(4) *Failure to carry out a plan of correction for lower level deficiencies.* HCFA terminates the Medicare provider agreement if the HHA fails to carry out an approved plan of correction for lower level deficiencies.

(c) *Procedures for termination.* The procedures for termination of a Medicare provider agreement are those set forth in § 489.53 of this chapter.

(d) *HHA that also participates in Medicaid.* (1) If the HHA also participates in Medicaid, HCFA notifies the Medicaid agency of the reason for, and effective date of termination of the Medicare provider agreement so that the Medicaid agency may terminate the HHA's participation in Medicaid.

(2) HCFA also notifies the Medicaid agency of the fact that, except as provided in paragraph (d)(3) of this section, FFP is not available in State payments for services furnished by that HHA after the effective date of termination from Medicare.

(3) As an exception, FFP may be continued for up to 30 days after termination of the Medicare provider agreement, if the payments are for patients admitted to care before the effective date of termination and the facility is making a good faith effort to discharge the Medicaid patients from care or refer them to other HHAs.

Subpart N—Civil Money Penalties

§ 488.700 Basis and scope.

(a) *Statutory basis.* (1) Section 1891 (e) and (f) of the Act authorize the Secretary to impose civil money penalties on HHAs as alternative sanctions.

(2) These sections of the Act also make the appeals provisions of section 1128A of the Act, which include a hearing before an ALJ and judicial review by a U.S. Court of Appeals, applicable to civil money penalties.

(b) *Scope.* This subpart sets forth the procedures that HCFA follows to impose a civil money penalty.

§ 488.702 Definitions.

(1) As used in this subpart, *facility* means an HHA.

(2) The other definitions set forth in subpart I of this part are equally applicable in this subpart N.

§ 488.705 Basis for imposing a civil money penalty.

(a) HCFA may impose a civil money penalty against any facility determined to have deficiencies at the condition of participation level, regardless of whether those deficiencies pose immediate jeopardy to patient health and safety.

(b) HCFA may impose the penalty when the facility is found by the State survey agency or by HCFA to have had condition level deficiencies between the previous and the current surveys even if it was in compliance at the time of both surveys.

(c) HCFA does not impose a civil money penalty when deficiencies are below the condition level.

(d) HCFA may impose a civil money penalty in addition to termination or any other penalties specified in other subparts of this part, or available under State or Federal law.

§ 488.708 Amount of penalty.

(a) *Factors considered.* HCFA always takes into account the following factors, as assessed by the State:

(1) The facility's degree of culpability.

(2) The facility's history of previous offenses, including repeat deficiencies.

(3) The facility's financial condition.

(4) The nature, scope, severity, and duration of the noncompliance.

(5) The category of requirements with which the facility is out of compliance.

(b) *Range of penalty amount.* (1) For a condition level deficiency that poses immediate jeopardy to patient health and safety, the range is \$3,050–\$10,000 per day of noncompliance.

(2) For a condition level deficiency that does not pose immediate jeopardy, the range is \$50–\$3,000 per day of noncompliance.

(c) *Specific daily amounts.* (1) HCFA sets specific daily amounts using \$50 intervals.

(2) If the immediate jeopardy is removed, but the deficiency continues, HCFA shifts the daily amount to the lower range.

(3) Within the ranges specified in paragraph (b) of this section, HCFA may increase the daily amount for a facility that alleges compliance but, on revisit by HCFA or the State survey agency, is found to still be out of compliance.

(4) Within the ranges specified in paragraph (b) of this section, HCFA increases the daily amount if the facility

fails to correct cited deficiencies within the approved timeframe for a plan of correction.

§ 488.710 Procedures for imposition of civil money penalty.

(a) *Notice of intent.* (1) HCFA sends the facility written notice of its intent to impose a civil money penalty.

(2) HCFA sends the notice at least 2 days but not more than 4 days before the effective date of the penalty in immediate jeopardy situations, and at least 15 days before the effective date in all other situations.

(3) The notice includes the following information:

(i) The statutory basis for the penalty.

(ii) The proposed daily amount.

(iii) The factors (as described in § 488.708) that HCFA considered.

(iv) Instructions for responding to the notice.

(v) A specific statement regarding the facility's appeal rights, which are those set forth in part 498 of this chapter.

(b) *Appeal rights.* (1) If the facility requests a hearing, part 498 of this chapter applies.

(2) The facility has 60 days from the date of receipt of the notice to request a hearing in accordance with § 498.40 of this chapter.

(c) *Waiver of right to hearing.* If the facility waives its right to a hearing, HCFA may reduce the civil money penalty amount by 35 percent.

§ 488.712 Effective date and duration of penalty.

(a) *Effective date.* The sanction is effective retroactive to the tenth day after the last day of survey for immediate jeopardy situations, and the twentieth day after the last day of survey when the deficiencies do not pose immediate jeopardy.

(b) *Duration of penalty.* (1) The civil money penalty continues until the day before the day the deficiencies are corrected or, if the HHA's provider agreement is terminated, the day before the effective date of termination.

(2) The date of correction of deficiencies may be found to be earlier than the date of revisit if the provider can demonstrate, through a preponderance of evidence, that corrections were in fact completed, and compliance achieved, by that earlier date.

§ 488.714 Computation and notice of total penalty amount.

(a) *Computation.* HCFA computes the total penalty amount after the HHA's compliance is verified, or after HCFA sends the HHA notice of termination of

its provider agreement but in no event before—

(1) The 60 day period for requesting a hearing has expired without a request from the HHA, or the HHA has explicitly waived its right to hearing; or

(2) The ALJ issues a decision following a hearing requested by the HHA.

(b) *Notice and due date.* The notice includes the following information:

(1) The daily penalty amount.

(2) Number of days for which the penalty is imposed.

(3) Total penalty amount.

(4) Due date for payment of the penalty.

§ 488.716 Due date for payment of penalty.

Payment of a civil money penalty is due 15 days after the notice specified in § 488.714(b).

488.718 Collection and settlement.

(a) *Collection of penalty amounts.* (1) The determined penalty amount may be deducted from any sums then or later owing by HCFA to the provider subject to the penalty.

(2) Interest accrues on the unpaid balance of the penalty, beginning on the due date and until the date of payment.

(3) The penalty amounts collected revert to the Medicare Trust Fund.

(b) *Settlement.* HCFA has authority to settle any case at any time before the ALJ issues a hearing decision.

PART 489—PROVIDER AGREEMENTS UNDER MEDICARE

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

Authority: Secs. 1102, 1861, 1864m, 1866, 1871, and 1891 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395aa, 1395cc, 1395hh and 1395bbb).

§ 489.21 [Amended]

2. In § 489.21, the introductory text of paragraph (b) is republished and paragraph (b)(3) is revised to read:

* * *

(b) Services for which the beneficiary is entitled to have payment made if the provider—* * *

(3) Had complied with the requirements for timely utilization review (as set forth, for hospitals in part 482, and for long-term care facilities in part 483 of this chapter), so that a limitation on days of service had not been imposed under section 1866(a) of the Act.

* * *

§ 489.53 [Amended]

3. In § 489.53, the following changes are made:

a. In paragraph (b)(1), the phrase "part 405, subpart K of this chapter," is changed to "subpart B of part 483 of this chapter."

b. Paragraph (c)(2) is revised to read as follows:

* * *

(2) *Exception.* For a provider with deficiencies that pose immediate jeopardy to the health and safety of patients, HCFA gives notice of termination at least 2 days before the effective date of termination of the provider agreement.

* * *

§ 489.60 [Amended]

4. In § 489.60, in paragraph (a), "subpart K of part 405 of this chapter", is changed to "subpart B of part 483 of this chapter".

Technical Amendments; Part 488

§ 488.1 [Amended]

1. In § 488.1—

a. The definition of "Act" is removed.
b. In the definition of *State*, "the Northern Mariana Islands," is added immediately after "Guam,".

§ 488.3 [Amended]

2. In § 488.3, paragraph (a)(2) is revised to read:

(a) * * *

(2) Be in compliance with the applicable conditions of participation, conditions for coverage, requirements of participation, or conditions for certification set forth elsewhere in this chapter.

* * *

§ 488.18 [Amended]

3. In § 488.18, in paragraphs (a) and (b), the parenthetical phrases are removed.

§ 488.20 [Amended]

4. In § 488.20, in paragraph (a), the second parenthetical phrase is removed, and the following is added: "Special rules for SNFs are set forth in § 488.50".

§ 488.28 [Amended]

5. In § 488.28, in paragraph (a), the second parenthetical phrase is removed, and the following is added "Special requirements applicable to SNFs are set forth in § 488.50."

§ 488.60 [Amended]

6. In § 488.60—

(a) The phrase "of this chapter" is added immediately after "subpart U of part 405", wherever the latter appears.

(b) In paragraph (a), § 488.12 of this part" is changed to "§ 488.12".

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance;

Program No. 13.773, Medicare-Hospital Insurance; Program No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: September 7, 1990.

Gail R. Wilensky,
Administrator, Health Care Financing
Administration.

Approved: January 28, 1991.

Louis W. Sullivan,
Secretary.

Editorial note: This document was received at the office of the Federal Register on July 26, 1991.

[FR. Doc. 91-18130 Filed 8-1-91; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 550, 580 and 581

[Docket No. 90-23]

Automated Tariff Filing and Information System ("ATFI"); Ocean Freight Tariffs in Foreign and Domestic Offshore Commerce; Inquiry

AGENCY: Federal Maritime Commission.

ACTION: Notice of availability of Supplement #3 to Batch Filing Guide.

SUMMARY: The Federal Maritime Commission announces the availability of Supplement #3 to the ATFI Batch Filing Guide. The transaction sets and other standards contained in the Batch Filing Guide must be followed in the private development of batch filing software which will be used in formatting and transmitting tariff material to the Commission's computer under ATFI.

DATES: Availability of Supplement #3: July 24, 1991.

ADDRESSES: Copies of Supplement #3 may be obtained from: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573.

FOR FURTHER INFORMATION CONTACT: John Robert Ewers, Deputy Managing Director, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523-5800.

SUPPLEMENTARY INFORMATION: The Batch Filing Guide, containing transaction sets and other standards, was appended to the Commission's December 26, 1990, Interim Report in this proceeding (56 FR 668, January 8, 1991). Supplement #3 (IB 20-91), like Supplements #1 and #2 issued by Information Bulletins IB 3-91 and IB 10-91, contains errata and addenda to the December 13, 1990, version of the ATFI Batch Filing Guide. The standards in the

Batch Filing Guide must be followed in developing batch filing software for formatting and transmitting tariff data under the new electronic system.

Joseph C. Polking,

Secretary.

[FR Doc. 91-18370 Filed 8-1-91; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 685

[Docket No. 910489-1190]

RIN 0648-AD98

Pelagic Fisheries of the Western Pacific Region

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

ACTION: Proposed rule.

SUMMARY: The Secretary of Commerce (Secretary) issues this proposed rule to implement Amendment 3 to the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FMP). The rule would prohibit longline fishing within 50 nautical miles (nm) of certain Northwestern Hawaiian Islands (NWHI) as well as within corridors between those islands. This action is necessary to prevent interactions between the fishery and the endangered Hawaiian monk seal (*Monachus schauinslandi*). The proposed rule would also establish a process for adjusting the size of the protected species zone and for changing the conservation and management measures to protect monk seals and other protected species in the NWHI.

DATES: Comments on the proposed rule must be received on or before September 16, 1991.

ADDRESSES: Send comments on the proposed rule and plan amendment to E.C. Fullerton, Director, Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, CA 90731. Copies of Amendment 3 may be obtained from the Western Pacific Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, HI 96813.

Send comments on the proposed collections of information to the Director, Southwest Region, NMFS (see above), and to the Office of Information and Regulatory Affairs, Office of Management and Budget, ATTN: Paperwork Reduction Project 0648-0214, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, Fisheries Management

Division, Southwest Region, NMFS, Terminal Island, California, (213) 514-6660, or Alvin Katekaru, Pacific Area Office, Southwest Region, NMFS, Honolulu, Hawaii, (808) 955-8831.

SUPPLEMENTARY INFORMATION: The FMP for pelagic species was approved and implemented when there were only 37 longline vessels in the fishery. Initial consultation under section 7 of the Endangered Species Act concluded that the longline fishery would not likely jeopardize the continued existence of the Hawaiian monk seal if certain gear and reporting requirements were included in the implementing regulations.

On May 31, 1991, NMFS published a final rule implementing Amendment 2 to the FMP (56 FR 24731). In preparation of the amendment, a new biological opinion was issued, which concluded that the fishery would jeopardize the continued existence of the Hawaiian monk seal unless longline fishing was prohibited within 50 nm of the NWHI. Amendment 2 and a preceding emergency rule (56 FR 15842, April 18, 1991) established a protected species zone in the NWHI. Amendment 2 also placed restrictions on vessels with longline gear entering the zone that included permit requirements, logbooks, and the requirement to carry an observer if directed by the Regional Director of the Southwest Region (Regional Director), NMFS. The rule was promulgated as a result of the expansion of the longline fishery and concerns that the growth of the fishery would have an adverse impact on fish stocks, on other fisheries, and on protected species, including Hawaiian monk seals, birds, and turtles.

As a result of information about injuries to monk seals received early in 1991, the Western Pacific Fishery Management Council (Council) sponsored an interagency task force consisting of NMFS, the U.S. Fish and Wildlife Service, the Hawaii Department of Land and Natural Resources, the U.S. Coast Guard, and the Council. The task force recommended closing to longline fishing the area where monk seals are active. A public hearing was held in Honolulu, Hawaii, on February 26, 1991, to solicit public testimony on the need for the types of regulatory controls necessary to prevent future takings of seals by the longline fishery. Representatives of several environmental groups stated that they favored closures of 50 nm or more to guarantee no taking of monk seals, and proposed mandatory observer coverage in a buffer zone around the NWHI. Several representatives of the fishing

industry indicated that they believed interactions were rare and would be limited to waters much closer to the islands. They felt that a closure of 20-30 nm would be sufficient with observer coverage out to 50 nm. There was general agreement on the need for more effective surveillance of the area to enforce whatever closures were implemented.

The Council subsequently met in an open session in Honolulu on February 27 through March 1, 1991, and concluded that prohibiting longline fishing in waters within 50 nm of the NWHI, including corridors connecting islands more than 100 nm apart, would be appropriate. In the Council's view, there was no evidence to suggest that there would be interactions beyond these boundaries. Preliminary data from mandatory logbooks during the period December 1, 1990, through January 31, 1991, show that only 19 of the 112 vessels that reported longline catches around Hawaii fished in the 50-nm zone. Those 19 vessels made 103 sets, 6 percent of the total 1,667 sets made by all vessels. Of the total fish landed in this 2-month period, 2,343 were caught in the 50-nm zone. About 6.5 percent of the bigeye tuna and 24 percent of the swordfish were caught in the zone. This time period is believed to have been representative of the heaviest fishing for swordfish in the NWHI, so the harvest from the zone throughout the year is expected to be relatively much less important. Also, since the pelagic species are highly migratory species and the fleet is highly mobile, the catches described above do not necessarily mean that the fleet will suffer an economic loss if this catch is foregone. Much, if not all of the harvest, may be made up from outside the zone, although some additional effort may be required. The economic impacts of displacing the fleet from the zone is expected to be minimal.

In response to the evidence of interactions last winter, the Council requested that the Secretary implement an emergency closure of these waters. The Secretary concurred with the proposal, and the closure became effective on April 15, 1991 (56 FR 15842, April 18, 1991). This action closed to longline fishing the protected species zone defined in Amendment 2.

More recent information regarding incidental hooking and snagging of monk seals confirmed the occurrence of interactions with the fishery. As of May 28, 1991, nine monk seals with evidence of injuries resulting from interactions with longline fishing operations have been reported. Six of these seals were

observed on Tern Island, French Frigate Shoals, with jaw or head injuries inconsistent with natural causes. Another seal was seen with a longline hook imbedded in its chest, trailing 30 feet of monofilament leader. Yet another was observed ashore on Tern Island with a hook in its mouth. A juvenile seal with a bleeding head injury and trailing monofilament line from its mouth was reported by a fishing vessel northwest of French Frigate Shoals in January 1991.

Some injured seals may have died at sea or hauled out on islands where they would not be seen, and observed injuries may represent only a part of the impact of the fishery. If seals were snagged or entangled only occasionally and released alive, the risks of injury and mortality from drowning, perforation of the gastrointestinal tract, or infection and septicemia still would be considerable. Any mortality resulting from these interactions could adversely affect the conservation and recovery of the endangered seal.

This proposed rule would implement Amendment 3 to the FMP, which permanently closes the protected species zone to longline fishing. Amendment 3 would also allow the Regional Director, Southwest Region, NMFS, with the Council's concurrence, to initiate rulemaking to change the size of the established protected species zone or to adopt new management measures necessary to protect endangered or threatened species in the protected species zone or other areas. These measures could include: Enlarging the protected species zone, requiring additional reporting from fishing vessels, restricting the type of gear used, and requiring observers to be taken on fishing trips.

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Fishery Conservation and Management Act (Magnuson Act) requires the Secretary to publish regulations proposed by a Council within 15 days of the receipt of an amendment and proposed regulations. At this time, the Secretary has not determined that Amendment 3 is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the information, views, and comments received during the comment period.

The Council prepared an environmental assessment (EA) for Amendment 3. A copy of the EA is available from the Council (see "ADDRESSES").

The Assistant Administrator for Fisheries, NOAA, has initially determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The present action will not have a cumulative effect on the economy of \$100 million or more, nor will it result in a major increase in costs to consumers, industries, government agencies, or geographical regions. No significant adverse effects on competition, employment, investment, productivity, innovation, or competitiveness of U.S. based enterprises are anticipated.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this proposed rule, if adopted, would not have a significant impact on a substantial number of small entities. The displacement of a portion of the longline effort inside the protected species zone is not expected to have a significant economic effect, because the harvest can be anticipated to be recovered outside the area.

The proposed rule would make permanent a collection-of-information requirement subject to the provisions of the Paperwork Reduction Act. This information collection has been approved by the Office of Management and Budget (OMB), OMB Control Number 0648-0214. Operators of longline fishing vessels would be required to notify the NMFS Southwest Enforcement Office immediately upon entering and departing the protected species zone. The public reporting burden for this collection of information is estimated to be 10 minutes: 5 minutes for the pre-transit notification and 5 minutes for the post-transit notification.

This proposed rule would also establish a process by which the Regional Director may adopt additional management measures to ensure the protection of endangered or threatened species from fishing operations. One of these measures could be the establishment of an observer program whereby vessel operators intending to fish within certain areas would be required to notify the Regional Director so that NMFS would have the opportunity to place an observer aboard the vessel. If an observer program is established, the public reporting burden for this collection of information is estimated to be 2 minutes for the pretrip notification. This collection-of-information requirement has been approved by OMB, OMB Control Number 0648-0214.

Send comments on the burden estimates or any other aspect of these collections of information, including

suggestions on how to reduce the burdens, to the Regional Director, Southwest Region, NMFS (see ADDRESSES), and to the Office of Information and Regulatory Affairs, Office of Management and Budget, ATTN: Paperwork Reduction Project 0648-0214, Washington, DC 20503.

The Council has determined that the proposed action is consistent to the maximum extent practicable with the approved coastal zone management program of the State of Hawaii. A letter requesting concurrence with this determination has been forwarded to the appropriate state agency.

Implementation of this rule would ensure that the fishery will not jeopardize the continued existence of any species listed as endangered or threatened under the Endangered Species Act, or the critical habitat of those species. The biological opinion issued for Amendment 2, which defined the protected species zone and required reporting from fishermen active within the zone, states that permanently closing the area to longline fishing is a reasonable and prudent alternative that must be adopted to safeguard the monk seal. This amendment implements that alternative.

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

List of Subjects in 50 CFR Part 685

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 26, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 685 is proposed to be 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, the definition for "Northwestern Hawaiian Islands" is revised, to read as follows:

§ 685.2 Definitions.

* * * * *

Northwestern Hawaiian Islands means the EEZ of the Hawaiian Islands Archipelago lying to the west of 161 °W longitude.

* * * * *

3. In § 685.5, new paragraphs (s) and (t) are revised to read as follows:

§ 685.5 Prohibitions.

* * * * *

(s) Fish for pelagic species with longline gear within the protected species zone in the Northwestern Hawaiian Islands as defined in § 685.2.

(t) Fail to notify the NMFS Southwest Enforcement Office of intent to transit the protected species zone as required under § 685.14.

* * * * *

4. In § 685.11, the section heading is revised and paragraphs (a) through (c) are revised to read as follows:

§ 685.11 Protected species conservation.

(a) If the Regional Director determines that additional measures are needed in a particular area to prevent adverse effects of longline fishing on protected species, the Regional Director will, with the Council's concurrence, initiate rulemaking which could include:

(1) Requiring additional reporting from vessels fishing;

(2) Enlarging the protected species zone;

(3) Restricting the type of gear used;

(4) Requiring observers to be taken on fishing trips; or

(5) Adopting any other management measures necessary to protect endangered or threatened species.

(b) If an observer requirement is established under paragraph (a)(4) of this section, the operator of any fishing vessel subject to the permit requirements of § 685.9 of this part shall inform the Pacific Area Office at least 72 hours (not including weekends and holidays) before leaving port of the operator's intent to fish within the area in which observers are required. The operator shall provide this notice by contacting the Pacific Area Office, telephone (808) 955-8831. The notice must include the name of the vessel, the name of the operator, the intended departure date and location, and a telephone number at which the operator or his agent may be contacted during the business day (8 a.m. to 5 p.m. local time) to indicate whether an observer will be required on the fishing trip.

(c) The initial size of the protected species zone is 50 nm from the center geographical positions of Nihoa Island, Necker Island, French Frigate Shoals, Gardner Pinnacles, Maro Reef, Laysan Island, Lisianski Island, Pearl and Hermes Reef, Midway Islands, and Kure Island, as defined in § 685.2.

* * * * *

5. Section 685.14 is revised, to read as follows:

§ 685.14 Transit notification.

The operator of a longline fishing vessel subject to this part transiting the protected species zone shall notify the NMFS Southwest Enforcement Office at (808) 541-2727 immediately upon entering and immediately upon departing the protected species zone. The notification must include the name of the vessel, name of the operator, date and time (GMT) of entry or exit from the protected species zone, and location by latitude and longitude to the nearest minute.

[FR Doc. 91-18287 Filed 8-1-91; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register

Vol. 56, No. 149

Friday, August 2, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 91-111]

National Boll Weevil Cooperative Control Program; Supplement to the Draft Environmental Impact Statement

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice advises the public that the Animal and Plant Health Inspection Service (APHIS) has prepared a supplement to the draft environmental impact statement (EIS) for the National Boll Weevil Cooperative Control Program. We request comments from Federal, State, and local agencies; industry; conservation groups; and other members of the public. The comments received on the supplement to the draft EIS, plus those previously received on the draft EIS, will be considered in the development of the final EIS.

DATES: We will consider all written comments received on or before September 16, 1991.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Nancy Sweeney, Project Leader, Environmental Analysis and Documentation, Biotechnology, Biologics, and Environmental Protection, ASPHIS, USDA, Room 828, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket 91-111. Comments we receive may be inspected at USDA, 14th and Independence Avenue, SW., room 1141, South Building, Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

A limited number of copies of the supplemental environmental impact statement (EIS) are available at the following locations:

1. Southeast Regional Office: A. S. Elder, Regional Director, 3505 25th Avenue, Building 1 North, Gulfport, MS 39501, (601) 863-1813.
2. South Central Regional Office: Robert L. Williamson, Regional Director, 3505 Boca Chica Boulevard, Suite 360, Brownsville, TX 78521-4065, (512)-2610.
3. Western Regional Office: James Reynolds, Regional Director, 9580 Micron Avenue, Suite 1, Sacramento, CA 95827, (916) 551-3220.
4. APHIS Reading Room, USDA: Room 1141, South Building, 14th and Independence Avenue, SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Nancy Sweeney, Project Leader, Environmental Analysis and Documentation, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, Room 828, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8565.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 1989, we published in the *Federal Register* (54 FR 31710-31711, Docket No. 89-134) a notice announcing the availability of a draft EIS for the National Boll Weevil Cooperative Control Program. The notice also requested comments on or before October 2, 1989. On October 12, 1989, we published in the *Federal Register* (54 FR 41859-41860, Docket No. 89-168) a notice extending the comment period on the draft EIS to November 3, 1989. In response to some of the comments received, we determined that a supplement was necessary to address the impacts the program may have in Alabama and to describe the steps we have taken to assess possible effects on listed and proposed endangered and threatened species across the cotton belt. Thus, this notice requests comments on the supplement, which has two parts:

Implementation of the Program in Alabama, and Analysis and Protection of Endangered and Threatened Species.

We will consider all comments on the supplement if received on or before the end of the 45-day comment period. Following the comment period, we will analyze these comments and those

received on the draft EIS to develop the final EIS. A "Notice of Availability" of the final EIS will be published in a subsequent *Federal Register* notice.

Done in Washington, DC, this 29th day of July 1991.

Robert Melland,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-18365 Filed 8-1-91; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Southern California Edison Company, Lucerne Valley/Big Bear Valley 115kV Electric Transmission Line, San Bernardino National Forest, San Bernardino County, CA; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement (EIS) for a Southern California Edison Company (SCE) proposal to furnish additional electrical power to Big Bear Valley and surrounding areas. The proposal is to provide 100 MW of capacity to Southern California Water Company's Bear Valley Electric District by constructing a 115 kilovolt (kV), double circuit, six conductor electric transmission line and electrical system substation on National Forest System lands. The proposed transmission line would run from the existing Cottonwood Substation in Lucerne Valley to a new substation in the Big Bear Lake area. The substation would connect to Southern California Water Company's existing Bear Valley Electric District distribution system by way of two 33 kV underground circuits. The first circuit will connect to the existing North Shore 33 kV underground line; the second circuit will tie into the existing South Shore 33 kV circuit with 1400 feet of new underground line. The Forest Service will serve as the lead Federal agency in meeting the requirements of the National Environmental Policy Act (NEPA).

ISSUES IDENTIFIED: Initial scoping and discussions with the proponent have identified the following issues: Threatened and endangered species, sensitive plant species, wildlife, road location, visual quality, cultural resources, recreation, health and safety, economics, mineral development, air

quality, water quality, and other land uses.

SUPPLEMENTARY INFORMATION: The proposed project includes a 14 mile long powerline and associated poles, a two and one-half acre substation complex (approximately 300 X 350 feet), and associated access/ maintenance roads. Depending on the route selected, the proposal could also involve the removal of other powerlines, pole structures, and substation equipment. Single pole structures, H-frame structures, and a combination of both will be analyzed.

The existing 33 kV line from the Cottonwood Substation to the Goldhill Substation north of Baldwin Lake supplies most of the electrical power to Big Bear Valley and the surrounding areas. Bear Valley Electric states that their electrical system currently operates at full capacity during peak demand periods. Based on the San Bernardino County General Plan and the Big Bear Lake Community Development Plan, future demand for electricity in the area is expected to increase as residential and commercial growth continue. Southern California Edison and Bear Valley Electric are proposing to construct the new system to meet all demand for the foreseeable future.

The Draft EIS (DEIS) is expected to be available for public review by April 1992 and comments will be received for a period of 45 days following the date that the notice of its availability is published in the **Federal Register**. It is important that those interested in the management of the San Bernardino National Forest participate at that time. To be most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the document or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations For Implementing The Procedural Provisions Of The National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal Court decisions have established that reviewers of DEISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions, [*Vermont Nuclear Power Corp. versus NRDC*, 435 U.S. 519, 553 (1978)], and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS, [*Wisconsin Heritages, Inc. versus Harris*, 490 F. Supp. 1338 (E.D. Wisc. 1980)]. The reason for this is to ensure that substantive comments and objections are made available to the Forest Service

when they can meaningfully consider them and respond to them in the final document. All comments will be considered and analyzed in preparing the final EIS, which is scheduled to be completed by July 1992. The responsible official will document the decision in a Record of Decision which will be subject to appeal under the provisions of 36 CFR part 217.

DATES: Comments are requested on this notice concerning the scope of analysis of the draft EIS. Comments must be received on or before September 3, 1991.

PUBLIC MEETING: A public meeting, to explain the proposal in more detail and to answer any associated questions, will be held at 10 a.m. on Saturday, August 17, 1991, at the Performing Arts Center, Big Bear Civic Center Office, 39707 Big Bear Boulevard, Big Bear Lake, CA.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis for the Southern California Edison Company proposal to Gene Zimmerman, Forest Supervisor, San Bernardino National Forest, 1824 S. Commercenter Circle, San Bernardino, CA 92408-3430.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and preparation of the EIS to Paul Bennett, Special Uses Assistant, P.O. Box 290, Fawnskin, CA 92333 or telephone (714) 866-3437.

Dated: July 25, 1991.

Gene Zimmerman,
Forest Supervisor.

[FR Doc. 91-18338 Filed 8-1-91; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-502]

Preliminary Results of Antidumping Duty Administrative Review: Certain Iron Construction Castings From the People's Republic of China

AGENCY: International Trade Administration, Import Administration, Commerce.

EFFECTIVE DATE: August 2, 1991.

FOR FURTHER INFORMATION CONTACT: Michael Ready, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-2613.

PRELIMINARY RESULTS:

Background

On May 9, 1986, the Department of Commerce (the Department) published in the **Federal Register** (51 FR 17222) an antidumping duty order on iron construction castings from the People's Republic of China (PRC). Petitioners, the Municipal Castings Fair Trade Council, and two respondents, Beijing Metals and Minerals Import and Export Corporation and Guangdong Metals and Minerals Import and Export Corporation (Minmet Beijing and Minmetals Guangdong) requested that we conduct an administrative review of iron construction castings from the PRC for the May 1, 1989 through April 30, 1990 period. We published the notice of initiation on July 6, 1990, (55 FR 27859).

Questionnaires were sent to ten exporters, including those specifically named by petitioner in its request to initiate the review. Minmetals Guangdong responded to our questionnaire on October 1, 1990. Further information was submitted to Minmetals Guangdong on November 15, 1990, and on June 7 and July 16, 1991. Despite its request for a review, Minmet Beijing did not respond to the questionnaire and has not been a participant in the review.

Scope of Review

Imports covered by this review are shipments of iron construction castings, limited to: manhole covers, rings and frames; catch basin grates and frames; cleanout covers and frames used for drainage or access purposes for public utility, water and sanitary systems; and valve, service and meter boxes which are placed below ground to encase water, gas, or other valves, or water or gas meters. These articles must be of cast iron, not alloyed, and not malleable. Until January 1, 1989, iron construction castings were classifiable under items 657.0950 and 657.0990 of the Tariff Schedules of the United States Annotated (TSUSA). Certain iron construction castings are currently classifiable under subheadings 7325.10.00.00 and 7325.10.00.50 of the Harmonized Tariff Schedule (HTS). Although the HTS and TSUSA subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Separate Rate

In a recent final determination concerning sparklers from the PRC (56 FR 20588, May 6, 1991), the Department stated certain criteria for assigning separate rates to respondents in non-

market-economy (NME) cases. As stated in the **Federal Register** notice (at 20589):

We have determined that exporters in non-market-economy countries are entitled to separate, company-specific margins when they can demonstrate an absence of central government control, both in law and in fact, with respect to exports. Evidence supporting, though not requiring, a finding of *de jure* absence of central control includes: (1) an absence of restrictive stipulations associated with an individual's exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; or (3) any other formal measures by the government decentralizing control of companies. *De facto* absence of central government control with respect to exports is based on two prerequisites: (1) whether each exporter sets its own export prices independently of the government and other exporters; and (2) whether each exporter can keep the proceeds from its sales.

Accordingly, on June 7, 1991, we sent to counsel for Minmetals Guangdong, the only participating respondent, a letter eliciting information and documentation that we might evaluate in determining whether that firm met the criteria and, therefore, merited a separate deposit rate.

Minmetals Guangdong's response to our request for information included the following:

1. The company's business license, which contains no restrictive stipulations;
2. Regulations on the Management of Enterprise Legal Person Registration under which the company separated from its parent;
3. Claims that Minmetals Guangdong sets its own export prices independently of the government and other exporters, provides samples of Minmetals Guangdong's correspondence with a customer (to demonstrate the price negotiation process) attached, and claims that Minmetals Guangdong competes with other PRC castings exporters; and
4. A certificate from the Bank of China stating that Minmetals has an independent foreign exchange account and may freely transfer funds to or from the account.

Minmetals Guangdong's submission also included the following:

1. The company's corporate charter which states, among other things, that the company is a financially independent economic entity responsible for determining its own profits and losses which has independent decision making power regarding all of its financial matters as long as such decisions do not violate the state's laws and regulations; and
2. A certificate from the Commission of Foreign Economic Relations and

Trade of Guangdong Province which states, among other things, that Minmetals Guangdong "is an independent legal person that was set up and is now existing in accordance with the Chinese law."

Based on the information contained in respondent's submission, we have preliminarily determined that Minmetals Guangdong satisfies the criteria established in *Sparklers* and should therefore be assigned a separate rate.

Period of Review

This review covers the period May 1, 1989 through April 30, 1990.

United States Price

In calculating United States price, the Department used purchase price, as defined in section 772 of the Act, because the merchandise was sold to unrelated purchasers for exportation to the United States prior to importation into the United States, and because exporter's sales price (ESP) methodology was not indicated by other circumstances. Purchase price was based on the packed price to unrelated purchasers in the United States. We made deductions for foreign inland freight and ocean freight. In accordance with the policy set forth in our final determination in the investigation of carbon steel wire rod from Poland (49 FR 29434, July 20, 1984), we based the deduction for inland freight charges on freight rates in a market-economy country. Most of the goods were transported from China to the United States aboard market-economy carriers. For the few shipments which were transported aboard non-market-economy carriers, the ocean freight charges were comparable to the charges of the market-economy carriers. Therefore, we based the deduction for ocean freight for all sales on the actual charges submitted by the respondent.

Foreign Market Value

Section 773(c)(1) of the Act provides that the Department shall determine foreign market value (FMV) using a factors of production methodology if (1) the merchandise is exported from an NME country, and (2) the information does not permit the calculation of FMV using home market prices, third country prices, or constructed value under section 773(a).

Pursuant to section 771(18) of the Act and based on determinations in prior proceedings, the PRC is an NME. (See e.g., Final Determination of Sales at Less than Fair Value: Natural Menthol From the People's Republic of China (46 FR 24614, May 1, 1981); Initiation of Antidumping Duty Investigation:

Refined Antimony Trioxide From the People's Republic of China (56 FR 23549, May 22, 1991). Respondents have not refuted this determination. Furthermore, absent a showing that all costs and prices are market-oriented, FMV in an NME cannot be based on home market prices, third country prices, or constructed value under section 773(a). No such showing has been made in the course of this review. As a result, section 773(c) of the Act, as amended by the Omnibus Trade and Competitiveness Act of 1988 ("1988 Act"), requires the Department to determine foreign market value on the basis of the market valuation of the factors of production utilized in producing the subject merchandise (unless the Department determines the available information on factor prices in market economies to be inadequate).

The 1988 Act further permits the Department to value the factors of production in one or more market economy countries that are at a level of economic development comparable to that of the NME and that are significant producers of comparable merchandise.

Of countries known to produce castings, we have determined that India, Pakistan and the Philippines are comparable to the PRC in terms of per capita gross national product (GNP), the growth rate in per capita GNP, and the national distribution of labor. We calculated FMV based on factors of production reported by the Chinese exporter, Minmetals Guangdong. We used information from India and Pakistan to value the various factors of production.

We chose India as the most comparable surrogate on the basis of per capita GNP, the growth rate in per capita GNP, and the national distribution of labor. Where possible, we obtained information for valuing factors of production from publicly available sources in India.

For items for which an Indian price was not available, we assigned a value based on data from Pakistan. Where appropriate, the factor values were adjusted to the period of review using wholesale price indices published by the International Monetary Fund.

The respondent reported the amounts of raw materials and energy needed to manufacture one metric ton of castings. We multiplied each per-ton factor quantity by the value for each component material, and summed the resulting individual raw material values. We then added an amount for direct labor cost. Next, we added an amount for factory overhead. We then added 10 percent, the amount reported by an

Indian company, for general expenses. We next added 10 percent for profit, as reported by the Indian manufacturer, because this figure is higher than the 8 percent statutory minimum for profit. Finally, we added an amount for packing costs to arrive at a constructed foreign market value for a single metric ton of castings. We then compared this value to the exporter's U.S. price for a metric ton of castings.

Use of Best Information Available

We have determined, in accordance with section 776(c) of the Act, that the use of best information available is appropriate for entries of the subject merchandise from exporters other than Minmetals Guangdong.

In deciding what to use as best information available, section 353.37(b) of the Department's regulations provides that the Department may take into account whether a party refused to provide requested information. Thus, the Department determines on a case-by-case basis what is best information available. When a company refuses to provide the information requested in a timely manner, or otherwise significantly impedes the Department's review, the Department will normally assign to that company the highest margin for the subject merchandise of either: (1) The highest margin calculated for that company in any previous review or the original investigation; or (2) the highest calculated margin for any respondent that supplied adequate responses for the current review. In this case, the highest margin is the margin we have calculated for Minmetals Guangdong in the current review. Accordingly, we will assign, as best information available, the margin we calculated for Minmetals Guangdong to all other exports from the PRC.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist:

Exporters	Margin (per- cent)
Guangdong Metals & Minerals Import & Export Corporation	63.28
All others	63.28

The cash deposit rate for all producers or exporters of iron construction castings from the PRC will be that established in the final results of this administrative review. These deposit requirements will be effective upon publication of the final results of this

administrative review for all shipments of iron construction castings from the PRC entered, or withdrawn from warehouse, for consumption on or after that publication date, as provided by section 751(a)(1) of the Act. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Public Comment

In accordance with 19 CFR 353.38, we will hold a public hearing, if requested, at 9:30 a.m. on September 18, 1991 in room 3708, to afford interested parties an opportunity to comment on these preliminary results. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time. Interested parties who wish to request or participate in a hearing must submit a written request within ten days of the date of publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reasons for attending; and, (4) a list of the issues to be discussed.

In addition, ten copies of the business proprietary version and five copies of the non-proprietary version of case briefs must be submitted to the Assistant Secretary no later than September 4, 1991. Ten copies of the business proprietary version and five copies of the non-proprietary version of rebuttal briefs must be submitted to the Assistant Secretary no later than September 11, 1991. An interested party may make a presentation only on arguments included in that party's case or rebuttal brief. If no hearing is requested, interested parties still may comment on these preliminary results in the form of case and rebuttal briefs. Written argument should be submitted in accordance with 19 CFR 353.38 and will be considered if received within the time limits specified in this notice.

This administrative review and notice are in accordance with sections 751(a)(1) of the Act and 19 CFR 353.22(c)(5).

Dated: July 26, 1991.

Francis J. Sailer,
Acting Assistant Secretary for Import Administration.

[FR Doc. 91-18404 Filed 8-1-91; 8:45am]

BILLING CODE 3510-DS-M

[A-588-015]

Television Receivers, Monochrome and Color, From Japan; Preliminary Results of Antidumping Duty Administrative Review

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

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by two domestic parties to the proceeding and one respondent, the Department of Commerce has conducted an administrative review of the antidumping finding on television receivers, monochrome and color, from Japan. The review covers one manufacturer/exporter of this merchandise to the United States, Mitsubishi Electric Corporation and Mitsubishi Electric Sales America, for the period March 1, 1988, through February 28, 1989. The preliminary results indicate the existence of dumping margins for the respondent during the period.

As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the differences between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 2, 1991.

FOR FURTHER INFORMATION CONTACT: Orlando Velez, David Mason, or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2923.

SUPPLEMENTARY INFORMATION:

Background

On April 19, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 18069) the final results of its last administrative review of the antidumping finding on television receivers, monochrome and color, from Japan (36 FR 4597, March 10, 1971). Two domestic parties to the proceeding, Zenith Corporation (Zenith) and the United Electrical Workers of America, Independent International Brotherhood of Electrical Workers, International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL-CIO, and Industrial Union Department, AFL-CIO (the Unions), and certain respondents, including Mitsubishi Electric Corporation and Mitsubishi Electric

Sales America (Mitsubishi), requested that we conduct an administrative review for the period March 1, 1988, through February 28, 1989, in accordance with § 353.22(a) of the Department's regulations. On April 28, 1989, we published a notice of initiation of an administrative review for Fujitsu General, Funai, Hitachi, Matsushita, Mitsubishi, NEC, Sanyo, Victor, Sharp, and Toshiba (54 FR 18320). The Department has already completed the administrative review for several of the parties listed above. At present, the Department is conducting the administrative review for Mitsubishi pursuant to § 751 of the Tariff Act of 1930 (the Tariff Act). Notice of preliminary results for the other parties listed above have been or will be published separately.

On June 28, and December 19, 1989, Mitsubishi submitted its questionnaire response to the Department. Subsequently, we requested and received supplementary information from Mitsubishi. In addition, Zenith made a timely allegation that Mitsubishi made sales in the home market at prices below its cost of production. Pursuant to Zenith's allegations, we initiated a cost investigation. On May 6, 1991, Mitsubishi submitted its cost questionnaire response to the Department.

Scope of the Review

Imports covered by this review are shipments of television receivers, monochrome and color, from Japan. Television receivers include, but are not limited to, units known as projection televisions, receiver monitors, and kits (containing all parts necessary to receive a broadcast television signal and produce a video image). Not included are certain monitors not capable of receiving a broadcast signal, certain combination units, and certain subassemblies not containing the components essential for receiving a broadcast television signal and producing a video image. Prior to January 1, 1989, television receivers, monochrome and color, were classifiable under item numbers 684.9230, 684.9232, 684.9234, 684.9236, 684.9238, 684.9240, 684.9245, 684.9246, 684.9248, 684.9250, 684.9252, 684.9253, 684.9255, 684.9256, 684.9258, 684.9262, 684.9263, 684.9265, 684.9270, 684.9275, 684.9400, and 684.9655 of the Tariff Schedules of the United States Annotated (TSUSA). As of January 1, 1989, this merchandise is classifiable under Harmonized Tariff Schedules (HTS) item numbers 8528.10.80, 8528.11.60, and 8528.20.00. The TSUSA and HTS item numbers are provided for

convenience and Customs purposes. The written description remains dispositive.

This review covers one manufacturer and/or exporter of Japanese television receivers, monochrome and color, for the period March 1, 1988, through February 28, 1989.

United States Price

In calculating United States price for Mitsubishi, the Department used exporter's sales price (ESP), as defined in § 772 of the Tariff Act. ESP was based on delivered prices to unrelated purchasers in the United States. We made adjustments, as applicable, for ocean freight, marine insurance, U.S. and Japanese inland freight, Japanese inland insurance, U.S. and foreign brokerage fees, U.S. duties, discounts, rebates, credit, royalties, warranties, inventory carrying costs, interest costs for the period of transit, selling expenses incurred in Japan for U.S. sales, and the U.S. subsidiary's selling expenses. Where appropriate, we added an amount to U.S. price to account for the Japanese commodity taxes which were rebated or not collected by reason of exportation of the merchandise to the United States, as specified in section 772(d)(1)(C) of the Tariff Act.

Foreign Market Value

In calculating foreign market value for Mitsubishi, we used home market price, as defined in section 773 of the Tariff Act.

Zenith alleged that Mitsubishi sold televisions in the home market at prices below the cost of production. We considered the allegations sufficient to warrant an investigation of possible sales below cost of production. When more than 10 percent of the sales of a particular model are determined to be below cost, we exclude those sales from our FMV calculation. In this case, we found it unnecessary to exclude sales in the home market.

We made adjustments, as applicable, for inland freight and insurance, discounts, credit expenses, sales promotions, advertising, warranties, royalties, differences in the physical characteristics of the merchandise, differences in commodity tax amounts, packing charges, and indirect selling expenses not exceeding the amount of U.S. indirect selling expenses.

Preliminary Results of Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margin exists for the period March 1, 1988, through February 28, 1989:

Manufacturer/exporter	Margin (percent)
Mitsubishi	2.68

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication of this notice, or the first workday thereafter. Interested parties may submit case briefs and/or written comments not later than 30 days after the date of publication. Rebuttal briefs, limited to issues raised in case briefs, may be filed not later than 37 days after the date of publication. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written comments or at a hearing.

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 percentage stated below. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated dumping duties of 35.40 percent, based on the margin for Mitsubishi in the March 1, 1989, through February 28, 1990 review period, will be required for Mitsubishi. For any future entries of this merchandise from an exporter not covered in this or in prior reviews, and who is unrelated to any reviewed firm or any previously reviewed firm, a cash deposit of 17.07 percent, based on the final results of the March 1, 1989 through February 28, 1990 administrative review, shall be required. These deposit requirements are effective for all shipments of Japanese television receivers, monochrome and color, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and this notice are in accordance with § 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Commerce regulations (19 CFR 353.22) (1990).

Dated: July 26, 1991

Erie I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-18405 Filed 8-1-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-569-015]

Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of final results of Antidumping Duty Administrative review.

SUMMARY: On June 6, 1991, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on television receivers, monochrome and color, from Japan. The review covers one manufacturer/exporter of this merchandise to the United States, the Sharp Corporation, and the periods March 1, 1986, through February 28, 1987, and March 1, 1988, through February 28, 1989.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received and the correction of certain clerical errors, we have changed the final results. The final margins range from 20.94 percent to 30.76 percent.

EFFECTIVE DATE: August 2, 1991.

FOR FURTHER INFORMATION CONTACT: Zev Primor or Melissa Skinner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-4851.

SUPPLEMENTARY INFORMATION:

Background

On June 6, 1991, the Department of Commerce (the Department) published in the *Federal Register* (56 FR 26061) the preliminary results of its antidumping duty administrative review of the antidumping finding on television receivers, monochrome and color, from Japan (36 FR 4597, March 10, 1971). We have now completed this administrative review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

Scope of Review

Imports covered by the review are shipments of television receivers, monochrome and color, from Japan. Television receivers include, but are not limited to, units known as projection televisions, receiver monitors, and kits (containing all parts necessary to receive a broadcast television signal and produce a video image). Not included are certain monitors not capable of receiving a broadcast signal, certain combination units, and certain

subassemblies not containing the components essential for receiving a broadcast television signal and producing a video image. Prior to January 1, 1989, television receivers, monochrome and color, were classifiable under item numbers 684.9230, 684.9232, 684.9234, 684.9236, 684.9238, 684.9240, 684.9245, 684.9246, 684.9248, 684.9250, 684.9252, 684.9253, 684.9255, 684.9256, 684.9258, 684.9262, 684.9263, 684.9265, 684.9270, 684.9275, 684.9400, and 684.9655 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under item numbers 8528.10.80 and 8528.20.00 of the Harmonized Tariff Schedule (HTS). The TSUSA and HTS item numbers are provided for convenience and Customs purposes only. The written description remains dispositive.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received timely comments from Sharp Corporation (Sharp) and two domestic interested parties, Zenith Electronics Corporation (Zenith) and Montgomery Ward & Co., Incorporated (Montgomery Ward).

In this final determination, we have corrected the following clerical errors: (1) The equation calculating the commodity tax base in the exporter's sales price (ESP) computer programs; (2) the adjustment in the indirect selling expenses; and (3) the U.S. interest rates used in the calculation of the credit and inventory carrying-cost expenses.

Comment 1: Zenith states that the Department's treatment of Japanese commodity taxes rebated or not collected by reason of exportation of the merchandise was unlawful. According to Zenith, the Department added the full amount of the tax to U.S. price, and made a circumstance-of-sale (COS) adjustment to foreign market value (FMV) for the difference between the amount of Japanese and U.S. tax. Zenith argues that the Court of International Trade (CIT) in *Zenith Electronics Corp. v. United States*, 755 F. Supp. 397 (1990) (as clarified by the Court order dated February 20, 1991) (*Zenith* and in *Daewoo Electronics Co. v. United States*, 712 F. Supp. 931 (1989) (*Daewoo*), ruled that the Department must cap the amount of commodity or consumption tax added to U.S. price at the amount of tax added to FMV, and that the Department is forbidden from neutralizing the tax adjustment to U.S. price by making COS adjustment to FMV for differences in taxes.

Department's Position: We do not agree with the CIT in *Zenith* or *Daewoo*,

but have not had an opportunity to appeal the issue on its merits. Consistent with our longstanding practice, we have not attempted to measure the amount of tax "passed-through" to customers in the home market. We do not agree that the statutory language limiting the amount of adjustment to the amount of tax "added to or included in the price" of color televisions (CTVs) in the home market requires the Department to measure the incidence of tax.

Because we believe that dumping margins should neither be inflated nor deflated by differences between Japanese taxes and constructed taxes applied to U.S. price, we do not agree with the CIT's position on adjustments for differences in commodity taxes. After calculating the amount of commodity and consumption tax and adding it to U.S. price, we make an adjustment to FMV for the differences in taxes by deducting the Japanese consumption and commodity tax from FMV and replacing it with the constructed U.S. commodity and consumption tax. This method has the same effect on the absolute margin calculated as would capping the amount of U.S. tax added to U.S. price. See our responses to Comment 1 in *Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Review* (56 FR 12702, March 27, 1991) and our response to Comment 4 in *Color Television Receivers, Except for Video Monitors, from Taiwan; Final Results of Antidumping Duty Administrative Review* (56 FR 31380, July 10, 1991).

Comment 2: Zenith argues that the Department should take into account the average age and balance of each account payable relating to home market sales, and apply the respondent's short-term interest rate to those average ages and balances to offset all claimed selling expenses. Zenith maintains that the true cost of a discount or rebate is the discount or rebate amount minus the savings the respondent realized by paying the rebate or discount after the obligation to pay has been incurred.

Department's Position: We disagree with Zenith. We avoid imputing expenses or costs when a company quantifies or documents its actual expenses, and when the company's quantification accurately reflects the expense to the seller. Since we have determined that Sharp accurately quantified its home market selling expenses, and that its claims accurately reflected these expenses, we have not reduced them by the amount of any

savings realized as a result of delayed payment. See our response to Comment 2 in Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Reviews (54 FR 13918, April 6, 1989).

Comment 3: Zenith argues that the Department should deduct antidumping-related legal expenses from exporter's sales price (ESP). According to Zenith, these expenses are selling expenses because they are incurred as a result of a respondent selling the merchandise under review in the United States at prices below FMV. Moreover, Zenith argues that there is no basis for retaining in ESP legal expenses incurred as a result of an antidumping proceeding when all other legal expenses incurred by a foreign company's U.S. subsidiary are deducted from ESP.

Department's Position: We disagree with Zenith. As we have stated in previous reviews of this order, and of the antidumping duty orders on color television receivers from the Republic of Korea and Taiwan, we do not consider legal expenses incurred in defending against an allegation of dumping to be expenses incurred in selling the merchandise in the United States. As a result, we have not deducted these expenses from ESP in these final results. Also, see our response to Comment 4 in Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Reviews (54 FR 13919, April 6, 1989). We note, however, that whereas Zenith criticized the Department in Comment 1 for failing to follow the CIT opinion in *Zenith*, in this instance, it is urging the Department to disregard the CIT opinion regarding this issue in *Daewoo*.

Comment 4: Zenith argues that the Department should deduct from U.S. price payments of estimated antidumping duties and any expenses related to such payments. According to Zenith, these items should be deducted from U.S. price along with the estimated ordinary duties paid because the statute specifically requires that "United States import duties" be deducted from U.S. price.

Department's Position: We disagree with Zenith. As we have stated in previous reviews of this finding, we believe that using estimated amounts of antidumping duties in our calculations would result in inaccurate margins. We do not consider payments of estimated antidumping duties to be expenses related to the sales of the merchandise under consideration for this review period. Further, given the possibility that these estimated duties could vary significantly from duties that may be assessed, we do not consider them to be

"expenses" within the meaning of section 772(d)(2)(A) of the Tariff Act for purposes of determining U.S. price. Finally, estimated duties and duties assessed are paid by the importer who is, in some cases, unrelated to the party whose sales are under review. We have, therefore, not deducted estimated duties from U.S. price in these final results. See our response to Comment 5 in Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Reviews (54 FR 13919, April 6, 1989), our response to Comment 6 in Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Review (56 FR 12703, 12704, March 27, 1991), and our response to Comment 8 in Color Television Receivers, Except for Video Monitors, from Taiwan; Final Results of Antidumping Duty Administrative Review (56 FR 31380, July 10, 1991).

Comment 5: Zenith contends that the Department erroneously treated selling commissions in the United States as though they consisted entirely of indirect selling expenses. According to Zenith, commissions compensate the recipient for both direct and indirect selling expenses incurred on behalf of the respondent. Zenith argues that, since FMV has already been adjusted for direct selling expenses, an offset to FMV comprised of indirect selling expenses up to the full amount of the U.S. commission overcompensates for the indirect portion of the commission, and effectively negates the deduction from U.S. price of the direct expense portion of the commission.

Department's Position: We disagree with Zenith. Section 353.56(b)(1) of our regulations requires us to make an adjustment for situations in which a commission is paid in one market, but not in the other market. That adjustment is limited to "the amount of the other selling expenses" allowed in the other market. We do not interpret this regulation as requiring us to limit the offset to a specific portion of the expenses of the commissionaire. Indeed, it is not necessary to examine how the recipient of the commissions spends the money because, to the seller, such monies represent direct expenses incurred as a result of that particular sale. We have, therefore, offset the full amount of the U.S. commissions in these final results. See our response to Comment 6 in Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Reviews (54 FR 13919, April 6, 1989), our response to Comment 9 in Color Television Receivers, Except for Video Monitors, from Taiwan; Final

Results of Antidumping Duty Administrative Review (56 FR 31381, July 10, 1991), and our response to Comment 7 in Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Review (56 FR 12704, March 27, 1991).

Comment 6: Zenith asserts that the Department may have improperly used home market indirect expenses that are not selling expenses as an offset to U.S. indirect selling expenses. Zenith states that the Department should require an affirmative demonstration from Sharp that all home market indirect expenses it has claimed as ESP offsets are actually selling expenses, and not general and administrative expenses.

Department's Position: We disagree with Zenith. As we have stated in previous reviews of this case, the pool of indirect selling expenses in the home market should include those expenses which are similar to the expenses incurred by the U.S. subsidiary, whose function it is to sell merchandise. We do not interpret our regulations as requiring that indirect selling expenses in the home market be limited to selling expenses in sales offices, and as excluding general and administrative expenses incurred by those offices. Accordingly, the equivalent home market expenses are those which are incurred by the home market selling division in support of the home market sales effort and which include certain general expenses associated with selling. Therefore, we believe that Sharp did not overstate its home market selling expenses, and we have used all these expenses in calculating the ESP offset for these final results. See our response to Comment 3 in Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Reviews (54 FR 13919, April 6, 1989) and our response to Comment 4 in Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Review (56 FR 12703, March 27, 1991).

Comment 7: Zenith contends that it is unclear whether constructed value (CV) does or does not include discounts, rebates, or commodity and consumption taxes. According to Zenith, these items must be included among the "general expenses" component of CV because the statute requires that these general expenses encompass what usually reflected in sales. Because Sharp acknowledges that discounts, rebates, and commodity and consumption taxes are included in the selling price of the merchandise, and because the

Department routinely adjusts for these items under its authority to adjust for differences in circumstances of sale, Zenith argues that they are "general expenses" as defined in the statute, and should, therefore, be included in CV.

Department's Position: We disagree with Zenith that these expenses should be included in CV. As we have stated in previous reviews, we do not consider discounts and rebates to be selling expenses; we consider them to be adjustments to price. Pursuant to the statute, the Department constructs an ex-factory value which consists of the sum of the cost of manufacture (COM), selling, general and administrative (SGA) expenses, profit on home market sales, and the cost of packing the merchandise for shipment to the United States. In order to make an "apples-to-apples" comparison of this surrogate FMV to U.S. price, all taxes, rebates, and discounts are removed from U.S. price and no tax is added thereto. As a result, we have not included discounts, rebates, and commodity taxes in our calculations of CV for these final results. See our response to Comment 20 in Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Reviews (56 FR 5396, February 11, 1991), and our response to Comment 9 in Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Review (56 FR 12704, 12705, March 27, 1991).

Comment 8: Sharp argues that the Department should have used Sharp's prices to its home market distributors to calculate FMV or, alternatively, that the Department should have granted a level-of-trade adjustment for the SGA expenses of the distributors since all of the comparable expenses of Sharp's U.S. distributors were deducted from the resale price in the United States. Montgomery Ward, which imported subject merchandise from Sharp, presents a similar argument.

Department's Position: We determined that the distributor-to-dealer level in Japan was an appropriate level for price comparisons because there was no clear evidence that home market prices to the company's related distributors were comparable to prices to unrelated parties. See 19 CFR 353.45. Other than what it submitted in previous reviews, where we similarly disallowed this adjustment, Sharp submitted no evidence in this administrative review to support its argument. As a result, we compared sales in the United States and the home market at the same level of trade, i.e., sales from distributors to dealers. Thus, there is clearly no need

for an adjustment for differences in level of trade. We note that we have included in the ESP offset the indirect SGA expenses incurred by the distributors for the sale of home market models as is our usual practice and policy. (See also 54 FR 35517, August 28, 1989; 55 FR 35916, September 4, 1990, Comment 10; and 56 FR 16069, April 19, 1991, Comment 2).

Comment 9: Sharp and Montgomery Ward claim that the Department failed to make a COS adjustment for home market indirect SGA expenses in calculating margins for purchase price (PP) sales.

Department's Position: The Department's regulations do not provide for a COS adjustment for indirect home market SGA expenses in the case of PP sales, except in situations where the PP sales include the payment of a commission, as described in 19 CFR 353.56(b)(1). In this case, there were no commissions associated with the U.S. sales. Therefore, no adjustment is warranted.

Comment 10: Sharp argues that the Department should have used a lower Japanese interest rate, rather than a U.S. short-term interest rate, when calculating the imputed U.S. credit and inventory carrying-cost expenses for ESP transactions. Sharp argues that in *LMI—La Metalli Industriale S.p.A. v. United States* 912 F.2d 455, 460 (Fed. Cir. 1990) (*LMI*), the Court concluded that "it is reasonable to assume that a corporation will finance its operations with the cheapest money available". Sharp states that it should be allowed to use the lowest interest rate available during the review period, regardless of the market in which the interest expenses would have been incurred. Sharp goes on to argue that as an alternative to using the lower Japanese rate, the Department should use the actual U.S. reported credit expenses.

Department's Position: We disagree. It is the Department's practice to apply the U.S. subsidiary's short-term interest rate to ESP sales when calculating the ESP credit and inventory carrying-cost adjustments. Sharp presented no evidence that its U.S. subsidiary received, or had access to, financing in Japan, and thus the Department used the average U.S. prime rate in effect at the time of the reviews. Moreover, Sharp's contention that we should have used actual U.S. reported credit expenses is without merit because, as noted in its questionnaire responses and the brief, Sharp realized no U.S. credit expenses during these review periods.

Sharp's attempt to rely on the *LMI* decision is also misplaced. The *LMI* decision was based on PP transactions

where no U.S. subsidiary existed. In the *LMI* decision, the Court found that since the respondent, *LMI*, could secure funds at a lower rate in the United States and did in fact do so, the U.S. interest rate should be applied to these PP sales. In this review, Sharp's U.S. subsidiary is responsible for ESP transactions. We attribute imputed interest expenses and inventory carry-cost to the location where they would be incurred, i.e., at Sharp's facilities in the United States, and, therefore, we applied the U.S. short-term interest rate to these sales. (See Final Determination of Sales at Less than Fair Value: Active-Matrix Liquid Crystal High Information Content Flat Panel Displays and Display Glass Therefor from Japan (56 FR 32395, July 16, 1991) and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and certain Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Review (56 FR 26054, June 6, 1991).)

Comment 11: Sharp argues that the Department must recalculate U.S. indirect expenses to include all the expenses of moving television receivers from factory sites in Japan to U.S. warehouses.

Department's Position: We disagree. As we stated in our last two reviews of Sharp, the statute provides that USP shall be reduced by the amount included in such price attributable to any movement charges. We consider charges incident to transporting the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States to be movement expenses, not indirect selling expenses. We deduct movement expenses from the selling prices in the United States (19 U.S.C. 772(d)(2)(A)) and home market (19 U.S.C. 733(a)) to ensure "apples-to-apples" comparisons.

Comment 12: Sharp claims that certain U.S. sales reported at zero or negative prices should be ignored because they are not in the ordinary course of trade.

Department's Position: We disagree. In its case brief of July 8, 1991, Sharp provided no explanation for the sales at zero or negative prices. Sharp merely argued that the fact that these transactions showed zero or negative prices established that they were "clearly" outside the ordinary course of trade. In its rebuttal brief of July 15, 1991, Sharp argues that these sales were provided "... to non-TV customers as a temporary promotion for the sale of non-TV items," however, Sharp provided no further information to support this contention. Sharp did not raise this argument until after the preliminary results were issued, and has provided

little more than affirmative statements in support of its contention. Consequently, we have included the U.S. sales with zero or negative prices in our calculations.

Comment 13: Montgomery Ward claims that it was unfairly penalized due to inordinate delays in the review of this antidumping finding. Specifically, Montgomery Ward is concerned about the potentially high payment of antidumping duties when, at the time of importation of Sharp's television sets, the estimated deposit rate was zero.

Department's Position: We disagree. An antidumping administrative review is, by its very nature, a retroactive proceeding. It reviews sales made in the United States after they were completed. Moreover, duty deposit rates are estimated rates and are subject to final determination. Despite the alleged delays in reviewing Montgomery Ward's sales, the Department is required by statute to determine final, and if necessary higher, antidumping duty rates.

Final Results of the Review

As a result of the comments received and the correction of certain clerical errors, we have revised our preliminary results for Sharp, and we determine the margins to be:

Manufacturer	Review No.	Period of review	Margin (percent)
Sharp	8	03/01/86-02/29/87	20.94
Sharp	10	03/01/88-2/29/89	30.76

The Department shall determine, and the Customs Service will 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.

Further, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties of 30.76 percent will be required for Sharp. For any shipments of this merchandise manufactured by Funai, Fujitsu General, Hitachi, Matsushita, Mitsubishi, NEC, Sanyo, Seiko Epson, Toshiba, Casio, Citizen, or Victor, the cash deposit will continue to be the same as the rates published in the final results of the last administrative reviews for these firms (56 FR 5392, February 11, 1991). For all other exporters/manufacturers not related to Sharp, or any previously reviewed firm, a cash deposit of 17.07 percent shall be required. These cash deposit requirements will be effective

for all shipments of Japanese television receivers, monochrome or color, entered or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 29, 1991.

Eric I. Garfinkel,
Assistant Secretary for Import
Administration.

[FR Doc. 91-18406 Filed 8-1-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-405]

Certain Textile Mill Products From Mexico; Preliminary Results of Countervailing Duty Administrative Review

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

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on certain textile mill products from Mexico for the period January 1, 1989 through December 31, 1989. We preliminarily determine the total bounty or grant to be zero or *de minimis* for 30 companies, 55.73 percent *ad valorem* for Atoyac Textil, S.A. de C.V., and 1.76 percent *ad valorem* for all other companies. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: August 2, 1991.

FOR FURTHER INFORMATION CONTACT: Dana S. Mermelstein or Barbara E. Tillman, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On March 28, 1990, the Department of Commerce (the Department) published a notice of "Opportunity to Request Administrative Review" (55 FR 11417) for the countervailing duty order on certain textile mill products from Mexico (50 FR 10824; March 18, 1985). On March 29, 1990, Tapetes Luxor, S.A. de C.V., an exporter of certain textile mill products from Mexico, requested an administrative review of the order for the period January 1, 1989 through

December 31, 1989. On March 30, 1990, the Government of Mexico, Barth & Dreyfuss, an importer of certain textile mill products from Mexico, and Productora Textil San Marcos, S.A. de C.V., an exporter of certain textile mill products from Mexico, also requested a review for this period. We initiated the review on April 27, 1990 (55 FR 17792). The Department has now conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by this review are shipments of certain textile mill products from Mexico. During the review period, such merchandise was classifiable under item numbers of the Harmonized Tariff Schedule listed in the attached appendix.

The review covers the period January 1, 1989 through December 31, 1989, and nine programs.

Calculation Methodology for Assessment and Cash Deposit Purposes

In calculating the benefits received during the review period, we followed the methodology described in the preamble to 19 CFR 355.20(d) (53 FR 52325; December 27, 1988). First, we calculated a country-wide rate, weight-averaging the benefits received by the 38 companies subject to review to determine the overall subsidy from all countervailable programs benefitting exports of the subject merchandise to the United States. Because the country-wide rate was above *de minimis*, as defined by 19 CFR 355.7, we proceeded to the next step in our analysis and examined the *ad valorem* rate we had calculated for each company for all countervailable programs combined, to determine whether individual company rates differed significantly from the weighted-average country-wide rate. Thirty companies received aggregate benefits which were zero or *de minimis* (significantly different within the meaning of 19 CFR 355.22(d)(3)(ii)); one company, Atoyac Textil, S.A. de C.V., received aggregate benefits which were otherwise significantly different in accordance with 19 CFR 355.22(d)(3)(i). These 31 companies must be treated separately for assessment and cash deposit purposes.

The remaining seven companies received aggregate benefits from all countervailable programs combined which were not significantly different from the weighted-average country-wide rate; their rates were used in the calculation to establish the "all other" rate for the review period. See, e.g.,

Final Results of Countervailing Duty Administrative Review; Porcelain-on-Steel Cookingware from Mexico (56 FR 26064; June 6, 1991) and Final Results of Countervailing Duty Administrative Review; Ceramic Tile from Mexico (56 FR 27496; June 14, 1991).

Analysis of Programs

(1) FOMEX

The "Fund for the Promotion of Exports of Mexican Manufactured Products" (FOMEX) is a trust of the Mexican Treasury Department, with the National Bank of Foreign Trade acting as trustee for the program. The National Bank of Foreign Trade, through financial institutions, makes FOMEX loans available at preferential rates to manufacturers and exporters for two purposes: pre-export financing and export financing. We consider both pre-export and export FOMEX loans to provide countervailable export bounties or grants because these loans are given at preferential rates, only on merchandise destined for export.

We found that the annual rate charged to the textiles exporters with peso-denominated FOMEX pre-export loans with interest due during the review period ranged from 34.8 percent to 54.7 percent; the annual rate for dollar-denominated FOMEX pre-export loans with interest due during the review period ranged from 10.3 to 11.6 percent. The annual rate for dollar-denominated FOMEX export loans received during the review period ranged from 9.1 to 11.3 percent. FOMEX export loans are available only in dollars.

We consider the benefit from loans to occur when the interest is paid. Because interest on FOMEX pre-export loans is paid at maturity, we calculated benefits based on loans that matured during the review period; these were obtained between July 1988 and November 1989. Interest on FOMEX export loans is pre-paid; we therefore calculated benefits based on FOMEX export loans received during the review period.

As a basis for our benchmark for peso-denominated FOMEX loans, we have relied in part on the effective rates published for the years 1981 through 1984, as published monthly in the Banco de Mexico's *Indicadores Economicos y Moneda* (I.E.), because the Banco de Mexico stopped publishing data on nominal and effective commercial lending rates after 1984. We calculated the average difference between the nominal Costo Porcentual Promedio (CPP) rates (the average short-term cost of funds to banks), and the I.E. effective rates for the period 1981 through 1984.

We added this average difference to the 1988 and 1989 CPP rates. In the last administrative review, we determined that a benchmark for peso-denominated loans calculated on a quarterly basis was more appropriate than an annual benchmark because the CPP rates fluctuated greatly during 1988. Hence we calculated a quarterly average monthly benchmark of 4.18 percent for pre-export peso-denominated loans received in the fourth quarter of 1988. See, e.g., Preliminary Results of Countervailing Duty Administrative Review; Certain Textile Mill Products from Mexico (56 FR 26065, June 6, 1991). In 1989, the CPP rates were stable; therefore, we calculated an annual average monthly benchmark of 4.36 percent for peso-denominated FOMEX loans. To determine the effective interest rate benchmark for 1989 dollar-denominated loans, we used an average of the quarterly weighted-average effective interest rates published in the Federal Reserve Bulletin, which was 11.99 percent in 1989.

We found that many textiles exporters used peso- and dollar-denominated FOMEX pre-export and dollar-denominated export financing during the review period. Because we found that the exporters were able to tie their FOMEX loans to specific countries, we measured the benefit only from FOMEX loans tied to sales of subject merchandise to the United States. We allocated each company's FOMEX benefit over the value of its total exports of the subject merchandise to the United States during the review period. We then weight-averaged the resulting benefits by each company's proportion of exports of the subject merchandise to the United States, excluding companies with significantly different aggregate benefits. (See section on "Calculation Methodology for Assessment and Duty Deposit Purposes" above.) On this basis, we preliminarily determine the benefit from this program to be zero or *de minimis* for 30 companies, 0.06 percent *ad valorem* for Atoyac Textil, S.A. de C.V., and 0.34 percent *ad valorem* for all other companies.

(2) FOGAIN

The Guarantee and Development Fund for Medium and Small Industries (FOGAIN) is a program that provides long-term loans to small- and medium-sized companies in Mexico. Although FOGAIN loans are available to all small- and medium-sized companies in Mexico, the interest rates available under the program vary depending upon whether a company has been granted priority status, and whether a company is located in a zone targeted for

industrial growth; as a result, some companies get more beneficial rates than others. Therefore, to the extent that this program provides financing at rates below the lowest non-specific rate available under FOGAIN, we consider it countervailable. See, e.g., Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Certain Textile Mill Products from Mexico (50 FR 10824; March 18, 1985).

During the review period, three companies had long-term variable-rate FOGAIN loans on which interest payments were due. Because the annual interest rate varied monthly, we treated each loan as a series of short-term loans.

To calculate the benefit, we used as our benchmark the least beneficial interest rate in effect for each FOGAIN loan payment and compared it to the FOGAIN preferential rate for the loan payments made during the review period. We divided the benefit from the loans by each company's total sales to all markets and then weight-averaged the resulting benefit by each company's proportion of total exports of the subject merchandise to the United States during the review period. On this basis, we preliminarily determine the benefit from this program to be 0.14 percent *ad valorem* for Apolo Textil, S.A. de C.V., 0.22 percent *ad valorem* for Telas VYC, S.A. de C.V., 0.08 percent *ad valorem* for Textiles del Hogar San Marcos, S.A. de C.V., zero for Atoyac Textil, S.A. de C.V., and zero for all other companies.

(3) FONEI

The Fund for Industrial Development (FONEI), administered by the Banco de Mexico, is a specialized financial development fund that provides long-term loans at below-market rates. FONEI loans are available under various provisions having different eligibility requirements. The plant expansion provision is designed for the creation, expansion, or modernization of enterprises in order to promote efficient production of goods to compete in the international market or to meet the objectives of the National Development Plan (NDP), which include industrial decentralization. We consider this FONEI loan provision to confer a bounty or grant because it restricts loan benefits to those enterprises located outside Zone IIIA (Mexico City and designated areas around Mexico City). See, e.g., Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Certain Textile Mill Products from Mexico (50 FR 10824; March 18, 1985).

Two companies had variable-rate, peso-denominated FONEI loans on which interest was due during the review period. These loans were used for investment. We treated these variable rate loans as a series of short-term loans. To calculate the benefit, we used the same benchmark as for the FOMEX peso-denominated pre-export loans and compared it with preferential interest rates in effect for each FONEI loan payment made during the review period. We divided the benefit from the loans by each company's total sales to all markets and then weight-averaged the resulting benefit by each company's proportion of exports of subject merchandise to the United States during the review period. On this basis, we preliminarily determine the benefit from this program to be 0.11 percent *ad valorem* for Bemis Craftil, S.A. de C.V., 0.07 percent *ad valorem* for Productora Textil San Marcos, S.A. de C.V., zero for Atoyac Textil, S.A. de C.V., and zero for all other companies.

(4) PITEX

The Program for Temporary Importation of Products used in the Production of Exports (PITEX) was established by a decree published in the *Diario Oficial* on May 9, 1985, and amended in the *Diario Oficial* on September 19, 1986, and May 3, 1990. The program is jointly administered by the Ministry of Commerce and Industrial Development (SECOFI) and the Customs Administration. Under PITEX, manufacturers with a proven export record may receive authorization to temporarily import merchandise to be used in the production of exports for up to five years without having to pay the import duties normally applicable to those imports. PITEX allows for the exemption of import duties for the following categories of merchandise used in export production: raw materials, packing materials, fuels and lubricants, machinery used to manufacture products for export, and other machinery. The importer must post a bond or other security to guarantee the reexportation of the temporary imports.

Nine companies used PITEX during the review period for temporary imports of merchandise that was both physically incorporated into exported products and not physically incorporated into exported products. The Department does not consider the non-excessive exemption, remission, deferral or drawback of import charges levied on goods that are physically incorporated in the exported products (making normal allowances for waste) to confer a countervailable benefit. Non-excessive duty drawback is a practice acceptable

under U.S. countervailing duty law and consistent with Item (i) of the Illustrative List of Export Subsidies appended to the Agreement on the Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade (Subsidies Code). Therefore, we preliminarily determine that PITEX provides countervailable benefits to the extent that it provides duty exemptions on temporary imports of merchandise not physically incorporated into the exported products.

To calculate the benefit from this program, we first calculated the duties that should have been paid on the non-physically incorporated items that were imported under the PITEX program during the review period. We then divided that amount by each company's total exports. We then weight-averaged the resulting benefits by each company's proportion of exports of subject merchandise to the United States, excluding companies with significantly different aggregate benefits. On this basis, we preliminarily determine the benefit from this program to be zero or *de minimis* for 30 companies, 55.67 percent *ad valorem* for Atoyac Textil, S.A. de C.V., and 1.43 percent *ad valorem* for all other companies.

(5) Other Programs

We also examined the following programs and preliminarily determine that exporters of certain textile mill products did not use them during the review period:

- (A) Certificates of Fiscal Promotion (CEPROFI);
- (B) Article 15 Loans;
- (C) Bancomext loans;
- (D) State Tax Incentives; and
- (E) Import Duty Reductions and Exemptions.

Firms Not Receiving Benefits

We preliminarily determine that the following firms have received zero or *de minimis* total benefits:

- (1) Abetex, S.A. de C.V.
- (2) Apolo Textil, S.A. de C.V.
- (3) Bemis Craftil, S.A. de C.V.
- (4) Celanese Mexicana, S.A. de C.V.
- (5) Comercializadora de Textiles, S.A. de C.V.
- (6) Crisol Textil, S.A. de C.V.
- (7) Derivados Acrilicos, S.A. de C.V.
- (8) Encajes Mexicanos, S.A. de C.V.
- (9) Estambres Millor, S.A. de C.V.
- (10) Exportaciones Diaz, S.A. de C.V.
- (11) Fabrica de Hilados y Tejidos SINDEC, S.A.
- (12) Fibras Sinteticas, S.A. de C.V.
- (13) Fieltrros Finos, S.A. de C.V.
- (14) Glasmex, S.A. de C.V.
- (15) Grupo HYTT, S.A. de C.V.
- (16) Hilaturas de la Laguna, S.A. de C.V.

- (17) Hilaturas Lerma, S.A. de C.V.
- (18) Hilos Timon, S.A. de C.V. (formerly Hilaturas Maya, S.A. de C.V.)
- (20) Milyon, S.A. de C.V.
- (21) Nanco, S.A. de C.V.
- (22) Nueva Nacional Textil Manufacturera del Salto, S.A. de C.V.
- (23) Portafelt de Mexico, S.A. de C.V.
- (24) Productora Textil San Marcos, S.A. de C.V.
- (25) Ryltex, S.A. de C.V.
- (26) Santiago Textil, S.A. de C.V.
- (27) Tamacani, S.A. de C.V.
- (28) Telas VYC, S.A. de C.V.
- (29) Terpel, S.A. de C.V.
- (30) Textiles del Hogar San Marcos, S.A. de C.V.

Preliminary Results of Review

As a result of our review, we preliminarily determined the total bounty or grant to be zero or *de minimis* for 30 companies, 55.73 percent *ad valorem* for Atoyac Textil, S.A. de C.V., and 1.76 percent *ad valorem* for all other companies during the period January 1, 1989 through December 31, 1989.

Upon completion of this review, the Department intends to instruct Customs to liquidate, without regard to countervailing duties, shipments of this merchandise from the 30 companies listed above, and to assess countervailing duties of 55.73 percent of the f.o.b. invoice price on shipments of this merchandise from Atoyac Textil, S.A. de C.V. and 1.76 percent of the f.o.b. invoice price on shipments of this merchandise from all other companies exported on or after January 1, 1989 and on or before December 31, 1989.

Further, the Department intends to instruct Customs to waive the cash deposit of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on shipments of this merchandise from the 30 companies listed above, and to collect a cash deposit of 55.73 percent of the f.o.b. invoice price on shipments of this merchandise from Atoyac Textil, S.A. de C.V. and 1.76 percent of the f.o.b. invoice price on shipments of this merchandise from all other companies entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than ten days from 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 of this notice. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing

the case brief. Any hearing, if requested, will be held seven days after the scheduled date for the submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 355.38(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 355.22.

Dated: July 26, 1991.

Eric I. Garfinkel,
Assistant Secretary for Import
Administration.

Appendix

Certain Textile Mill Products From Mexico C-201-405

Harmonized Tariff System (HTS) Numbers 1989 Administrative Review

3918.10.32	3921.12.19	3921.13.19	3921.90.19
3921.90.21	4008.21.00	4010.10.10	5106.10.00
5106.20.00	5107.10.00	5107.20.00	5108.10.60
5108.20.60	5109.10.60	5109.90.60	5111.11.60
5111.19.20	5111.19.60	5111.20.60	5111.30.60
5112.19.60	5112.20.00	5112.30.00	5204.11.00
5204.19.00	5204.20.00	5205.11.10	5205.12.10
5205.12.20	5205.13.10	5205.13.20	5205.14.10
5205.22.00	5205.23.00	5205.24.00	5205.25.00
5205.31.00	5205.32.00	5205.33.00	5205.34.00
5205.42.00	5205.43.00	5205.44.00	5206.11.00
5206.12.00	5206.13.00	5206.14.00	5206.15.00
5206.31.00	5206.32.00	5206.33.00	5206.34.00
5206.35.00	5206.41.00	5206.42.00	5206.43.00
5206.44.00	5206.45.00	5207.10.00	5207.90.00
5208.11.20	5208.12.40	5208.13.00	5208.19.40
5208.21.20	5208.21.40	5208.22.40	5208.22.60
5208.23.00	5208.29.40	5208.29.60	5208.31.40
5208.31.60	5208.31.80	5208.32.30	5208.32.40
5208.32.50	5208.33.00	5208.39.20	5208.39.60
5208.39.80	5208.41.40	5208.41.60	5208.41.80
5208.42.30	5208.42.40	5208.42.50	5208.43.00
5208.49.40	5208.51.40	5208.51.60	5208.51.80
5208.52.30	5208.52.40	5208.52.50	5208.53.00
5208.59.20	5208.59.60	5208.59.80	5209.11.00
5209.19.00	5209.21.00	5209.29.00	5209.31.60
5209.32.00	5209.39.00	5209.41.60	5209.42.00
5209.43.00	5209.49.00	5209.51.60	5209.52.00
5209.59.00	5210.21.40	5210.21.60	5210.22.00
5210.29.40	5210.29.60	5210.31.40	5210.31.60
5210.32.00	5210.39.40	5210.39.60	5210.51.40
5210.51.60	5210.52.00	5210.59.40	5210.59.60
5211.31.00	5211.39.00	5211.51.00	5211.59.00
5212.21.60	5212.22.60	5212.23.60	5212.24.60
5212.25.60	5401.10.00	5401.20.00	5402.10.30
5402.20.30	5402.20.60	5402.31.30	5402.31.60

5402.32.30	5402.32.60	5402.33.30	5402.33.60
5402.39.30	5402.39.60	5402.41.00	5402.42.00
5402.43.00	5402.49.00	5402.51.00	5402.52.00
5402.59.00	5402.61.00	5402.62.00	5402.69.00
5403.10.30	5403.20.30	5403.20.60	5403.31.00
5403.32.00	5403.33.00	5403.39.00	5406.10.00
5406.20.00	5407.10.00	5407.41.00	5407.42.00
5407.43.20	5407.44.00	5407.52.20	5407.53.10
5407.53.20	5407.54.00	5407.60.05	5407.60.10
5407.60.20	5407.71.00	5407.72.00	5407.73.20
5407.74.00	5407.81.00	5407.82.00	5407.83.00
5407.84.00	5407.91.05	5407.91.20	5407.92.05
5407.92.20	5407.93.05	5407.93.20	5407.94.05
5407.94.20	5408.10.00	5408.21.00	5408.22.00
5408.23.20	5408.24.00	5408.31.05	5408.31.20
5408.32.05	5408.32.90	5408.33.05	5408.33.90
5408.34.05	5408.34.90	5508.10.00	5508.20.00
5509.12.00	5509.21.00	5509.22.00	5509.31.00
5509.32.00	5509.41.00	5509.51.30	5509.51.60
5509.53.00	5509.69.20	5509.69.40	5509.99.20
5509.99.40	5511.10.00	5511.20.00	5511.30.00
5512.11.00	5512.19.00	5512.21.00	5512.29.00
5512.91.00	5512.99.00	5513.11.00	5513.13.00
5513.19.00	5513.21.00	5513.23.00	5513.29.00
5513.33.00	5513.39.00	5513.41.00	5513.43.00
5513.49.00	5514.11.00	5514.19.00	5514.21.00
5514.29.00	5514.41.00	5514.49.00	5515.11.00
5515.12.00	5515.13.05	5515.19.00	5515.21.00
5515.29.00	5515.91.00	5515.99.00	5518.11.00
5516.12.00	5516.13.00	5516.14.00	5516.21.00
5516.22.00	5516.23.00	5516.24.00	5516.41.00
5516.42.00	5516.43.00	5516.44.00	5516.91.00
5516.92.00	5516.93.00	5516.94.00	5601.10.20
5601.22.00	5602.10.10	5602.10.90	5602.21.00
5602.90.30	5602.90.60	5602.90.90	5603.00.90
5604.20.00	5604.90.00	5606.00.00	5607.41.30
5607.49.15	5607.49.25	5607.49.30	5607.50.20
5607.50.40	5607.90.20	5608.11.00	5608.19.10
5701.10.18	5701.10.20	5701.90.20	5702.10.90
5702.31.10	5702.31.20	5702.32.10	5702.32.20
5702.39.20	5702.41.10	5702.41.20	5702.42.10
5702.42.20	5702.49.10	5702.51.20	5702.51.40
5702.52.00	5702.59.10	5702.59.20	5702.91.30
5702.91.40	5702.92.00	5702.99.10	5702.99.20
5703.10.00	5703.20.10	5703.20.20	5703.30.00
5704.10.00	5704.90.00	5705.00.20	5801.31.00
5801.33.00	5801.34.00	5801.35.00	5801.36.00
5802.30.00	5803.10.00	5803.90.30	5804.10.00
5804.21.00	5804.29.00	5804.30.00	5805.00.25
5805.00.30	5805.00.40	5806.31.00	5806.32.10
5806.40.00	5808.90.00	5810.10.00	5810.91.00
5810.92.00	5811.00.20	5901.10.20	5901.90.40
5902.10.00	5902.20.00	5902.90.00	5903.10.30
5903.20.30	5903.90.30	5905.00.90	5906.91.30
5906.99.30	5907.00.90	5911.10.20	5911.20.10
5911.31.00	5911.32.00	5911.90.00	6001.10.20
6001.10.60	6001.22.00	6001.92.00	6002.10.80
6002.20.10	6002.20.30	6002.20.60	6002.30.20
6002.43.00	6002.93.00	6301.10.00	6301.20.00
6301.30.00	6301.40.00	6301.90.00	6302.10.00
6302.21.20	6302.22.10	6302.22.20	6302.29.00
6302.31.20	6302.32.10	6302.32.20	6302.39.00
6302.40.10	6302.40.20	6302.51.10	6302.51.20
6302.51.30	6302.51.40	6302.52.10	6302.52.20
6302.53.00	6302.59.00	6302.60.00	6302.91.00
6302.92.00	6302.93.20	6302.99.20	6303.12.00
6303.19.00	6303.92.00	6303.99.00	6304.11.10
6304.11.20	6304.11.30	6304.19.05	6304.19.15
6304.19.20	6304.19.30	6304.91.00	6304.92.00
6304.93.00	6304.99.15	6304.99.20	6304.99.60
6307.10.20	7019.20.10	9404.90.90	

[FR Doc. 91-18407 Filed 8-1-91; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

[Docket No. 910771-1171]

Decision on Petition Submitted by Iranian Political Refugee for Designation as a Minority Group

AGENCY: Minority Business Development Agency (MBDA), Commerce.

ACTION: Notice of decision.

SUMMARY: MBDA received a petition requesting it to designate Iranian political refugees as a socially or economically disadvantaged group whose members are eligible for MBDA assistance. This notice announces denial of that request.

FOR FURTHER INFORMATION CONTACT:

Eric W. Moll, Acting Chief Counsel, United States Department of Commerce, Minority Business Development Agency, room 5069, Washington, DC 20230, Telephone 377-5045.

SUPPLEMENTARY INFORMATION: MBDA issued a regulation at 15 CFR part 1400 for determination of group eligibility for MBDA assistance (See 49 FR 42697, October 24, 1984). The purpose of this regulation is to provide procedures through which groups not previously designated can establish their social or economic disadvantage.

In accordance with this regulation, a petition was submitted on behalf of all Iranian political refugees to the United States, requesting this Agency to designate them as a socially or economically disadvantaged group whose members are eligible for MBDA assistance. Receipt of this petition by MBDA was published in the *Federal Register* on February 21, 1991, and interested persons were invited to submit comments.

The petitioner for minority status asserted that Iranian refugees need assistance as the lack of control over the circumstances which led to their emigration have led to their suffering severe economic disadvantage. He indicated that in the first twenty-four months after their arrival, Iranians experience the third highest welfare dependency rate with respect to other refugees, with this economic disadvantage causing social disadvantage. Further, the petitioner argued that political relations between the United States and Iran are the cause of discrimination against Iranian refugees in the area of private sector jobs. In support of his claim, the petitioner has appended two publications of statistical information on

numbers of Middle Eastern refugees settling in the United States. One item is a portion of the Report to Congress, Refugee Resettlement Program, U.S. Department of Health and Human Services, published on January 31, 1990; the other is a 1984 publication of the American Council for Nationalities Service discussing the creation of a refugee class as a result of the political and religious upheavals in Iran.

In addition, appended to the petition was a letter from the Church of the Brethren, Refugee Resettlement Program, which emphasized the lack of financial resources that refugees endure.

The Agency received three comments in favor of and in support of the petition and none opposed to it. The first comment was a letter asserting that Iranian refugees have suffered tremendous discrimination and that, on humanitarian grounds, assistance would be of great help to them as a group. The second comment was also a letter stating that Iranian exiles, including refugees, originate from lower social class backgrounds and are at a disadvantage educationally and occupationally. This contributor included two statistical documents which he coauthored, entitled, "Iranian Exiles and Immigrants in Los Angeles," and "Are the Characteristics of Exiles Different From Immigrants? The Case of Iranians in Los Angeles." The third comment, also a letter, stated that Iranian refugees, even though they had become naturalized United States citizens, suffer present job discrimination based on their country of origin.

Having considered the evidence submitted by the petitioner and the comments which the Agency received, as the Director of MBDA, I have decided to deny the petition. My determination follows:

MBDA issued a regulation at 15 CFR part 1400 for determination of group eligibility for assistance. In accordance with this regulation, a petition was submitted on behalf of all Iranian political refugees, requesting this Agency to designate them as a socially or economically disadvantaged group whose members are eligible for MBDA assistance.

The evidence which has been presented to MBDA in support of this petition is insufficient to sustain a designation of social or economic disadvantage. Section 1400.4 of the regulation sets out the harm which must be proved and the types of evidence that must be produced. The section states as follows:

(a) The representatives of the group requesting formal designation should

establish social or economic disadvantage by a preponderance of the evidence. Social or economic disadvantage must be chronic, long standing, and substantial, not fleeting or insignificant. In determining whether a group has made an adequate showing that it has suffered chronic racial or ethnic prejudice or cultural bias for the purposes of this regulation, a determination will be made as to whether this group suffered the effects of discriminatory practices over which its members have no control.

Applicants must demonstrate that such social or economic conditions have produced impediments in the business world for members of the group which are not common to all business people in the same or similar business and market place.

(b) Evidence which will be considered in determining whether groups are socially or economically disadvantaged includes but is not limited to:

(1) Statistical profile outlining the national income level and standard of living enjoyed by members of the group in comparison to the income level and standard of living enjoyed by individuals not considered to be members of socially or economically disadvantaged groups.

(2) Evidence of employment discrimination suffered by members of the group in comparison to employment opportunities available to individuals not considered to be members of socially or economically disadvantaged groups.

(3) Evidence of educational discrimination in comparison to educational opportunities available to individuals not considered to be members of socially or economically disadvantaged groups.

(4) Evidence of denial of access to organizations, groups, or professional societies, whether in business or in school, based solely upon racial and/or ethnic considerations.

(5) Kinds of businesses and business opportunities available to group members in comparison to the kinds of businesses and business opportunities available to individuals not considered to be members of socially or economically disadvantaged groups.

(6) Availability of capital to group members in comparison to the availability of capital to individuals not considered to be members of socially or economically disadvantaged groups.

(7) Availability of technical and managerial resources to group members in comparison to the technical and managerial resources available to individuals not considered to be

members of socially or economically disadvantaged groups.

(8) Any other evidence of denial of opportunity or access to those things which would enable the individual to participate more successfully in the American economic system, available to individuals not considered to be members of social or economically disadvantaged groups.

The petitioner has defined the disadvantaged group very narrowly, limiting its membership, not to all United States citizens and resident aliens of Iranian descent, but to individuals who have left Iran as political refugees. He has, therefore, chosen to demonstrate characteristics that are limited to that circumscribed group of individuals.

The only evidence which MBDA has received in favor of the petition are conclusory statements to the effect that Iranian refugees are disadvantaged economically. No actual evidence of the type set forth above has been submitted demonstrating that the public perceives certain specific characteristics unique to Iranian refugees and that it has reacted in such a way as to create an environment of social or economic disadvantage. It is necessary that substantial factual evidence be presented to the Agency demonstrating the situation endured and the fact that it is more likely than not that the individual suffers such disadvantage as a result of his membership in the group.

Accordingly, the petition submitted on behalf of all Iranian political refugees requesting minority designation is denied.

Authority: 15 U.S.C. 1512; E.O. 11625; 3 CFR 616 (1971-75); 36 FR 19967 (1971); E.O. 12432; 3 CFR 198 (1983); and 48 FR 32551 (1983).

Dated: July 22, 1991.

Joe Lira,
Director.

[FR Doc. 91-18315 Filed 8-1-91; 8:45 am]

BILLING CODE 3510-21-M

National Institute of Standards and Technology

Senior Executive Service; Membership of General and Limited Performance Review Boards

The General Performance Review Board (GPRB) reviews performance agreements, appraisals, ratings, and recommended actions pertaining to employees in the Senior Executive Service and makes appropriate recommendations to the Director of NIST concerning such matters in such a manner as will assure the fair and

equitable treatment of senior executives. The GPRB performs its review functions for all NIST senior executives except those who are members of the NIST executive Board and those who are members of the GPRB.

The Limited Performance Review Board (LPRB) performs its review functions for all NIST senior executives who are members of the NIST Executive Board (except the NIST Deputy Director) and those senior executives who are members of the NIST GPRB.

Individuals who have been newly appointed by the Director of NIST to membership on the GPRB and LPRB or have had their term of membership extended are listed below:

GPRB

Mr. E. Larry Heacock, Director, Office of Satellite Operations, National Environmental Satellite Data and Information Service, National Oceanic and Atmospheric Administration, Washington, DC 20233. Appointment expires: 12/31/92.

Dr. Donald J. Sullivan, Chief, Time and Frequency Division, Physics Laboratory, National Institute of Standards and Technology, Boulder, CO 80303. Appointment expires: 12/31/92.

Mr. Robert Scace, Director, Office of Microelectronics Programs, Electronic and Electrical Engineering Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899. Appointment expires: 12/31/92.

LPRB

Dr. George Sinnott (Chair), Director for International and Academic Affairs, Office of the Director, National Institute of Standards and Technology, Gaithersburg, MD 20899. Appointment expires: 12/31/92.

Mr. J. Michael St. Clair, Chief, Engineering Division, National Weather Service, National Oceanic and Atmospheric Administration, Silver Spring, MD 20910. Appointment expires: 12/31/92.

The full membership and expiration dates of the GPRB and LPRB are listed below:

GPRB

Dr. James E. Hill, (Chair), Chief, Building Environment Division, Building and Fire Research Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899. Appointment expires: 12/31/91.

Mr. Allen L. Hankinson, Chief, Systems and Software Technology Division, Computer Systems Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899. Appointment expires: 12/31/91.

Mr. E. Larry Heacock, Director, Office of Satellite Operations, National Environmental Satellite Data and Information Service, National Oceanic and Atmospheric Administration, Washington, DC 20233. Appointment expires: 12/31/92.

Dr. Willie E. May, Chief, Organic Analytical Research Division, Chemical Science and Technology Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899. Appointment expires: 12/31/91.

Dr. Alvin H. Sher, Assistant Director for Management Information Technology, Computing and Applied Mathematics Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899. Appointment expires: 12/31/91.

Dr. Donald J. Sullivan, Chief, Time and Frequency Division, Physics Laboratory, National Institute of Standards and Technology, Boulder, CO 80303. Appointment expires: 12/31/92.

Mr. Robert Scace, Director, Office of Microelectronics Programs, Electronic and Electrical Engineering Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899. Appointment expires: 12/31/92.

LPRB

Dr. George Sinnott (Chair), Director for International and Academic Affairs, Office of the Director, National Institute of Standards and Technology, Gaithersburg, MD 20899. Appointment expires: 12/31/92.

Mr. J. Michael St. Clair, Chief, Engineering Division, National Weather Service, National Oceanic and Atmospheric Administration, Silver Spring, MD 20910. Appointment expires: 12/31/92.

Mr. Karl E. Bell, Deputy Director, Office of the Director of Administration, National Institute of Standards and Technology, Gaithersburg, MD 20899. Appointment expires: 12/31/91.

For further information contact Mrs. Ellen M. Dowd, Chief, Office of Personnel and Civil Rights, National Institute of Standards and Technology, Gaithersburg, telephone 301-975-3000.

Dated: July 26, 1991.

John W. Lyons,

Director.

[FR Doc. 91-18320 Filed 8-1-91; 8:45 am]

BILLING CODE 3510-13-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Macau

July 29, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: August 5, 1991.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6495. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a Memorandum of Understanding (MOU) dated June 21, 1991, the Governments of the United States and Macau agreed to increase the 1991 limits for sweaters in Categories 345, 445/446 and 645/646 to the original 1991 levels.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 55 FR 50756, published on December 10, 1990). Also see 55 FR 51945, published on December 18, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,
Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 29, 1991.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to

you on December 12, 1990, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Macau and exported during the twelve-month period which began on January 1, 1991 and extends through December 31, 1991.

Effective on August 5, 1991, you are directed to amend further the December 12, 1990 directive to increase the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Macau, as amended:

Category	Adjusted twelve-month limit ¹
Sublevels in Group I	
345.....	38,233 dozen.
645/646.....	193,288 dozen.
Sublevel in Group II	
445/446.....	75,679 dozen.

¹ The limits have not been adjusted to account for any imports exported after December 31, 1990.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-18368 Filed 8-1-91; 8:45 am]

BILLING CODE 3510-DR-F

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing the blind or other severely handicapped.

EFFECTIVE DATE: September 3, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On May 3, June 7 and 14, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (56 FR 20414, 26395 and 27502) of

proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodities and provide the services at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and services listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the services procured by the Government.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Bandage, Elastic, 6510-00-935-5823 (Remaining Government Requirement).

Water Bag, Nylon Duck, 8465-01-310-1259.

Services

Janitorial/Custodial, BLM Fairbanks Offices and Fire Operations Building, Fort Wainwright and University Avenue, Fairbanks, Alaska.

Janitorial/Custodial, U.S. Post Office and Courthouse, Dubuque, Iowa.

Janitorial/Custodial for the following locations:

Federal Building, 130 East Main Street, Carthage, Tennessee.

Federal Building, 118 East Locust Street, Lafayette, Tennessee.

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,
Executive Director.

[FR Doc. 91-18409 Filed 8-1-91; 8:45 am]

BILLING CODE 6820-33-M

Procurement List Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to procurement list.

SUMMARY: This action adds to the Procurement List a service to be furnished by a nonprofit agency employing the blind or other severely handicapped.

EFFECTIVE DATE: September 3, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On April 12, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (56 FR 14931) of proposed addition to the Procurement List.

Comments were received from the current contractor for this service and from the local union which represents the contractor's employees. The union enclosed a petition signed by most of the employees in support of its comments.

The contractor noted that it is a minority business participating in the Small Business Administration (SBA) 8(a) program, with a commitment to hiring minorities for the entry level jobs it provides. It objected to the proposed addition to the Procurement List because minorities would be displaced and would lose the training opportunities these jobs afford. It proposed as alternatives that the 8(a) program be expanded or that each Federal contract establish a number of positions to be filled by people with disabilities.

The local union stated that this service provides an opportunity for minorities to gain experience needed to compete in the commercial office cleaning market. It also stated that it has active programs to integrate persons with disabilities into the competitive work force. It claimed that addition of this service to the Procurement List would remove an opportunity for minorities and adversely affect its attempts to find employment for persons with disabilities by discouraging other unions from following its example.

The Committee has been informed that the contractor will graduate from the 8(a) program in 1992, so it will not be able to provide employment and training opportunities through this service beyond its current contract. Expansion of the 8(a) program is the responsibility of SBA, not the Committee. As for displacement of the current minority employees of the contractor, the Committee has determined that the loss

of employment for this group is outweighed by the creation of jobs for persons with severe disabilities, a group with even higher rates of unemployment. With respect to the contractor's other alternative, the Committee is not aware of any authority that would permit Federal agencies to require that a specific number of persons with disabilities be employed on Federal contracts.

The Committee applauds the union's efforts and encourages it and other unions to continue to explore ways to provide employment for persons with disabilities. However, the union has not indicated that the janitorial/custodial service at the Jackson Federal Building which is proposed for addition to the Procurement List is part of this effort. Accordingly, the Committee has determined that creation of a definite number of jobs for persons with disabilities through addition of this service to the Procurement List outweighs any possible discouragement of union efforts to create an unknown number of jobs for persons with disabilities.

After consideration of the material presented to it concerning the capability of a qualified nonprofit agency to provide the service at a fair market price and the impact of the addition on the current or most recent contractor, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

- The action will not result in any additional reporting, recordkeeping or other compliance requirements.
- The action will not have a serious economic impact on any contractors for the service listed.
- The action will result in authorizing small entities to provide the service procured by the Government.

Accordingly, the following service is hereby added to the Procurement List:

Janitorial/Custodial, Jackson Federal Building, 915 Second Avenue, Seattle, Washington.

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,
Executive Director.

[FR Doc. 91-18410 Filed 8-1-91; 8:45 am]

BILLING CODE 6820-33-M

Procurement List Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be provided by nonprofit agencies employing the blind or other severely handicapped.

DATES: Comments must be received on or before September 3, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing the blind or other severely handicapped. It is proposed to add the following services to the Procurement List:

- Grounds Maintenance, Naval Hospital, Oakland, California.
- Janitorial/Custodial, Martin Luther King Federal Building, Walnut Street, Newark, New Jersey.
- Janitorial/Custodial, Philadelphia Service Center, North Building, 11601 Roosevelt Blvd., South Building, 11501 Roosevelt Blvd., Philadelphia, Pennsylvania.
- Janitorial/Custodial, Naval Air Station (Except Army Facilities), Corpus Christi, Texas.
- Janitorial/Custodial for the following GSA Warehouses in Auburn, Washington: WAO815KA, WAO816KA, WAO821KA, WAO817KA, WAO822KA, WAO823KA, WAO824KA, WAO825KA, WAO831KA, WAO832KA, WAO833KF, WAO834KF.

Microfilming of IRS Documents, Cincinnati, Ohio.

Beverly L. Milkman,
Executive Director.

[FR Doc. 91-18411 Filed 8-1-91; 8:45 am]

BILLING CODE 6820-33-M

Additions to the Procurement List; Correction of Effective Date

The effective date for additions to the Procurement List appearing on page 33422 of FR Doc. 91-17232 in the issue of Monday, July 22, 1991 is corrected to August 21, 1991.

Beverly L. Milkman,

Executive Director.

[FR Doc. 91-18412 Filed 8-1-91; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability: Record of Decision for the Yakima Firing Center Land Acquisition, Yakima, WA

AGENCY: Department of Defense, Department of the Army, Fort Lewis, Washington.

ACTION: Notice of Availability of a Record of Decision (ROD) for the Yakima Firing Center (YFC) Land Acquisition, Yakima, Washington.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the U.S. Army has prepared a Record of Decision to acquire approximately 63,000 acres of additional maneuver training land near the Yakima Firing Center (YFC), Yakima, Washington in fiscal year 1992.

The requirement for additional maneuver area, beyond what is available at Fort Lewis and YFC, is a result of three major factors. First is the increased emphasis on brigade level combined arms training by both Active and Reserve Component (AC/RC) units Army wide. This increased emphasis results from changes in Army doctrine, organizations, and equipment which in turn respond to evolving battlefield requirements. The land expansion at YFC will enhance the ability of AC/RC units to train to realistic brigade and battalion levels. Second, the expansion will provide sufficient land to permit live-fire operations to continue at the same time large scale maneuver training exercises are conducted. YFC is the only major training area in the northwest continental United States that can accommodate the safety fans for all modern ground and Army air weapons platforms. Despite the trend to reduce forces, the Army must maintain training areas large enough to support the current and future live-fire and maneuver training and testing requirements and support potential mobilization requirements. Finally, the expansion will also permit

environmentally sound land management practices. The increased usage of YFC by all types of maneuver forces has mandated the careful monitoring and conservation of our existing land resources.

The following alternatives were considered in this ROD: (1) The Preferred Alternative—the land proposed to be acquired lies in Yakima, Kittitas and Grant Counties, Washington, and encompasses approximately 63,000 acres. The land includes a northern expansion area (North of the existing YFC), an eastern expansion area (east of the existing YFC), and a river crossing site on the east bank of the Columbia River; (2) The Hanford Reservation Alternative—the areas of the Hanford Site that were considered for acquisition included: the Arid Lands Ecology (ALE) Reserve; the buffer area located north of Washington State Highway #24, west of highway #240, and south of the Columbia River; the Wahluke Wildlife Area and the Saddle Mountains Refuge Area; (3) The No Action Alternative—the no action alternative would maintain the current acreage and training activity at the YFC. YFC would continue to have a shortfall of available maneuver area for training, and not enough land to provide fallow time for land rehabilitation without interfering with realistic maneuver and live-fire training. The Preferred Alternative was selected.

A copy of the YFC ROD can be obtained by writing or contacting Mr. Gary Stedman, Headquarters I Corps and Fort Lewis, Environmental and Natural Resources Division (ATTN: AFZH-DEQ), Fort Lewis, Washington 98433-5000. Telephone calls may be placed to (206) 967-5337 or 967-5646.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), OASA (IL&E).

[FR Doc. 91-18363 Filed 8-1-91; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Conduct of Employees; Waiver of Post-Employment Restrictions

Section 605(a)(3) of the Department of Energy Organization Act (Public Law 95-91, as amended) authorizes the Secretary of Energy to waive the post-employment restrictions of section 605(a)(1) of the Act, where a former employee has outstanding scientific or technological qualifications, is acting with respect to a particular matter in a scientific or technological field, and it has been determined that the national

interest would be served by such action or appearance by the former employee.

It has been established to my satisfaction that Lewis E. Temple, Jr., who was Director of the Construction, Environment, and Safety Division of the Office of Energy Research from May 1985 until June 1991, has a unique combination of outstanding qualifications in the field of nuclear engineering and in the management of construction projects. I am further satisfied that it will serve the national interest to permit him, in his capacity as Project Director for the Advanced Photon Source (APS), Argonne National Laboratory, to appear before and communicate with employees of the Department of Energy with respect to management and direction of construction of the APS Project, and that these activities are in a technological field.

I have, therefore, waived the post-employment prohibitions of section 605(a)(1) of the Department of Energy Organization Act to permit contact by Dr. Temple with employees of the Department of Energy with respect to management and direction of construction of the APS Project.

Dated: July 12, 1991.

James D. Watkins,

Admiral, U.S. Navy (Retired), Secretary of Energy.

[FR Doc. 91-18390 Filed 8-1-91; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award Intent To Award Grant to British Coal Corp.

AGENCY: U.S. Department of Energy.

ACTION: Notice of Noncompetitive Financial Assistance.

SUMMARY: The Department of Energy announces that, pursuant to 10 CFR 600.7(b)(2)(i)(B), it intends to make a non-competitive award of \$102,030.00 to the British Coal Corporation under grant number DE-AC01-91FE62384.

The purpose of this grant is to support a study of the control, utilization, and disposal of carbon dioxide and other greenhouse gases from fossil fuel use. This study will also develop estimates of the energy market and economic impacts of the implementation of potential abatement offices.

This study is cosponsored by the U.K. Atomic Energy Authority; the British Coal Corporation; ENEL, Italy; Ministry of Economic Affairs, the Netherlands; National Energy Administration, Sweden; Ministry of Energy, Danish Energy Agency, Denmark; Statoil,

Norway; and DGXII, Commission of the European Community.

The performance schedule is for a six month period.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, ATTN: Lynnette Desorcie, 1000 Independence Avenue, SW., Washington, DC 20585, 202-586-6700.

Robert J. Woytko,

Acting Director, Operations Division "A",
Office of Placement and Administration.

[FR Doc. 91-18391 Filed 8-1-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CP90-187-000]

Oklahoma-Arkansas Pipeline Co.; Availability of Final Environmental Impact Statement for Proposed Oklahoma-Arkansas Pipeline Project

July 26, 1991.

Notice is hereby given that the staff of the Federal Energy Regulatory Commission (FERC or Commission) has made available a final environmental impact statement (FEIS) on the natural gas pipeline facilities proposed in the above-referenced docket.

The FEIS was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, including receipt of necessary permits and approvals, would have limited adverse environmental impact. The FEIS evaluates alternatives to the proposal.

The proposed action involves the construction and operation of approximately 355.4 miles of 30- and 36-inch-diameter interstate natural gas pipeline, including metering facilities, to provide open access transportation services on a firm or interruptible basis to shippers who may include producers, interstate pipelines, local distribution companies, cogenerators, marketers, and end users. The Oklahoma-Arkansas Pipeline Project would transport up to 500,000 thousand cubic feet per day (Mcf) of natural gas from the Arkoma Basin producing area in eastern Oklahoma and western Arkansas, to interconnection points with existing facilities of Texas Eastern Transmission Corporation (Texas Eastern) in White County, Arkansas and of Trunkline Gas Company (Trunkline) in Tate County, Mississippi. Approximately 259,000 Mcfd would be delivered to Texas Eastern and 241,000 Mcfd to Trunkline.

The FEIS will be used in the regulatory decision-making process at the FERC and may be presented as evidentiary material in formal hearings at the FERC. While the period for filing interventions in this case has expired, motions to intervene out-of-time can be filed with the FERC in accordance with the Commission's Rules of Practice and Procedure, 18 CFR 385.214(d). Further, anyone desiring to file a protest with the FERC should do so in accordance with 18 CFR 385.211.

The FEIS has been placed in the public files of the FERC and is available for public inspection in the FERC's Division of Public Information, room 3104, 941 North Capitol Street, NE., Washington, DC 20426. Copies have been mailed to Federal, state, and local government agencies, interested individuals, public interest groups, newspapers, libraries, and parties to the proceeding.

Limited copies of the FEIS are available from Mr. Lonnie Lister, Project Manager, Environmental Policy and Project Analysis Branch, Office of Pipeline and Producer Regulation, room 7312, 825 North Capitol Street, NE., Washington, DC 20426, or call (202) 208-2191. When these copies are depleted, the FEIS will be available from the National Technical Information Service (NTIS), Springfield, Virginia. Please call the NTIS at (703) 487-4780 to obtain the identification number and information on how to order additional copies.

Lois D. Cashell,

Secretary.

[FR Doc. 91-18335 Filed 8-1-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-2538-000, et al.]

Questar Pipeline Company, et al.; Natural Gas Certificate Filings

July 26, 1991.

Take notice that the following filings have been made with the Commission:

1. Questar Pipeline Company

[Docket No. CP91-2538-000]

Take notice that on July 22, 1991, Questar Pipeline Company (Questar), 79 South State Street, Salt Lake City, Utah 84111, filed in (Docket No. CP91-2538-000, a request pursuant to §§ 157.205 and 157.212(a) of the Commission's Regulations and Questar's blanket certificate issued in Docket No. CP82-491-000 pursuant to section 7 of the Natural Gas Act for authorization to construct and operate one 2-inch tap on its transmission pipeline system for delivery of gas to Mountain Fuel Supply Company (Mountain Fuel), all as more

fully set forth in the request that is on file with the Commission and open to public inspection.

Questar proposes to construct and operate one 2-inch tap on its existing 12 3/4-inch O.D. Jurisdictional Lateral No. 85 (J.L. No. 85) located in Sweetwater County, Wyoming, at an estimated cost of \$7,000. Questar states that the additional delivery point will allow it to deliver natural gas from its general system supply of up to approximate 20 Dth per day and 2,200 Dth annually to Mountain Fuel, the local distribution company affiliate of Questar, for sale by Mountain Fuel to the Rock Springs-Sweetwater County Airport located near Rock Springs, Wyoming.

In addition to the tap, Questar states that pursuant to the automatic authorization provisions of 18 CFR 157.208(a), it intends install approximately 4,000 feet of 3-inch tap line (Jurisdictional Tap Line No. 91 (J.T.L. No. 91)) and one standard district regulator station, at an estimated cost of \$79,000. Questar states that the J.T.L. No. 91 will connect the J.L. No. 85 two-inch tap assembly to the new district regulator station where Mountain Fuel will take title to the gas.

Questar states that deliveries to Mountain Fuel through the proposed tap will not cause Questar to exceed the maximum daily quantities applicable to the service provided to Mountain Fuel under Questar's FERC Rate Schedules CD-1 (Wyoming/Colorado Zone) (23,893 Dth per day) and X-33 (1187,470 Dth per day). Finally, Questar states that its FERC Gas Tariff does not prohibit the addition of new delivery points.

Comment date: September 9, 1991, in accordance with Standard Paragraph G at the end of this notice.

2. El Paso Natural Gas, Tennessee Gas Pipeline, and United Gas Pipe Line Companies

Docket Nos. CP91-2565-000, CP91-2566-000, CP91-2567-000, CP91-2568-000, CP-2569-000, CP91-2570-000, CP91-2571-000, CP91-2572-000]

Take notice that Applicants filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued to Applicants all as more fully set forth in the requests that are on file with the Commission and open to public inspection.¹

¹ These prior notice requests are not consolidated.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation

service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix A. Applicants'

addresses and transportation blanket certificates are shown in the attached appendix B.

Comment date: September 9, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt ¹ points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2565-000 (7-24-91)	GasMark, Inc. (Marketer).	1,030 515 167,975	(²).....	NM.....	³ 5-24-91, T-1, Interruptible.	ST91-9033-000, 6-1-91.
CP91-2566-000 (7-24-91)	Ashton Energy Company (Marketer).	100,000 100,000 ⁴ 36,500,000	Various.....	Various.....	³ 6-16-88, IT, Interruptible.	ST91-9552-000, 7-9-91.
CP91-2567-000 (7-24-91)	NGC Transportation, Inc. (Marketer).	500,000 500,000 ⁴ 182,500,000	OLA, LA, TX.....	NY, RI, NJ, CT, PA, MS...	³ 9-30-87, IT, Interruptible.	ST91-9523-000, 7-1-91.
CP91-2568-000 (7-24-91)	BHP Petroleum Company, Inc. (Producer).	20,000 20,000 ⁴ 7,300,000	LA, TX, MS.....	LA, AL, TN, MS, WV, NJ, MA.	³ 12-19-88, IT, Interruptible.	ST91-9507-000, 7-1-91.
CP91-2569-000 (7-24-91)	Seagull Marketing Services (Marketer).	515,000 515,000 187,975,000	Various.....	Various.....	³ 10-1-88, ITS, Interruptible.	ST91-9384-000, 6-19-91.
CP91-2570-000 (7-24-91)	Enron Gas Marketing Inc. (Marketer).	515,000 515,000 187,975,000	Various.....	Various.....	³ 1-20-89, ITS, Interruptible.	ST91-9470-000, 6-19-91.
CP91-2571-000 (7-24-91)	Graham Energy Marketing Corp. (Marketer).	123,600 123,600 45,114,000	Various.....	Various.....	³ 11-9-88, ITS, Interruptible.	ST91-9466-000, 6-24-91.
CP91-2572-000 (7-24-91)	Energy Marketing Exchange, Inc. (Marketer).	77,250 77,250 28,196,250	AL, LA, TX.....	LA, TX.....	³ 4-14-88, ITS, Interruptible.	ST91-9506-000, 7-2-91.

¹ Offshore Louisiana is shown as OLA.

² Any point of receipt on El Paso's system.

³ As amended.

⁴ Tennessee's quantities are in dekatherms.

⁵ As amended.

Applicant's address	Blanket docket
El Paso Natural Gas Company, P.O. Box 1492, El Paso, Texas 79978.	CP88-433-000
Tennessee Gas Pipeline Compa- ny, P.O. Box 2511, Houston, Texas 77252.	CP88-115-000
United Gas Pipe Line Company, P.O. Box 1478, Houston, Texas 77251-1478.	CP88-6-000

authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 91-18337 Filed 8-1-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-8-22-000]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 28, 1991.

Take notice that CNG Transmission Corporation ("CNG"), on July 24, 1991, pursuant to section 4 of the Natural Gas Act, Article V of the Stipulation and Agreement approved by the Commission on May 7, 1991, in Docket Nos. RP88-211-000, *et al.*, and section 3 of Rate Schedule UTAP filed June 6, 1991, files six (6) copies of the following revised tariff sheets to First Revised Volume No. 1 of CNG's FERC Gas Tariff:

Second Revised Sheet No. 35

Alternate Second Revised Sheet No. 35

Second Alternate Second Revised Sheet No.

35

The proposed effective date is August 1, 1991.

The purpose of this filing is to track a rate reduction filed by Texas Eastern Transmission Corporation ("Texas Eastern") on July 1, 1991, in Docket No. TQ91-4-17-000.

CNG has filed alternate tariff sheets to correspond to the alternate sheets currently before the Commission as part of CNG's compliance filing of June 6, 1991, in Docket Nos. RP88-211 *et al.*

CNG states that copies of the filing were served upon CNG's customers as well as interested parties.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 and 385.211. All motions or protests should be filed on or before August 2, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken but will serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Persons that are already parties to this proceeding need not file a motion to intervene in this matter.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for

Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 91-18336 Filed 8-1-91; 8:45]

BILLING CODE 6717-01-M

[Docket Nos. CP90-2154-000, RP85-177-008, RP88-67-039, RP88-81-000, RP88-221-000, RP89-255-002, RP90-119-001, RP90-15-000, RP91-4-000, RP91-119-000, and TA91-1-17 (Phase I/Rates)]

Texas Eastern Transmission Co.; Informal Settlement Conference

July 26, 1991.

Take notice that a conference will be convened in this proceeding on August 6, 7 & 8, 1991, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the issues in the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations 18 CFR 385.214. In the spirit of 18 CFR 385.601(b)(2), it is recommended that parties have management officials with decision-making authority attend.

For additional information, contact Dennis H. Melvin (202) 208-0042 or Arnold H. Meltz (202) 208-0737.

Lois D. Cashell,
Secretary.

[FR Doc. 91-18334 Filed 8-1-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-61-004]

Texas Gas Transmission Corp.; Compliance Filing

July 26, 1991.

Take notice that on July 24, 1991, Texas Gas Transmission Corporation (Texas Gas) tendered for filing a refund report of amounts due customers under the dockets numbers referenced above.

Texas Gas states that, pursuant to Ordering Paragraph (B) of the Commission's Order Approving Settlement (Order) issued on May 1, 1991, in the dockets referenced above, Texas Gas is submitting the following refund report. On June 28, 1991, Texas Gas issued refund checks to five (5) customers who had negative remaining direct bill obligations under the Stipulation and Agreement filed by Texas Gas. Paragraph (B) of the Order

directs Texas Gas to file with the Commission a refund report for any refund made pursuant to this settlement within 30 days of making such refunds.

Texas Gas states that copies of the refund report are being mailed to Texas Gas's jurisdictional customers, interested state commissions, and all persons listed on the official service list previously compiled by the secretary in the 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 rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before August 2, 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 91-18332 Filed 8-1-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-68-035]

Transcontinental Gas Pipe Line Corp.; Report of Refunds

July 26, 1991.

Take notice that on July 9, 1990, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing with the Federal Energy Regulatory Commission its Interest Rate True-Up of PSP and LPSP Charges made pursuant to sections 34 through 37 of the General Terms and Conditions of Transco's FERC Gas Tariff, Second Revised Volume No. 1.

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 rule 211 of the Commission's rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before August 2, 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 91-18333 Filed 8-1-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 91-14-NG]

BC Gas Inc.; Order Amending Long-Term Authorization To Import From and Export Natural Gas to Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order amending long-term authorization to import from and export natural gas to Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order to BC Gas Inc. (BC Gas) approving amendments to DOE/FE Opinion and Order No. 285-A that increase the annual Canadian natural gas volumes it imports and exports to and from U.S. storage facilities from 2,164,122 Mcf to 3,180,243 Mcf. Further, the order eliminates daily delivery ceilings and seasonal restrictions for importing and exporting gas.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 26, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-18392 Filed 8-1-91; 8:45 am]

BILLING CODE 6450-91-M

[FE Docket No. 91-29-NG]

North American Resources Co.; Order Granting Blanket Authorization To Export Natural Gas to Canada and Mexico

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting Blanket Authorization to Export natural gas to Canada and Mexico.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued an order granting North American Resources Company blanket authorization to export up to a combined total of 73 Bcf of natural gas to Canada and Mexico over a two-year term beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056,

Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 26, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-18393 Filed 8-1-91; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 91-24-NG]

Seagull Marketing Services, Inc.; Order Granting Blanket Authorization To Export Natural Gas From and to Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting blanket authorization to import and to export natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Seagull Marketing Services, Inc. blanket authorization to import up to 150 Bcf of Canadian natural gas and to export to Canada up to 150 Bcf of natural gas over a two-year period beginning on the date of first delivery of the import or export.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 26, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-18394 Filed 8-1-91; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Cases Filed During the Week of July 5 Through July 12, 1991

During the Week of July 5 through July 12, 1991, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: July 26, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of July 5 through July 12, 1991]

Date	Name and location of applicant	Case No.	Type of submission
July 12, 1991	James L. Schwab, Spokane, WA	LFA-0136	Appeals of an information request denial. <i>If Granted</i> James L. Schwab would receive a waiver of all fees incurred in the processing of the DOE information.
July 11, 1991	Unisys, McLean, VA	LFA-0135	Appeal of an information request denial. <i>If Granted</i> Unisys would receive access to fee information for Contract DE-AC65-89WA04360.

REFUND APPLICATIONS RECEIVED

[Week of July 5 to July 12, 1991]

Date received	Name of refund proceeding/name of refund applicant	Case No.
02/11/91	Fisher Motor Company.	RF311-14
06/07/91	Odessa L.P.G. Transport, Inc.	RF335-33
07/08/91	E. Carter Co. RII School Dist.	RF335-52
07/09/91	David E. Knox	RF329-9
07/09/91	L.S. Riggins Oil Co.	RF330-32
07/09/91	Johnson Oil Co.	RF330-33
07/09/91	Metropolitan Petroleum Co.	RF330-34
07/09/91	Rainey Oil Co.	RF330-35
07/09/91	Metro Oil Prods. Inc.	RF330-36
07/11/91	Dosch-King Company, Inc.	RC272-126
07/12/91	Hercules, Inc.	RF336-18
07/12/91	Aqualon Company	RF336-19
07/12/91	Southeastern Massachusetts.	RF336-20
07/05/91 thru 07/12/91.	Texaco Refund Applications Received.	RF321-16225 thru RF321-16254

REFUND APPLICATIONS RECEIVED—Continued

[Week of July 5 to July 12, 1991]

Date received	Name of refund proceeding/name of refund applicant	Case No.
07/05/91 thru 07/12/91.	Crude Oil Applications Received.	RF272-890446 thru RF272-89470
07/05/91 thru 07/12/91.	Gulf Oil Refund Applications Received.	RF300-17136 thru RF300-17191

[FR Doc. 91-18395 Filed 8-1-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3979-9]

Environmental Impact Statement; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements Filed July 22, 1991 Through July 26, 1991 Pursuant to 40 CFR 1506.9.

EIS No. 910241, Final EIS, FHW, MI, MI-45 Reconstruction, west of 68th Avenue to east of 24th Avenue, Funding and section 404 Permit, Ottawa County, MI, Due: September 03, 1991, Contact: Norman Stoner (517) 377-1851.

EIS No. 910242, Final EIS, FHW, WI, US 53 Improvements, Trego to Kent Road, Funding and section 404 Permit, Washburn and Douglas Counties, WI, Due: September 03, 1991, Contact: James Wenning (608) 264-5956.

EIS No. 910243, Draft EIS, FHW, CA, CA-30 Improvements, CA-66/Foothill Boulevard to I-215, Funding and section 404 Permit, Los Angeles and San Bernardino Counties, CA, Due: September 16, 1991, Contact: Leonard Brown (916) 551-1307.

EIS No. 910244, Draft EIS, AFS, UT, East Fork Black Forks Multiple Use Management Project, Implementation, Wasatch-Cache National Forest, Evanston Ranger District, Summit County, UT, Due: September 16, 1991, Contact: Steve Ryberg (307) 789-3194.

EIS No. 910245, Final EIS, FHW, IL, FAP 30 (formerly FAP 413) Construction, I-270 at the northern terminus of I-255 to IL-267 north of Alton, Funding, section 404 Permit, Possible NPDES Permit, Madison County, IL, Due: September 03, 1991, Contact: Jay Miller (217) 492-4600.

EIS No. 910246, Final EIS, NPS, VA, George Washington Memorial Parkway, Potomac Greens Interchange Development, Construction Permit, Special Use Permit, Daingerfield Island, VA, Due: September 03, 1991, Contact: Sally Bluemental (202) 619-7038.

EIS No. 910247, Final SUPPLEMENT, FHW, KY, US 27 and US 68 Improvement, Rogers Road in Lexington to Parkway Drive in Paris, Funding, Bridge Construction Permit, North Fork Elkhorn Creek and Houston Creek Bridge, Fayette and Bourbon Counties, KY, Due: September 03, 1991, Contact: Paul Toussaint (502) 227-7321.

EIS No. 910248, Final EIS, UAF, IL, Scott Air Force Base Joint Military-Civilian Use, Civil Runway and Associated Airport Facilities Construction, Plan Approval, St. Clair County, IL, Due: September 03, 1991, Contact: Patricia Calliott (618) 256-5764.

EIS No. 910249, Draft EIS, EPA, Hazardous Waste Treatment, Storage, and Disposal Facilities (TSDF), Organic Air Emission Standards, Due: October 01, 1991, Contact: Stephen Shedd (919) 541-5397.

EIS No. 910250, Draft EIS, CDB, NY, City of Rochester School No. 25 and School No. 36 Replacement, CDBG, Rochester, Monroe County, NY, Due: September 16, 1991, Contact: Robert M. Barrows (716) 428-6924.

EIS No. 910251, Final EIS, AFS, MT, Turkey Salvage Timber Sale and Road Construction Implementation, Lewis and Clark National Forest, Judith Ranger District, Judith Basin County, MT, Due: September 03, 1991, Contact: Richard M. Abt (406) 761-4623.

EIS No. 910252, Final EIS, NOA, Flower Garden Banks National Marine Sanctuary Establishment, Designation, LA and TX, Due: September 03, 1991,

Contact: Edward Lindelof (202) 606-4122.

EIS No. 910253, Draft EIS, NOA, AK, Halibut Fisheries Proposed Individual Fishing Quota Management Alternatives Plan, Approval and Implementation, Gulf of Alaska and Bering Sea/Aleutian Islands, AK, Due: September 16, 1991, Contact: Steven Pennoyer (907) 586-7221.

EIS No. 910254, Final EIS, FHW, KY, US 27 Construction, Camp Nelson to Nicholasville Bypass, Funding and 404 Permit, Jessamine County, KY, Due: September 16, 1991, Contact: Paul Toussaint (502) 227-7321.

EIS No. 910255, Draft EIS, FHW, IA, US 20 Relocation, US 65 south of Iowa Falls to existing US 20 at the Grundy/Black Hawk County line, Funding and section 404 Permit, Hardin and Grundy Counties, IA, Due: September 16, 1991, Contact: H.A. Williard (515) 233-1664.

EIS No. 910256, Final EIS, AFS, MT, Gravelly Sagebrush Burning Project, Implementation, Beaverhead National Forest, Madison County, MT, Due: September 03, 1991, Contact: Ron Scott (406) 682-4253.

EIS No. 910257, Final EIS, FRC, OK, MS, AR, Oklahoma-Arkansas Natural Gas Pipeline Project, Construction, Operation and Transportation, Section 10 and 404 Permits, NPDES Permit, Several Counties in MS, OK and AR, Due: September 03, 1991, Contact: Lonnie Lister (202) 208-2191.

Dated: July 30, 1991.

Terry M. Cullins,

Chief, SPAD, Office of Federal Activities.

[FR Doc. 91-18415 Filed 8-1-91; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3980-1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared July 15, 1991 through July 19, 1991 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 5, 1991 (56 FR 14096).

Draft EISs

ERP No. D-AFS-J67012-MT Rating EC2, East Boulder Mine Project, Platinum and Palladium Mining, Construction and Operation, Plan of

Operations Approval and COE section 404 Permit, Gallatin National Forest, Sweet Grass County, MT.

Summary: EPA has concerns with potential impacts on water quality and aquatic life from the East Boulder Mine project. Sufficient information is lacking to address the credibility of several document proposals. Additional alternatives should be analyzed in subsequent NEPA documentation.

ERP No. D-AFS-K35033-CA Rating EC2, Rock Creek-Cresta Reservoirs Dredging Project, Dredging and Disposal of Sediments, section 404 Permit, Plumas National Forest, Plumas County, CA.

Summary: EPA expressed environmental concerns regarding potential project impacts to wetlands and water quality and the adequacy of the alternatives analysis, mitigation to avoid or reduce impacts of water quality and wetlands and the discussion of future actions to address the long term sedimentation problem at the reservoir.

ERP No. DA-AFS-C65001-PR Rating EC2, Caribbean National Forest and Luquillo Experimental Forest Land and Resource Management Plan, Effects of Hurricane Hope and Updated Information, Commonwealth of Puerto Rico.

Summary: EPA believes the Forest Service addresses many of our concerns about mitigation activities in the Caribbean National Forest. The final EIS should present additional information on the potential impacts of highway restoration on water quality.

ERP No. DS-FRC-C05144-NJ Rating EC2, Mount Hope Pumped Storage Hydroelectric Project Construction, Operation and Maintenance, New and Additional Information, License, section 404 Permit, Morris County, NJ.

Summary: EPA expressed environmental concerns due to potential water quality impacts to Mount Hope Pond and other water bodies in the drainage basin, and the project's potential conflict with the provisions of the Roe Amendment. EPA requests that additional information to address these issues be provided in the final EIS.

Final EISs

ERP No. F-BLM-A82122-00, Thirteen Western States, Vegetation Treatment on Bureau of Land Management Lands, Implementation, AZ, CO, ID, MT, NV, NM, ND, OK, OR, SD, UT, WA, and WY.

Summary: EPA has concerns about site-specific assessments that will be tiered from the final EIS. To ensure adequate analysis of the program's impacts, the future assessments should be made available to EPA staff for review. Additionally, several remaining

factual omissions and deficiencies should be corrected.

ERP No. F-FHW-E50287-TN, TN-56 (Austin Peay) Bridge Approaches Replacement, Cumberland River, Funding, U.S. CGD Bridge Permit and Possible COE Section 404 Permit, Jackson County, TN.

Summary: EPA believes, that no significant long term environmental impact will occur if best management practices are followed, and wetlands mitigation and the monitoring plan are implemented.

ERP No. FS-AFS-G65041-AR, Ozark-St. Francis National Forest, Land and Resource Management Plan, Additional Information, Amendment to Alternative D, Implementation, Several Counties, AR.

Summary: Review of the final EIS has been completed and the project found to be satisfactory.

Dated: July 30, 1991.

Terry M. Cullins,

Chief, SPAD, Office of Federal Activities.

[FR Doc. 91-18416 Filed 8-1-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3980-3]

Expert Panel on the Role of Science at EPA; Open Meeting

Under Public Law 92-463, notice is hereby given that the Expert Panel on the Role of Science at EPA will hold a public meeting on August 19, 1991, in the LaSalle Room of the Loew's L'Enfant Plaza Hotel, 480 L'Enfant Plaza SW., Washington, DC. The meeting will begin at 8:30 a.m. and will end at 10 a.m.

The purpose of the meeting will be to summarize issues which the Panel has identified for consideration during its review of science at EPA, and to receive input from members of the public. Any member of the public wishing to attend the meeting, present an oral statement, or submit a written statement should contact Gail Robarge, U.S. Environmental Protection Agency, Office of Research and Development (H-8105), 401 M St., SW., Washington, DC 20460, (202)382-7891. For further information concerning the Panel or its activities, please contact Ms. Wendy Cleland-Hamnett, Designated Federal Official to the Panel, Office of the Administrator (A-101), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202)382-4724. Seating is limited due to the size of the room and will be on a first come basis.

Dated: July 30, 1991.

Wendy Cleland-Hamnett,

Special Assistant to the Administrator.

[FR Doc. 91-18508 Filed 8-1-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1854]

Petitions for Reconsideration and Clarification of Actions in Rule Making Proceedings

July 26, 1991-G4.

Petitions for reconsideration have been filed in the Commission rule making proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor Downtown Copy Center (202) 452-1422. Oppositions to these petitions must be filed on or before August 20, 1991. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 73.202(b), Table of allotments, FM Broadcast Stations. (Lafayette, Tennessee and Campbellsville, Kentucky) (MM Docket No. 89-570, RM Nos. 7061, 7710), Number of Petitions Received: 1.

Subject: Amendment of part 73 of the Rules to provide for an Additional FM Station Class (Class C3) and to Increase the Maximum Transmitting Power for Class A FM Stations. (MM Docket No. 89-375, RM-6236, RM-6237), Number of Petitions Received: 4.

Subject: Amendment of Part 2 of the Rules Concerning the Importation of Radio Frequency Devices Capable of Causing Harmful Interference. (GEN Docket No. 89-349), Number of Petitions Received: 3.

Subject: Regulation of International Accounting Rates. (CC Docket No. 90-337, Phase I), Number of Petitions Received: 2.

Subject: Amendment of Part 15 of the Commission's Rules to Implement the Provisions of the Television Decoder Circuitry Act of 1990. (GEN Docket No. 91-1), Number of Petitions Received: 1.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-18322 Filed 8-1-91; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Supervisory Policy Statement on Securities Activities

AGENCY: Federal Financial Institutions Examination Council.

ACTION: Request for comment.

SUMMARY: The five member agencies of the Federal Financial Institutions Examination Council (the FFIEC), which include the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS) (collectively, the Agencies), are seeking additional public comment on section III of the proposed supervisory policy statement that was initially published for public comment on January 3, 1991 (56 FR 263). As now proposed, section III defines "high-risk mortgage securities" and specifies that such securities are not suitable investment portfolio holdings for depository institutions. High-risk mortgage securities may only be acquired to reduce an institution's interest rate risk and must be reported in the trading account at market value or as assets held for sale at the lower of cost or market value. Examiners will seek the orderly divestiture of high-risk mortgage securities that do not reduce interest rate risk. Other products with risk characteristics similar to high-risk mortgage securities may be subject to the same supervisory treatment. In addition, section III further provides that disproportionately large holdings of long-term zero-coupon bonds are considered an imprudent investment practice. Such holdings will be subject to criticism by examiners who may seek their orderly disposal.

DATES: Comments must be received by September 3, 1991.

ADDRESSES: Comments should be directed to Robert J. Lawrence, Executive Secretary, Federal Financial Institutions Examination Council, 1776 G Street NW., suite 850B, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: At the FRB: Roger H. Pugh, Manager, Policy Development, Division of Banking

Supervision and Regulation (202) 728-5883; Charles H. Holm, Supervisory Financial Analyst, Division of Banking Supervision and Regulation (202) 452-3502. At the FDIC: Sharon K. Lee, Capital Markets Specialist, Division of Supervision (202) 898-6789; Robert F. Storch, Chief, Accounting Section, Division of Supervision (202) 898-8906. At the NCUA: Charles Felker (202) 682-9640. At the OCC: Owen Carney, Senior Advisor for Investment Securities (202) 874-5070; Jamie Newell, Senior Capital Markets Advisor (202) 874-5070. At the OTS: John M. Frech, Senior Accountant, Accounting Policy (202) 906-5649; J. Douglas Gordon, Senior Financial Economist (202) 906-5728.

SUPPLEMENTARY INFORMATION: On January 3, 1991, the Federal Financial Institutions Examination Council issued for public comment a proposed Supervisory Policy Statement concerning the Selection of Securities Dealers, Securities Portfolio Policies and Strategies and Unsuitable Investment Practices, and Stripped Mortgage-Backed Securities, Certain CMO Tranches, Residuals, and Zero-Coupon Bonds. Under Section III of this proposal, stripped mortgage-backed securities, residuals, and "high-risk CMO tranches" were subject to the same supervisory treatment. However, many commenters indicated that the definition of high risk CMO tranches in section III of the proposal was too vague. These commenters indicated that the definition should include specific quantitative criteria in order to more precisely differentiate high risk CMO tranches from those with less risk. In consideration of the public comments on the January proposal, the FFIEC is now proposing to define "high-risk mortgage securities" in a quantitative manner. This definition will apply to all mortgage derivative products, including Collateralized Mortgage Obligations ("CMOs"), Real Estate Mortgage Investment Conduits ("REMICs"), CMO and REMIC residuals, and Stripped Mortgage-Backed Securities ("SMBs"). In addition, other aspects of Section III have been changed from the January proposal.

Although the FFIEC invites comments on all aspects of section III as it is now proposed, the FFIEC requests comment on the following specific issues relating to section III.

(1) Whether the quantitative criteria proposed for determining high-risk mortgage securities in Section III effectively distinguishes "high-risk" mortgage derivative products from all other mortgage derivative products. If possible, commenters should provide

estimates (with supporting data) of the portion of the existing CMO and REMIC products that will fall within the high-risk definition.

(2) The impact of the reporting treatment set forth in section III for high-risk mortgage securities.

The text of the proposed section III of the Supervisory Policy follows.

Supervisory Policy Statement on Securities Activities

Section III: Mortgage Derivative Products, Other Asset Backed Products, and Zero-Coupon Bonds

Summary

Mortgage derivative products include Collateralized Mortgage Obligations (CMOs), Real Estate Mortgage Investment Conduits (REMICs), CMO and REMIC residuals, and Stripped Mortgage-Backed Securities (SMBs). The cash flows from the mortgages underlying these securities are redirected to create two or more classes with different maturity or risk characteristics designed to meet a variety of investor needs and preferences. However, many mortgage derivative products exhibit considerably more price volatility than standard mortgages or ordinary mortgage pass-through securities and can therefore expose investors to significant risk of loss if they are not managed in a safe and sound manner. This price volatility is caused in part by these mortgage derivative products' substantial prepayment risk and average life variability. In addition, because these products are complex, a high degree of technical expertise is required to understand how their prices and cash flows may behave under various interest rate and prepayment expectations. Moreover, because the secondary market for most of these products is relatively thin, they may be difficult to liquidate should the need arise.

Finally, there is additional uncertainty because new variants of these instruments continue to be introduced and their price performance under varying market and economic conditions has not been tested.

A general principle underlying this section is that mortgage derivative products possessing average life or price volatility in excess of a standard fixed rate 30-year mortgage-backed pass-through security are "high-risk mortgage securities" and are not suitable investments for depository institutions. All high-risk mortgage securities, as defined in detail below, held by depository institutions must be carried in the institutions, trading account or as assets held for sale. Institutions that

hold mortgage derivative products that meet the definition of a high-risk mortgage security must do so to reduce interest rate risk in accordance with safe and sound practices.¹ Furthermore, depository institutions that purchase high-risk mortgage securities must demonstrate that they understand and are effectively managing the risks associated with these instruments. Levels of activity involving high-risk mortgage securities should be reasonably related to an institution's capital, capacity to absorb losses, and level of in-house management sophistication and expertise. Appropriate managerial and financial controls must be in place and the institution must have the ability to use analytical modeling techniques to monitor and prudently adjust its holdings of high-risk mortgage securities in an environment of changing price and maturity expectations.

Prior to taking a position in any high-risk mortgage security, an institution should evaluate the risk exposure resulting therefrom to ensure that the position will lead to a reduction in the institution's overall interest rate risk. An institution should also consider the liquidity and price volatility of these products prior to purchasing them.

Circumstances in which the purchase or retention of high-risk securities is deemed by the appropriate federal regulatory authority to be contrary to safe and sound practices for depository institutions will result in criticism by examiners, who may require the orderly divestiture of high-risk mortgage securities.

Securities and other products, whether carried on or off the balance sheet, having risk characteristics similar to high-risk mortgage securities may be subject to the same supervisory treatment as high-risk mortgage securities.

Long-term zero coupon bonds also exhibit significant price volatility and may expose an institution to considerable risk. Disproportionately large holdings of these instruments may be considered an imprudent investment practice, which will be subject to

¹ Notwithstanding the provisions of this supervisory policy requiring the use of high-risk mortgage securities to reduce interest rate risk, this supervisory policy is not meant to preclude an institution with strong capital and earnings and adequate liquidity that has a closely supervised trading department from acquiring high-risk mortgage securities for trading purposes. The trading department must operate in conformance with well-developed policies, procedures, and internal controls, including detailed plans prescribing specific position limits and control arrangements for enforcing these limits.

criticism by examiners. In such instances, examiners may seek the orderly disposal of such securities. Assets slated for disposal are reported as assets held for sale at the lower of cost or market value.

Overview of the Securities

A. SMBSs consist of two classes of securities with each class receiving a different portion of the monthly interest and principal cash flows from the underlying mortgage-backed securities (MBS). In its purest form, an MBS is converted into an interest-only (IO) strip, where the investor receives all of the interest cash flows and none of the principal, and a principal-only (PO) strip, where the investor receives all of the principal cash flows and none of the interest.

IOs and POs have highly volatile price characteristics based, in part, on the prepayment variability of the underlying mortgages and consequently on the maturity of the stripped securities. Therefore, IOs and POs will nearly always meet the definition of high risk in this policy.

From a market perspective, IOs and POs have relatively wide bid/ask spreads compared to mortgage-backed securities. This decreases the effectiveness of SMBSs as interest rate risk reduction tools because interest rates and prepayments need to change by a significant amount before the price at which the security can be sold (i.e., the bid price) will exceed the price at which the security was purchased (i.e., the ask price).

B. CMOs and REMICs, hereafter called CMOs, have been developed in response to investor concerns regarding the uncertainty of cash flows associated with the prepayment option of the underlying mortgagor. A CMO can be collateralized directly by mortgages, but more often is collateralized by MBSs issued or guaranteed by GNMA, FNMA or FHLMC and held in trust for CMO investors. In contrast to MBSs in which cash flow is received pro rata by all security holders, the principal cash flow from the mortgages underlying a CMO is segmented and paid in accordance with a predetermined priority to investors holding various CMO tranches (but not necessarily to those holding certain residuals). By allocating the principal cash flows from the underlying collateral among the separate CMO tranches, different classes of bonds are created, each with its own stated maturity, estimated average life, coupon rate, and unique prepayment risk characteristics. Notwithstanding the importance of the CMO structure to an evaluation of the timing and amount of

cash flows, it is equally essential to understand the coupon rates on the mortgages underlying the CMO to assess the prepayment sensitivity of the CMO tranches.

C. Residuals are claims on any excess cash flows from a CMO issue or other asset-backed security remaining after the payments due to the holders of the other classes and after trust administrative expenses have been met. The economic value of a residual is a function of the present value of the anticipated excess cash flows under assumed prepayment speeds based upon the underlying collateral of the CMO. These cash flows are highly sensitive to prepayments and existing levels of market interest rates; and the mortgages underlying the CMO must be understood in order to assess this sensitivity. Accordingly, most residuals meet the definition of high-risk in this policy. Other factors affecting the market value of residuals include a lack of liquidity and a wide bid-ask price spread.

D. Zero-coupon, "stripped" and certain Original Issue Discount (OID) securities are priced at large discounts to their face value prior to maturity and exhibit significant price volatility. "Stripped" securities are the interest or principal portions of U.S. Government obligations (which are separated and sold to depository institutions in the form of stripped coupons or stripped bonds (principal)), STRIPS, and such proprietary products as CATs or TIGRs. Also, deep discount OID bonds have been issued by a number of municipal entities.

Definition of "High-Risk Mortgage Security"

In general, any mortgage derivative product (including a CMO floating rate debt class) that exhibits greater price volatility than a standard fixed rate thirty-year mortgage-backed pass-through security will be deemed to be high risk. For purposes of this policy statement, a "high-risk mortgage security" is defined as any mortgage derivative product that at the time of purchase, or at a subsequent testing date, meets at least one of the following three tests. Once a mortgage derivative product is defined to be high risk, the product will be considered as high-risk as long as it is held by the institution.

(1) *Average Life Test.* The mortgage derivative product has an expected weighted average life greater than 8.0 years.

(2) *Average Life Sensitivity Test.* The expected weighted average life of the mortgage derivative product:

a. Extends by more than 4.0 years, assuming an immediate and sustained parallel shift in the yield curve of plus 300 basis points, or

b. Shortens by more than 5.0 years, assuming an immediate and sustained parallel shift in the yield curve of minus 300 basis points.

(3) *Price Sensitivity Test.* The estimated change in the price of the mortgage derivative product is more than 16 percent, due to an immediate and sustained parallel shift in the yield curve of plus or minus 300 basis points.

For purposes of determining whether a particular mortgage derivative product meets any of the above tests, all of the underlying assumptions including prepayment assumptions for the underlying collateral must be reasonable. Examiners will review all of the underlying assumptions used by the institution. For example, if an institution's prepayment assumptions differ significantly from the median prepayment assumptions of several major dealers as selected by examiners, the examiners may use their own prepayment assumptions in determining if a particular mortgage derivative product is high risk.

The federal financial institution regulatory agencies will monitor the changes in the level of interest rates and market innovations. The above tests may be adjusted in the event of a significant movement in market interest rates or to fairly measure the risk characteristics of new mortgage-backed products. Furthermore, each federal financial institution regulatory agency reserves the right to take such action as it deems appropriate to avoid evasion of the standards set forth in this policy statement, including the definition of high risk mortgage security.

Generally, a CMO floating-rate debt class bearing a rate that, at the time of purchase and each subsequent testing date, is 125 basis points or more below the contractual cap on the instrument is not subject to the average life and average life sensitivity tests described above. For purposes of this policy statement, a CMO floating-rate debt class is a debt class whose rate adjusts at least annually on a one-for-one basis with the debt class's index. The index must be a conventional, widely-used market interest rate index such as LIBOR. This exception does not apply to inverse floating rate debt classes.

A mortgage derivative product that does not meet any of the above tests will generally not be considered a high-risk mortgage security. However, any mortgage derivative product (including a CMO floating rate debt class) that, in an

examiner's judgment, exhibits greater price volatility than a standard fixed rate 30-year mortgage-backed pass-through security will be deemed to be high risk.

Supervisory Policy

Mortgage Derivative Products. Prior to purchase, a depository institution must determine whether a mortgage derivative product that it is considering acquiring is high-risk, as defined above. An institution may only acquire a high-risk mortgage derivative product to reduce its overall interest rate risk. (See footnote 4 regarding the use of high-risk mortgage derivative products as trading assets.)

An institution that has acquired high-risk mortgage securities in order to reduce interest rate risk needs to actively manage its holdings of these securities because of their substantial prepayment and average life variability. Such active management implies that the institution does not have both the intent and ability to hold high-risk mortgage securities for long-term investment purposes. Accordingly, high-risk mortgage securities that are being used to reduce interest rate risk should not be reported as investments at amortized cost, but must be reported as trading assets at market value or as held-for-sale assets at the lower of cost or market value.

Examiners will seek the orderly divestiture of high-risk mortgage securities that do not reduce interest rate risk. These securities must be reported as held-for-sale assets at the lower of cost or market value until their disposition.

Mortgage derivative products that do not meet the definition of high-risk mortgage securities at the time of purchase should be reported as investments, held-for-sale assets, or trading assets, as appropriate. A mortgage derivative product that was not a high-risk mortgage security when it was purchased as an investment may later fall into the high-risk category. Institutions must ascertain from a source independent of the party from whom the product was purchased and document, no less frequently than annually, that any nonhigh-risk mortgage derivative products that are held for investment remain outside the high-risk category. Such documentation will be subject to examiner review. If a mortgage derivative product that was not a high-risk mortgage security when it was purchased as an investment later meets the high-risk definition, it normally must be redesignated as held for sale.

An institution that owns or plans to acquire high-risk mortgage securities

must have a monitoring and reporting system in place that provides the documentation necessary to evaluate the expected and actual performance of such securities. The institution must use this system to conduct and document an analysis that shows, prior to purchase, that the proposed acquisition of a high-risk mortgage security will reduce the institution's overall interest rate risk. Subsequent to purchase, the institution must evaluate and document at least quarterly whether this high-risk mortgage security has actually reduced interest rate risk.

The institution's analyses performed prior to purchase and subsequently thereafter must be fully documented and will be subject to examiner review. This review will include an analysis of all assumptions used by management regarding the interest rate risk associated with the institution's assets, liabilities and off-balance sheet positions. Analyses performed and records constructed to justify purchases on a post-acquisition basis are unacceptable and will be subject to examiner criticism. Reliance on analyses and documentation obtained from a securities dealer or other outside party without internal analyses by the institution are also unacceptable and reliance on such third-party analyses will be subject to examiner criticism.

Management should also maintain documentation demonstrating that it took reasonable steps to assure that the prices paid for high-risk mortgage securities represented fair market value. Generally, price quotes should be obtained from at least two brokers prior to executing a trade. If, because of the unique or proprietary nature of the transaction or product, or for other legitimate reasons, bids cannot be obtained from more than one broker, management should document the reasons for not obtaining such quotes.

In addition, a depository institution that owns high-risk mortgage securities must demonstrate that it has established the following:

(1) A board-approved portfolio policy which addresses the goals and objectives the institution expects to achieve through its securities activities, including interest rate risk reduction objectives with respect to high-risk mortgage securities;

(2) Limits on the amounts of funds that may be committed to these high-risk mortgage securities;

(3) Specific financial officer responsibility for and authority over securities activities involving high-risk mortgage securities;

(4) Adequate information systems;

(5) Procedures for periodic evaluation of high-risk mortgage securities and their actual performance in reducing interest rate risk; and

(6) Appropriate internal controls.

The board of directors, or an appropriate committee thereof, and the institution's senior management should regularly (at least quarterly) review all high-risk mortgage securities to determine whether these instruments are adequately satisfying the interest rate risk reduction objectives set forth in the portfolio policy. The depository institution's senior management should be fully knowledgeable about the risks associated with prepayments and their subsequent impact on its high-risk mortgage securities.

Failure to report high-risk mortgage securities in accordance with the above policy, or failure to maintain adequate documentation demonstrating that the product was intended to reduce the institution's interest rate risk, will be viewed as an unsafe and unsound practice.

Purchases of high-risk mortgage securities prior to the date of this supervisory policy statement generally will be reviewed in accordance with previously-existing supervisory policies.

Other Zero-Coupon, Stripped or Original Issue Discount (OID) Products. Although considered free from credit risk if issued directly by the U.S. Government, longer maturities of zero coupon, stripped, and deep discount OID products (generally, maturities exceeding ten years from the date of purchase) have displayed extreme price volatility. Therefore, disproportionately large long-maturity holdings of these instruments, in relation to the total investment portfolio or total capital of the depository institution, are considered an imprudent investment practice. Such holdings will be subject to criticism by examiners who may seek the orderly disposal of some or all of these securities. Securities slated for disposal must be reported as held-for-sale assets at the lower of cost or market value until their disposition.

Other Considerations

Depository institutions should exercise extreme caution with respect to high-risk mortgage securities (as defined above) and securities with similar characteristics, irrespective of brand names and labels. Before purchasing any new or unfamiliar instrument, senior management should at a minimum produce internally a detailed analysis of the security in order to understand the performance characteristics, price volatility, and

potential hazards inherent in owning the security under various interest rate scenarios. A prospectus supplement that fully details the cash flows covering each of the securities held by the institution should be obtained and analyzed prior to purchase and retained for examiner review. Securities and other products (whether carried on or off the balance sheet) with characteristics similar to those of high-risk mortgage securities and long-maturity zero-coupon products described in this supervisory policy may be treated in the same manner by the financial regulatory agencies.

Several states have adopted, or are considering, regulations that prohibit state-chartered banks from purchasing interest-only strips or other securities discussed above. Accordingly, state-chartered institutions should consult with their state regulator concerning the permissibility of these purchases.

Dated: July 29, 1991.

Robert J. Lawrence,

Executive Secretary, Federal Financial Institutions Examination Council.

[FR Doc. 91-18342 Filed 8-1-91; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL MARITIME COMMISSION

Maryland Port Administration Moller Steamship Line, Inc.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-010896-008.

Title: Maryland Port Administration/ Moller Steamship Line, Inc. Terminal Agreement.

Parties:

Maryland Port Administration
Moller Steamship Line, Inc.

Synopsis: The Agreement, filed July 28, 1991, amends the parties' basic

agreement to place the agreement on a month-to-month basis for a term of 30 days beginning on August 1, 1991 pending the final negotiations of a long-term lease between the parties. All other terms and conditions of the agreement will continue to remain in effect.

Dated: July 29, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-18348 Filed 8-1-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Central Illinois Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 21, 1991.

A. Federal Reserve Bank of Chicago
(David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Central Illinois Bancorp, Inc.*, Sidney, Illinois; to acquire 97 percent of the voting shares of Arrowsmith State Bank, Arrowsmith, Illinois.

B. Federal Reserve Bank of St. Louis
(Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Central Bancompany, Inc.*, Jefferson City, Missouri; to acquire at least 80 percent of the voting shares of Nixa Bank, Nixa, Missouri.

Board of Governors of the Federal Reserve System, July 29, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-18353 Filed 8-1-91; 8:45 am]

BILLING CODE 6210-01-F

Norwest Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 16, 1991.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation*, Minneapolis, Minnesota; to acquire the book of insurance business of Norwest Bank

Wisconsin East Central, Sheboygan, Wisconsin, and thereby engage in general insurance agency activities pursuant to section 4(c)(8)(G) of the Bank Holding Company Act and § 225.25(b)(8)(vii) of the Board's Regulation Y. These activities will be conducted in Sheboygan, Wisconsin.

Board of Governors of the Federal Reserve System, July 29, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-18354 Filed 8-1-91; 8:45 am]

BILLING CODE 6210-01-F

Carlos Hank Rohn; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than August 21, 1991.

A. Federal Reserve Bank of Dallas
(W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Carlos Hank Rohn*, Lomas Virreyes, Mexico; to acquire an additional 8.86 percent of the voting shares of Laredo National Bancshares, Inc., Laredo, Texas, for a total of 13.05 percent and thereby indirectly acquire The Laredo National Bank, Laredo, Texas.

Board of Governors of the Federal Reserve System, July 29, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-18355 Filed 8-1-91; 8:45 am]

BILLING CODE 6210-01-F

Wachovia Corporation; 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 August 21, 1991.

A. Federal Reserve Bank of Richmond
(Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Wachovia Corporation*, Winston-Salem, North Carolina; to acquire 100 percent of the voting shares of South Carolina National Corporation, Columbia, South Carolina, and thereby indirectly acquire The South Carolina National Bank, Charleston, South Carolina.

In connection with this application, Applicant also proposes to acquire Provident Financial Corporation, Columbia, South Carolina, and thereby

engage in making, acquiring, or servicing loans or other extensions of credit for its own account or the account of others pursuant to § 225.25(b)(1); acting as agent for the sale of credit life, credit accident and health insurance, and property and casualty insurance directly related to extensions of credit by it or its affiliate pursuant to § 225.25(b)(8)(i), (ii), and (iv); and reinsuring credit life and credit accident and health insurance sold as agent by itself or affiliates pursuant to § 225.25(b)(8)(i); South Carolina National Mortgage Corp., Columbia, South Carolina, and thereby engage in making, acquiring, or servicing loans or other extensions of credit for its own account or the account of others pursuant to § 225.25(b)(1); Southern Provident Life Insurance Company, Phoenix, Arizona, and thereby engage in reinsuring credit life and credit accident and health insurance sold by subsidiaries of South Carolina National Corporation pursuant to § 225.25(b)(8)(i); SCN Capital Management Corporation, Columbia, South Carolina, and thereby engage in serving as investment adviser as defined by section 2(a)(20) of the Investment Company Act of 1990, to an investment company registered under the Act; providing portfolio investment advice to any other person, including South Carolina National Bank; furnishing general economic information and advice; general economic statistical forecasting services and industry studies; and providing financial advice to state and local governments, such as with respect to the issuance of their securities pursuant to § 225.25(b)(4); SCN Discount Brokerage Services, Inc., Columbia, South Carolina, and thereby engage in securities brokerage services pursuant to § 225.25(b)(15); Southeast Switch, Inc., Maitland, Florida, and thereby engage in providing data processing and transmission services to federally insured depository institutions who participate in Southeast Switch's neutral shared electronic funds transfer network and providing related services, including the administration and promotion of the network and providing data processing, transmission and related services to other EFT networks pursuant to § 225.25(b)(7); and providing bank management consulting advice to depository institutions pursuant to § 225.25(b)(11); Atlantic Savings Bank, FSB, Hilton Head Island, South Carolina, and thereby engage in deposit-taking activities and lending and other activities that are permissible for bank holding companies pursuant to § 225.25(b)(9); and making first mortgage loans, selling such loans in the secondary market, and such other

mortgage banking activities pursuant to § 225.25(b)(1); South Carolina Low and Moderate Income Rural Housing Partners Limited Partnership, Boston, Massachusetts, and thereby engage in constructing, acquiring, managing and selling seven apartment complexes to provide safe and affordable housing for low to moderate income and elderly individuals and families in South Carolina's communities with populations of less than 20,000 pursuant to § 225.25(b)(6); Bay Side, A Limited Partnership, Columbia, South Carolina, and thereby engage in investing up to \$5,000,000 in one or more community development projects which will provide safe and affordable rental housing to low- and moderate-income persons in South Carolina pursuant to § 225.25(b)(6); and Old Republic Bancorp, Inc. and Old Republic Savings Bank, Raleigh, North Carolina, and thereby engage in owning, controlling, and operating a savings association that engages only in deposit-taking activities and lending and other activities that are permissible for bank holding companies pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 29, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-18356 Filed 8-1-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Forms Submitted to the Office of Management and Budget for clearance

The Administration for Children and Families will publish on Fridays information collection packages submitted to the Office of Management and Budget (OMB) for clearance, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). Following is the package submitted to OMB since the last publication.

(For a copy of a package, call the FSA, Report Clearance Officer 202-401-5604.)

Participation Rate Statistical Report—FSA-103—The information is needed to determine the JOBS program participation rate and appropriate Federal Financial Participation (FFP) rate in each state. Respondents: State or local government; Number of Respondents: 51; Frequency of Response: Quarterly; Average Burden

per Response: 12 hours; Estimated Annual Burden: 2,448 hours.

OMB Desk Clearance Officer: Laura Oliven.

Written comments and recommendations for the proposed information collection should be sent directly to the appropriate OMB Desk Officers designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3201, 725 17th Street NW., Washington, DC 20503.

Dated: July 19, 1991.

Naomi B. Marr,

Associate Administrator, Office of Management and Information Systems.

[FR Doc. 91-18045 Filed 8-1-91; 8:45 am]

BILLING CODE 4150-04-M

Agency for Health Care Policy and Research

Assessment of Medical Technology

The Agency for Health Care Policy and Research (AHCPR), through its Office of Health Technology Assessment (OHTA), announces that it is coordinating a Public Health Service (PHS) assessment of the effectiveness of plethysmography for the diagnosis of vascular (venous or arterial) disease.

Specifically, AHCPR is interested in:

1. The diagnostic accuracy of all types of plethysmography and how they compare to other non-invasive measurements, such as light reflection rheography, ultrasound imaging, including, but not limited to, B-mode ultrasonography, duplex ultrasonography, and ultrasonic duplex color arteriography in detecting vascular insufficiency;

2. Comparative information on indirect (hemodynamic) tests and direct (anatomical) tests in the diagnosis of vascular disease; and

3. The clinical utility of plethysmography.

The assessment consists of a synthesis of published literature and information obtained from appropriate organizations in the private sector and from PHS agencies and others in the Federal Government. PHS assessments are conducted in accordance with section 904(b) of the PHS Act (42 U.S.C. 299a-2(b)). Based on the assessment, a PHS recommendation will be formulated, pursuant to 904(d) of the PHS Act, to assist the Health Care Financing Administration (HCFA) in establishing coverage policies. The information being sought by this notice is a review and assessment of past, current, and planned research related to this technology, as well as a

bibliography of published, controlled clinical trials and other well-designed clinical studies. Information related to the characteristics of the patient population most likely to benefit from plethysmography, as well as information on clinical acceptability, effectiveness, and the extent of use of this technology, is also being sought. Any person or group wishing to provide AHCPR with information relevant to this assessment should do so in writing no later than October 31, 1991 or within 90 days from the date of publication of this notice.

To enable the interested scientific community to evaluate the information included in the assessment, AHCPR will discuss in the assessment only those data and analyses for which a source(s) can be cited. Respondents therefore are encouraged to include with their submission a written consent permitting AHCPR to cite the source of the data and comments provided. Otherwise, in accordance with the confidentiality statute governing information collected by AHCPR, 42 U.S.C. 299a-1(c), no information received will be published or disclosed which could identify an individual described in the information or an entity supplying the information.

Written material should be submitted to: Director, Office of Health Technology Assessment, AHCPR, 6001 Montrose Avenue, suite 700, Rockville, MD 20852, (301) 443-4990.

Dated: July 26, 1991.

J. Jarrett Clinton,
Administrator.

[FR Doc. 91-18418 Filed 8-1-91; 8:45 am]

BILLING CODE 4160-90-M

Centers for Disease Control

[Program Announcement 128]

Cooperative Agreements for Childhood Lead Poisoning; Availability of Funds for Fiscal Year 1991

Introduction

The Centers for Disease Control (CDC) announces that cooperative agreement applications are being accepted for Fiscal Year 1991 for the following studies: Blood Lead Levels Following Abatement, BLIFA, which are prospective studies of blood lead levels in lead-poisoned children following abatement of lead paint in dwellings; Fingerstick/Venous Comparison, FVC which are comparative studies of lead levels in children's blood samples collected by fingerstick and by venipuncture.

The Public Health Service (PHS) is committed to achieving the health

promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Environmental Health and Maternal and Infant Health. (For ordering a copy of Healthy People 2000, see Where to Obtain Additional Information section.)

Authority

This program is authorized under sections 301(a) (42 U.S.C. 241) and 317A (42 U.S.C. 247b-1) of the Public Health Service Act, as amended. Program regulations are set forth in title 42, Code of Federal Regulations, part 51b.

Eligible Applicants

Eligible applicants are state or local health departments or other state or local health agencies or departments with active programs to screen, identify, and medically and environmentally manage lead-poisoned children. This eligibility includes health departments or other official organizational authority (agency or instrumentality) of the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and Federally recognized Indian Tribal governments. Limitation of eligibility for these awards to the above-named entities is based on the need for established mechanisms for collection of necessary case-related data.

Public agency applicants are encouraged to collaborate with academic institutions where appropriate to obtain scientific and technical assistance in study design and implementation. If a state agency applying for cooperative agreement funds is other than the official state health department, written concurrence by the state health department must be provided.

Applicants may apply for both components, however, each application must be complete and must stand alone.

Note: Eligible applicants may enter into contracts, including consortia agreements, as necessary to meet the requirements of the program and strengthen the overall application.

Availability of Funds

A. BLLFA

Approximately \$300,000 will be available in Fiscal Year 1991 to fund up to six new cooperative agreements. Awards of approximately \$50,000 to \$100,000 each are expected to begin on or about September 30, 1991. Awards will be made for 12-month budget

periods within project periods not to exceed 3 years.

B. FVC

Approximately \$50,000 will be available in Fiscal Year 1991 to fund up to two new cooperative agreements. Awards of approximately \$20,000 to \$30,000 per year are expected to begin on or about September 30, 1991. Awards will be made for 12-month budget periods within project periods not to exceed 2 years.

Purpose

A. BLLFA

This cooperative agreement program is intended to assist state and local health agencies in conducting structured studies of changes in blood lead levels in lead-poisoned children following lead-paint abatements as they are routinely conducted in the jurisdictions of the recipients. It presumes that a program already exists to screen children for lead poisoning, inspect the dwellings associated with lead-poisoned children, and ensure that lead-paint abatement is carried out according to state and local requirements. Funding and technical assistance are intended to enable recipients to conduct additional case-tracking, data-collection, and data-analysis activities for the studies which are not part of routine case-management. While recipients are expected to study lead-poisoned children identified from an ongoing screening activity and abatements conducted under the requirements of jurisdictional health or housing codes, these awards are not intended to fund screening or abatement activities.

B. FVC

This cooperative agreement program is intended to support studies which will systematically compare lead levels in blood samples collected by fingerstick with levels in samples collected by venipuncture from the same children. Funded studies would be carried out in settings where children are routinely screened and followed up for childhood lead poisoning. Information from such studies may be used to refine recommendations made by CDC to state and local childhood lead poisoning prevention programs (CLPPPs) regarding screening and diagnosis of lead poisoning. Such studies may also lead to identification of the need for improved sample collection methods.

Goals

A. BLLFA

1. To obtain quantitative estimates of both short-term and long-term changes

in the blood lead levels of lead-poisoned children not requiring chelation therapy, following lead-paint abatements as they are currently conducted in different jurisdictions.

2. To obtain estimates of short-term and long-term changes in house dust lead levels in abated dwellings.

3. To identify factors that may modify changes in blood or dust lead levels following lead-paint abatement.

B. FVC

1. To quantify the rate of false positive tests;

2. To identify factors associated with false positive tests;

3. To assess the ability of special devices and techniques to reduce the rate of false positives.

Program Requirements

To be able to fulfill the objectives of this cooperative agreement, an applicant must meet the following requirements:

A. BLLFA

1. Screening: Applicant has responsibility for or close working relationship with, an ongoing program that screens children for lead poisoning (or monitors screening performed by others), identifies lead poisoning cases, and provides for or ensures the appropriate medical and environmental management of such cases, including obtaining follow-up blood lead measurements at appropriate intervals.

2. Inspection/abatement: Applicant has responsibility for or close connection with ongoing inspection/abatement activities, which include inspecting residences of childhood lead-poisoning cases for lead-paint hazards and providing or ensuring abatement of lead-paint hazards, using generally accepted practices.

Ongoing activity is based on use of written guidelines, statutes, or regulations that specify methods used to inspect dwellings, identify lead-paint hazards, and abate such hazards.

Abatement standards should include:

- Acceptable methods of lead-paint removal, enclosure, or encapsulation;
- Measures to prevent exposure of children to the abatement process;
- Requirements for containment and cleanup of dust and debris generated by the abatement process; and
- Inspection of dwellings from which lead based paint has been abated to ensure compliance with applicable abatement standards.

3. Applicant is able to demonstrate established capacity to collect and analyze data needed to fulfill the study objectives, including ability to obtain

follow-up blood lead measurements at required intervals.

4. Applicant has demonstrated experience in conducting relevant epidemiologic studies.

5. Applicant has access to a laboratory with demonstrated proficiency in performing lead measurements.

B. FVC

1. Applicant conducts routine screening and follow up for childhood lead poisoning, or has a close working relationship with such a screening program.

2. Applicant has access to a laboratory with demonstrated proficiency in performing blood lead measurements.

3. Applicant is able to demonstrate established capacity to collect and analyze data needed to fulfill the study objectives.

Cooperative Activities

In conducting activities to achieve the purpose of these programs, the recipient shall be responsible for conducting activities under A. below, and CDC will be responsible for conducting activities under B. below:

A. Recipient Activities

BLIFA

1. Enroll study subjects meeting specified eligibility criteria after obtaining informed consent;

2. Collect demographic, behavioral, and household inspection data using structured interviews and data collection forms;

3. Measure baseline blood lead, house dust lead, and soil lead levels;

4. Measure follow-up blood lead and house dust levels at regular intervals; and

5. Analyze collected data.

FVC

1. Enroll study subjects meeting specified eligibility criteria after obtaining informed consent. Eligibility criteria should include children for which a venous blood sample would normally be collected;

2. Collect paired fingerstick and venous blood samples from enrolled subjects, using one or more protocols for sample collection;

3. For each paired sample collection, collect data concerning the subject, technician, and conditions of sample collection that may be predictive of contamination rates;

4. Measure lead levels in the paired samples;

5. Analyze collected data.

B. CDC Activities

BLIFA

1. Review study protocol and recommend changes consistent with the project goals;

2. Assist in quality control and quality assurance of blood and environmental lead measurements;

3. Provide technical assistance in data collection, analysis, and interpretation.

FVC

1. Review study protocol and recommend changes consistent with the project goals;

2. Assist in quality control and quality assurance of blood lead measurements;

3. Provide technical assistance in data collection, analysis, and interpretation.

Evaluation Criteria

Each application will be reviewed individually, and evaluated according to the following criteria:

A. BLIFA: (maximum of 100 points)

1. *Study Protocol* (25%): The protocol's scientific soundness, its feasibility, its consistency with the project goals, and the extent to which it provides adequate detail for evaluation.

2. *Access to Study Subjects* (20%): The extent to which the application documents the presence of an ongoing childhood lead poisoning screening program with the ability to identify and follow up the number of lead poisoning cases required to meet study criteria.

3. *Inspection and Abatement Activities* (25%): The extent to which the application documents the presence of an ongoing activity of inspecting dwellings for lead hazards and ensuring abatement. The technical soundness and degree of detail provided in written procedures for inspection and abatement and the extent to which the abatement procedures are likely to reduce sources of lead exposure in the abated dwelling.

4. *Laboratory Capacity* (10%): The extent to which the application documents access to a laboratory with demonstrated proficiency in performing blood lead measurements.

5. *Project Personnel* (10%): The extent to which the application documents qualifications and time commitments adequate to complete the study and meet the project goals.

6. *Experience* (10%): The extent of the applicant's experience in conducting similar studies.

7. *Budget Justification and Adequacy of Facilities* (unscored): The budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of grant

funds. The adequacy of available facilities to support the project will also be evaluated.

B. FVC: (maximum of 100 points)

1. *Study Protocol* (30%): The protocol's scientific soundness, its feasibility, its consistency with the project goals, and the extent to which it provides adequate detail for evaluation.

2. *Access to Study Subjects* (20%): The extent to which the application documents the presence of an ongoing childhood lead poisoning screening program with the ability to identify and enroll the number of subjects required to meet study criteria.

3. *Laboratory Capacity* (20%): The extent to which the application documents access to a laboratory with demonstrated proficiency in performing blood lead measurements.

4. *Project Personnel* (15%): The extent to which the application documents qualifications and time commitments adequate to complete the study and meet the project goals.

5. *Experience* (15%): The extent of the applicant's experience in conducting similar studies.

6. *Budget Justification and Adequacy of Facilities* (unscored): The budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of grant funds. The adequacy of available facilities to support the project will also be evaluated.

Noncompeting Applications

Continuation awards will be made on the basis of the availability of funds and the following criteria:

1. Satisfactory progress is made towards achieving first budget year objectives for implementation of the study protocol.

2. The proposed activities for the new budget period are consistent with the study protocol and project goals.

3. The budget request is clearly explained, adequately justified and consistent with the intended use of grant funds.

Other Requirements

Human Subjects

Individual state projects may include research on human subjects, including access to personal identifiers to link relevant data sets. Therefore, if applicable, applicants must comply with Public Law 93-148 regarding the protection of human subjects. Assurances must be provided that the project or activity will be subject to initial and continuing review by an appropriate institutional review

committee. The applicant will be responsible for providing evidence of this assurance in accordance with the appropriate guidelines and forms provided in the application kit.

Executive Order 12372 Review

Applications are subject to the Intergovernmental review of Federal Programs as Governed by Executive Order 12372. Executive Order 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than Federally-recognized Indian tribal governments) should contact their state Single Point of Contacts (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC of each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305, no later than 30 days after the deadline date for new and competing awards. The granting agency does not guarantee to "accommodate or explain" state process recommendations it receives after that date.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.283.

Application Submission and Deadline

Applicants should follow the guidance provided in PHS form 5161-1 in preparing grant applications. Applicants are encouraged to be concise. You may refer to appendices to provide detailed program descriptions and program protocols. The original and two copies of the application must be submitted on or before August 8, 1991 to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta, GA 30305.

1. Deadline

Applications shall be considered as meeting the deadline if they are either:

A. Received on or before the deadline date, or

B. Sent on or before the deadline date and received in time for submission for

the review process. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

2. Late Applications

Applications which do not meet the criteria in 1A or 1B above are considered late applications and will be returned to the applicant.

A one-page, single-spaced, typed abstract must be submitted with the application. The heading should include the title of the grant program, project title, organization, name and address, project director and telephone number. The abstract should include a brief summary of the study protocol, a brief description of the population of study subjects and of laboratory capacity, and a brief synopsis of the applicant's experience in conducting similar studies.

Where To Obtain Additional Information

A complete program description, information on application procedures, an application package and business management technical assistance may be obtained from Lisa Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E-14, Atlanta, Georgia 30305, (404) 842-6630 or FTS 236-6630.

Programmatic technical assistance may be obtained from Nancy Tips, Public Health Advisor, or Thomas Matte, M.D., Medical Epidemiologist, Lead Poisoning Prevention Branch, Division of Environmental Hazards and Health Effects, Center for Environmental Health and Injury Control, Centers for Disease Control, 1600 Clifton Road, NE., Mailstop F-28, Atlanta, Georgia 30333, (404) 488-4880 or FTS 236-4880.

Please refer to Announcement Number 128 when requesting information and submitting any application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report, Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone (202) 783-3238).

Dated: July 29, 1991.

Robert L. Foster,
Acting Director, Office of Program Support,
Centers for Disease Control.

[FR Doc. 91-18352 Filed 8-1-91; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 91M-0247]

IOPTEx Research, Inc.; Premarket Approval of Model 405 Anterior Chamber Intraocular Lens

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by IOPTEx Research, Inc., Irwindale, CA, for premarket approval, under the Medical Device Amendments of 1976, of Model 405 Anterior Chamber Intraocular Lens. After reviewing the recommendation of the Ophthalmic Devices Panel of the Medical Devices Advisory Committee, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of June 27, 1991, of the approval of the application.

DATES: Petitions for administrative review by September 3, 1991.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nancy C. Brogdon, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1212.

SUPPLEMENTARY INFORMATION: On November 15, 1988, IOPTEx Research, Inc., Irwindale, CA 91706, submitted to CDRH an application for premarket approval of Model 405 Anterior Chamber Intraocular Lens. The device is an anterior chamber intraocular lens and is indicated for secondary and backup lens implantation for the visual correction of aphakia in persons 60 years of age or older. Backup lens implantation is identified as primary extracapsular cataract extraction where there is a structural reason that the anterior chamber lens is the preferred lens. The lens is intended to be placed in the angle in the anterior chamber. The

device is available in a range of powers from 5 diopters (D) through 33 D in 0.5-D increments..

On January 25, 1990, the Ophthalmic Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application. On June 27, 1991, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the *Federal Register*. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before September 3, 1991, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: July 24, 1991.

James S. Benson,
Director, Center for Devices and Radiological Health.

[FR Doc. 91-18417 Filed 8-1-91; 8:45 am]

BILLING CODE 4160-01-M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96-511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the *Federal Register* on July 12, 1991.

(Call Reports Clearance Officer on (301) 965-4149 for copies of package)

1. Pain Assessment Instruments Development—0960-0479. The information will be used by the Social Security Administration to develop final information collection instruments to assess pain in applicants for disability insurance benefits. The affected public is comprised of State Disability Determination Services and certain applicants for disability insurance.

Number of Respondents: 2700.

Frequency of Response: 1.

Average Burden Per Response: 53 minutes.

Estimated Annual Burden: 2400.

OMB Desk Officer: Laura Oliven.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: July 25, 1991.

Ron Compston,
Social Security Administration, Reports Clearance Officer.

[FR Doc. 91-18195 Filed 8-1-91; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-91-1917; FR-2934-N-37]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free title V information line at 1-800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A-10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

All properties in this week's Notice are located on Air Force bases that are being closed pursuant to the 1988 Base Closure and Realignment Act. The Department of the Air Force is the landholding and disposal agency. For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact: U.S. Air Force: John Carr, Realty Specialist, HQ-AFBDA/BDR, Pentagon, Washington,

DC 20330-5130; (703) 693-0674; (this is not a toll-free number.)

Dated: July 26, 1991.

Paul Roitman Bardack,
Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 08/02/91

California—George Air Force Base

George Air Force Base is located in San Bernardino County, California, 92394-5000. All the properties will be excess to the needs of the Air Force on or about December 31, 1992. Properties shown below as suitable/available will be available at that time. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The Base covers 5,340 acres and contains 732 individual properties that have been reviewed by HUD for suitability for use to assist the homeless. The 666 properties that HUD has determined suitable and which are available include various types of housing; office and administrative buildings; recreational, maintenance, and storage facilities; and other more specialized structures.

Suitable/Available Properties

Property Numbers: 199120001-199120420

Type Facility: Housing—420 buildings with a total of 1,636 dwelling units; buildings have 1, 2, 3, 4, 6, or 8 units each; wood/stucco frame construction; possible asbestos

Property Numbers: 199120421-199120467, 199120470-199120473

Type Facility: Office/administration—51 buildings ranging in size from 200 sq. ft. on 1 floor to 56,600 sq. ft. on 3 floors; wood or concrete block construction; several trailers; possible asbestos

Property Numbers: 199120474-199120483, 199120485-199120505

Type Facility: Recreation—21 buildings and 10 parcels of land, including theatre, recreation center, bowling center, gym, library, craft center, shop, youth center, golf course buildings, pools, bathhouses; 7 baseball, softball, and soccer fields; track; golf course; driving range; possible asbestos

Property Numbers: 199120506-199120508, 199120511-199120520, 199120527-199120547

Type Facility: Temporary living quarters, dorms, lodges, and ancillary sheds—34 buildings; 1 and 2 story wood, concrete, and concrete block structures; 4700 sq. ft. to 25,000 sq. ft.

for living quarters; 380 sq. ft. to 2400 sq. ft. for sheds; possible asbestos

Property Numbers: 199120548-199120587

Type Facility: Aircraft and airport related facilities—40 structures including hangers, shops, tower, terminal, lab, docks, storage, control center, navigation station, runways; sizes up to 86,000 sq. ft.; possible asbestos

Property Numbers: 199120588-199120597, 199120599-199120608

Type Facility: Maintenance and engineering facilities—20 buildings; concrete and wood; 200 sq. ft. to 17,000 sq. ft.; possible asbestos

Property Numbers: 199120609-199120618

Type Facility: Training facilities—10 buildings; education center and 9 classroom buildings; concrete and wood; 1200 sq. ft. to 16,800 sq. ft.; possible asbestos

Property Numbers: 199120619-199120630

Type Facility: Stores and services—12 buildings; 10 stores and 2 gas stations; wood and concrete; 1800 sq. ft. to 30,700 sq. ft.; possible asbestos

Property Numbers: 199120631-199120632

Type Facility: Chapels—2 buildings; 4800 sq. ft. wood; 24,100 sq. ft. concrete; possible asbestos

Property Number: 199120633

Type Facility: Hospital—3 story, concrete block, 147,000 sq. ft.; possible asbestos

Property Numbers: 199120634-199120635

Type Facility: Fire facilities—2 buildings; fire station and command center; possible asbestos

Property Numbers: 199120636-199120638

Type Facility: Audio visual and photo lab—3 buildings; wood and concrete; 1800 sq. ft. to 2300 sq. ft.; possible asbestos

Property Numbers: 199120639-199120645

Type Facility: Vehicle shops—7 buildings; concrete; 74 sq. ft. to 33,000 sq. ft.; possible asbestos

Property Numbers: 199120646-199120655

Type Facility: Misc.—10 buildings; wood and concrete; 1 story; dining halls, mess halls, food service, child care centers; 1800 sq. ft. to 19,000 sq. ft.; possible asbestos

Property Numbers: 199120656-199120666

Type Facility: Communications/electronic—11 buildings; concrete block and wood; 1 story shops and sheds; 108 sq. ft. to 10,200 sq. ft.; possible asbestos

Property Numbers: 199120667-199120678

Type Facility: Warehouses—12 buildings; 1124 sq. ft. to 70,000 sq. ft.; wood, concrete, and concrete block; possible asbestos

Suitable/Unavailable Properties

Property Numbers: 199120468-199120469
 Type Facility: Office—2 one story wood structures; possible asbestos
 Property Number: 199120484
 Type Facility: Recreation—one story wood structure; possible asbestos
 Property Numbers: 199120509-199120510, 199120521-199120526
 Type Facility: Temporary living quarters—8 one story wood structures; possible asbestos
 Property Number: 199120598
 Type Facility: Maintenance and engineering—one story wood structure; possible asbestos

Unsuitable Properties

Property Number: 199120679
 Type Facility: Small arms
 Reason: Within 2000 ft. of flammable or explosive material
 Property Numbers: 199120680-199120687
 Type Facility: Hazardous storage facilities—8 buildings
 Reason: Within 2000 ft. of flammable or explosive material
 Property Numbers: 199120688-199120713
 Type Facility: Explosives and munitions facilities—26 buildings
 Reason: Within 2000 ft. of flammable or explosive materials
 Property Numbers: 199120714-199120732
 Type Facility: Fuel facilities—19 structures
 Reason: Within 2000 ft. of flammable or explosive materials

California—Mather Air Force Base

Mather Air Force Base is located in Sacramento County, California, 95655. The five properties listed below were reported as unutilized in 1990. Approximately 1,400 other properties at the Base will be reviewed for suitability for use to assist the homeless on or about January 1992.

Unsuitable Properties

Property Numbers: 189010606-189010608, 189030001
 Type Facility: 4 Buildings, Nos. 3686, 3494, 2566, 1766
 Reason: Secured area
 Property Number: 189010609
 Type Facility: Vacant land
 Reason: Secured area

Illinois—Chanute Air Force Base

Chanute Air Force Base is located in Rantoul, Champaign County, Illinois, 61866. The 123 properties listed below were reported excess to the needs of the Air Force in 1990. They are presently vacant and available for application for use to assist the homeless. The remainder of the approximately 800

properties at the Base will be reviewed for suitability for use to assist the homeless on or about January 1992.

Suitable/Available Properties

Property Numbers: 189030224-189030301
 Type Facility: Housing (Chapman Courts)—78 2-unit residential buildings; wood frame; termite damage; need major rehab; possible asbestos; possible easement restrictions
 Property Numbers: 189030302-189030312
 Type Facility: Housing (Chapman Courts)—11 4-unit residential buildings; wood frame; termite damage; need major rehab; possible asbestos; possible easement restriction
 Property Numbers: 189030313-189030342
 Type Facility: Housing (Chapman Courts)—30 1-unit residential buildings; wood frame; termite damage; need major rehab; possible asbestos; possible easement restriction
 Property Number: 189030343
 Type Facility: Administrative (Chapman Courts, Bldg. 5) 2707 sq. ft.; 1 story wood frame; termite damage; possible asbestos; needs major rehab; possible easement restriction
 Property Number: 189030344
 Type Facility: Warehouse (Bldg. 732)—13,336 sq. ft.; 2 story wood frame; needs structural repairs
 Property Number: 189030345
 Type Facility: Band facility (Bldg. 118)—3996 sq. ft.; 1 story wood frame; needs structural repairs
 Property Number: 189030346
 Type Facility: Cold storage (Bldg. 107)—17,118 sq. ft.; 1 story wood frame; needs rehab; potential utilities

New Hampshire—Pease Air Force Base

Pease Air Force Base is located in Rockingham County, New Hampshire, 03803. The Base covers 4,257 acres and includes a hospital, theatre, bowling alley, 2 chapels, over 2,000 bachelor bed spaces, and 1,200 military multi-family housing units. The New Hampshire Air National Guard is expected to continue operations on a portion of the Base. HUD has reviewed information on 798 properties located at the Base and has found 689 to be suitable for possible use to assist the homeless. All suitable/available properties listed below are vacant.

Suitable/Available Properties

Property Number: 189040320-189040323
 Type Facility: 3 open mess and 1 dining hall
 Property Number: 189040324
 Type Facility: Credit union building

Property Numbers: 189040325-189040326
 Type Facility: 2 bachelor quarters buildings

Property Number: 189040327
 Type Facility: Hospital heat plant
 Property Number: 189040328
 Type Facility: Hospital
 Property Number: 189040329
 Type Facility: Trailer (hospital office space)
 Property Numbers: 189040330-198040322
 Type Facility: 3 training facilities
 Property Numbers: 189040333-198040334
 Type Facility: 2 child care facilities
 Property Number: 189040335
 Type Facility: Fire station
 Property Numbers: 189040059-189040319
 Type Facility: 261 4-unit residences
 Property Numbers: 189040347, 189040349
 Type Facility: 2 sales stores
 Property Number: 189040350
 Type Facility: Commissary
 Property Numbers: 189040351-189040352
 Type Facility: 2 chapels
 Property Number: 189040383
 Type Facility: Single family residence
 Property Number: 189040384
 Type Facility: Rod and gun club
 Property Number: 189040385
 Type Facility: Motor pool
 Property Numbers: 189040386-189040394
 Type Facility: 9 dormitories
 Property Numbers: 189040395-189040404
 Type Facility: 10 residences with detached garage
 Property Numbers: 189040405-189040467
 Type Facility: 63 2-unit residences with detached garage
 Property Numbers: 189040468-189040471
 Type Facility: 4 6-unit residences with attached garage
 Property Numbers: 189040472-189040715
 Type Facility: 244 detached housing storage sheds
 Property Numbers: 189040720, 189040721, 189040726
 Type Facility: 3 communications facilities
 Property Numbers: 189040734-189040742
 Type Facility: 9 recreational facilities, including library, bowling center, theatre, gymnasium, youth center, bath house, and automotive shop
 Property Numbers: 189040743-189040751
 Type Facility: 9 small concrete munitions storage buildings
 Property Numbers: 189040752-189040771
 Type Facility: 20 administrative facilities
 Property Numbers: 189040773-189040788, 189040790-189040793, 189040795-189040805

Type Facility: 31 miscellaneous buildings used for office, administrative, educational, laboratory, traffic check, storage, maintenance, and other purposes

Property Number: 189010534

Type Facility: Bldg. 8, Newington Road

Property Number: 189010535

Type Facility: Temp. lodging facility, Bldg. 94, Rockingham Drive

Unsuitable Properties

Property Number: 189040360

Type Facility: Golf course

Reason: Within airport runway clear zone

Property Number: 189010536

Type Facility: Vehicle fuel station

Reason: Within 2000 ft. of flammable or explosive material

Property Numbers: 189010537, 189010538

Type Facility: Jet fuel pumphouses

Reason: Within 2000 ft. of flammable or explosive material

Property Number: 189010539

Type Facility: Weapons storage area

Reason: Within 2000 ft. of flammable or explosive material

Property Numbers: 189040336-189040346

Type Facility: Family housing, Bldgs. 369-371, 373-375, 377-380, 382

Reason: Within airport runway clear zone

Property Number: 189040348

Type Facility: Service station

Reason: Other

Property Numbers: 189040353-189040359

Type Facility: Bldgs. 398-401, 403, 405, 407

Reason: Within airport runway clear zone

Property Numbers: 189040361-189040373

Type Facility: Industrial facilities

Reason: Within 2000 ft. of flammable or explosive material

Property Numbers: 189040374-189040382, 189040727-189040733

Type Facility: Aircraft operations buildings

Reason: Within 2000 ft. of flammable or explosive material

Property Numbers: 189040716-189040719

Type Facility: Utility plants

Reason: Other

Property Numbers: 189040722-189040725

Type Facility: Communications facilities

Reason: Within 2000 ft. of flammable or explosive material

Property Numbers: 189040772, 189040794

Type Facility: Bus shelters

Reason: Other

Property Number: 189040789

Type Facility: Utility station

Reason: Other

Property Numbers: 189040806, 189040808, 189040825-189040829

Type Facility: Sewage pump stations

Reason: Other

Property Numbers: 189040807, 189040809,

189040814, 189040819-189040820,

189040822-189040824

Type Facility: Pump stations

Reason: Other

Property Numbers: 189040810-189040813,

189040815-189040818, 189040821,

189040830-189040851

Type Facility: Power stations

Reason: Other

[FR Doc. 91-18163 Filed 8-1-91; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-010-01-4320-08]

Cascade Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to amend the Cascade Resource Management Plan.

SUMMARY: Pursuant to 43 CFR part 1600 (BLM Planning Regulations) the Bureau of Land Management (BLM) is beginning preparation of an amendment to the Cascade Resource Management Plan. The amendment will consider area of critical environmental concern (ACEC) designation on six sites containing populations of *Allium aseae* (Asae's Onion). The amendment will also consider transfer of three tracts out of federal ownership. An environmental assessment (EA) will be prepared on the amendment.

DATES: It is anticipated that the amendment and EA will be available for public review and comment during the summer of 1991. Public meetings have not been scheduled.

ADDRESSES: Written Comments should be mailed to: Cascade Area Manager, Bureau of Land Management, 3948 Development Avenue, Boise, ID 83705.

FOR FURTHER INFORMATION CONTACT: Cascade Area Manager or Fred Minckler, Team Leader at the Bureau of Land Management, 3984 Development Avenue, Boise, ID 83705. Telephone (208) 384-3300.

SUPPLEMENTARY INFORMATION: The Cascade Resource Management Plan (RMP) is a land use plan for the Cascade Resource Area encompassing nearly 500,000 acres of public land administered by BLM in southwest Idaho. The RMP was approved in 1988. The amendment being prepared will address special management actions and designation of six sites ranging in

size from five to 400 acres as ACECs to protect an onion species currently being considered for listing as threatened or endangered. The amendment will also address transfer of two small tracts of public land from federal ownership by direct sale and transfer of a third tract through private exchange.

Dated: July 26, 1991.

J. David Brunner,

District Manager, Boise District Office.

[FR Doc. 91-18339 Filed 8-1-91; 8:45 am]

BILLING CODE 4310-06-M

Fish and Wildlife Service

Availability of Draft Recovery Plan for the O'ahu Tree Snails of the Genus *Achatinella* for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the O'ahu tree snails of the genus *Achatinella*. These species occur in mountainous dry to wet forests and shrublands on the island of O'ahu, Hawaii.

DATES: Comments on the draft recovery plan must be received on or before October 1, 1991 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor, Pacific Islands Office, U.S. Fish and Wildlife Service, P.O. Box 50167, Honolulu, Hawaii 96850 (building address: 300 Ala Moana Boulevard, Honolulu, Hawaii 96813), or the Assistant Regional Director, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232. Written comments and materials regarding the plan should be addressed to the Pacific Islands Office Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above Honolulu, Hawaii address.

FOR FURTHER INFORMATION CONTACT: Karen Rosa, Fish and Wildlife Biologist, at the above Honolulu, Hawaii address (telephone 808/541-2749 or FTS/551-2749).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where

they are again secure, self-sustaining members of their ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States, its Territories and Commonwealths. Recovery plans describe actions considered necessary for conservation of the species, criteria for recognizing the recovery levels for downlisting or delisting them, and initial estimates of times and costs to implement the recovery measures needed.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will take these comments into account in the course of implementing approved recovery plans.

The species being considered in this recovery plan are the O'ahu tree snails of the genus *Achatinella*. The areas of emphasis for recovery actions are the Northern Ko'olau range, Northern Wai'anae range, Southern Wai'anae range and other mountainous areas above 400 m elevation on the island of O'ahu, Hawaii.

Of the 41 species in the genus *Achatinella* that are federally listed as endangered, 16 species are now extinct, 5 species have not been seen for over 15 years, and 18 of the remaining 20 species are on the verge of extinction. Recovery efforts for these species will focus on control of an introduced predatory snail that is believed to be the main reason for decline of the O'ahu tree snails, control of introduced rats and exotic plants, location and protection of additional populations of tree snails, protection and management of suitable habitat, and captive cultivation for future reestablishment of snail colonies on O'ahu. The interim goal of this recovery plan is to locate and stabilize all remaining populations of *Achatinella* spp.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of this plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 26, 1991.

William E. Martin,
Acting Regional Director, U.S. Fish and Wildlife Service, Region 1.

[FR Doc. 91-18340 Filed 8-1-91; 8:45 am]

BILLING CODE 4310-55-M

Availability of a Draft Revised Recovery Plan for *Enhydra lutra nereis* (southern sea otter) for Review and Comment, and Announcement of Public Workshops on the Draft

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and related public workshops.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft revision of the southern sea otter recovery plan. This species occurs along the central coast of California, from Point Ano Nuevo south to Pismo Beach. The Service solicits review and comment from the public on this draft revised plan. One of the issues being considered in the draft plan is the future of the Management (no-otter) Zone and the translocated experimental population. Two public workshops will be held.

DATES: Comments of the draft revised recovery plan must be received on or before October 1, 1991 to receive consideration by the Service. Public workshops will be held in Santa Monica, California on August 20, 1991, and in Rohnert Park, California on August 22, 1991.

ADDRESSES: Public workshops will be held at the Guest Quarters Suite Hotel, 1707 Fourth Street, Santa Monica, California; and at the Red Lion Inn Sonoma County, One Red Lion Drive, Rohnert Park, California. Workshops will be from 1 p.m. to 4 p.m. and from 6 p.m. to 9 p.m.

Persons wishing to review the draft revised recovery plan may obtain a copy by written request addressed to the Ventura Field Office, U.S. Fish and Wildlife Service, 2140 Eastman Avenue, Suite 100, Ventura, California, 93003, or the Assistant Regional Director, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232-4181. Written comments and materials regarding the plan should be addressed to Mr. Carl Benz at the above Ventura, California address. Comments and materials received are available upon request for public inspection, by

appointment, during normal business hours at the above Ventura, California address.

FOR FURTHER INFORMATION CONTACT: Mr. Carl Benz at the above Ventura, California address (telephone 805-644-1766 or FTS 983-6039).

SUPPLEMENTARY INFORMATION:

Background

The southern (California) sea otter was listed as threatened in 1977 under the Federal Endangered Species Act. It is also recognized as a depleted population pursuant to the Marine Mammal Protection Act. Reduced range and population size, vulnerability to oil spills, and the oil spill risk from coastal tanker traffic were the primary reasons for the threatened status. The southern sea otter population contains about 2000 individuals and ranges between Point Ano Nuevo south to Pismo Beach. About 14 otters are at San Nicolas Island as a result of translocation efforts to establish an experimental population. After review of new biological information, the Service, with assistance of the Southern Sea Otter Recovery Team, has drafted for public review and comment a revised recovery plan.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified will be considered prior to approval of the plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 29, 1991.

William E. Martin,
Acting Regional Director, U.S. Fish and Wildlife Service, Region 1.

[FR Doc. 91-18351 Filed 8-1-91; 8:45 am]

BILLING CODE 4310-55-M

Availability of a Draft Recovery Plan for *Cirsium Pitcheri* (Pitcher's Thistle) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft recovery plan for *Cirsium pitcheri* (Pitcher's thistle). This plant is endemic to the beaches and grassland dunes of Lakes Michigan, Superior, and Huron. It is found at 120

sites in Michigan, 8 in Indiana, and 8 in Wisconsin. It is also known from 12 sites in Ontario, Canada. The species is threatened by human-caused threats, including shoreline development, recreation, dune and beach stabilization, and sand mining. The recovery plan sets out criteria to protect essential habitat, manage known occurrences, and preserve genetic diversity. The Service solicits review and comments from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before September 3, 1991 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft plan may examine a copy during normal business hours at the Services's Twin Cities Regional Office, Division of Endangered Species, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111, telephone 612/725-3276, FTS 725-3276; the East Lansing Field Office, 1405 South Harrison Road, East Lansing, Michigan, 48823, telephone 517/337-6650, FTS 374-6650; the Green Bay Field Office, 1015 Challenger Court, Green Bay, Wisconsin, 54311, telephone 414/433-3803, FTS 360-3803; and the Bloomington Field Office, 718 North Walnut Street, Bloomington, Indiana 47401 telephone 812/334-4261, FTS 332-4261. Persons wishing to obtain a copy of the draft recovery plan should contact the Twin Cities Regional Office. Written comments and materials regarding the plan should be mailed to the Twin Cities Office. All comments and materials received will be available for public inspection, by appointment, during normal business hours at that office for the duration of the comment period.

FOR FURTHER INFORMATION CONTACT: William F. Harrison, at the above Twin Cities Regional Office address (612/725-3276; FTS 725-3276).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, criteria for recognizing recovery levels for downlisting or delisting them, and initial estimates of times and costs to implement the recovery measures needed.

The Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during the recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

Cirsium pitcheri (Pitcher's thistle) was listed as a threatened species under the Act on July 18, 1988 (FR 53 27137). This species is currently extant at 136 sites; 120 in Michigan, 8 in Indiana, and 8 in Wisconsin. The plant is endemic to the beaches and grassland dunes of Lakes Michigan, Superior, and Huron, where it is threatened by development of the lakeshores and dunal areas. It is found most frequently in the near-shore plant communities, although it may be found in all nonforested areas of a dune system. Pitcher's thistle is vulnerable because of its endemism to the narrow shoreline habitats of the Great Lakes. Habitat alteration and destruction is considered the greatest threat to the species, because of the desirability of its shoreline habitat for residential development. The plant has been extirpated from Illinois, where it was once known from 14 sites.

Pitcher's thistle is a monocarpic or semelparous (blooms and sets seed only once) herbaceous plant that blooms after a 5 to 8 year juvenile stage. The stems and leaves of juveniles and adults are woolly white, deeply pinnatifid with the lobes less than 2 centimeter (cm) wide and up to 4 cm long. The flowering stems are up to 1 meter tall and have several to a dozen widely scattered leaves. The plants will have a tap root that extends at least 2 meters long. The recovery plan outlines strategies to protect populations and habitats, manage all protected sites, continue to survey for new occurrences, implement a landowner contact and education program, develop restoration protocols, and conduct research on the biology of the species and the dune system it depends upon. The recovery objective is to secure permanent protection sufficient to maintain 80 of the most viable occurrences representing each biogeographic region, all landowners have been contacted concerning the protection of privately owned occurrences, and restored

populations are ecologically functional after 20 years.

Public Comments Solicited

The Service solicits written comments on this recovery plan. All comments received by the date specified above will be considered prior to approval of the plan.

Authority: The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 23, 1991.

James C. Gritman,
Regional Director.

[FR Doc. 91-18362 Filed 8-1-91; 8:45 am]

BILLING CODE 4310-55-M

Geological Survey

Application Notice Establishing a Tentative Closing Date for Transmittal of Applications Under the Water Resources Research Grant Program for Fiscal Year (FY) 1992

Applications are invited for water research projects under the Water Resources Research Grant Program.

The purpose of this program is to provide matching grants for research concerning any aspect of water resource-related problems deemed to be in the national interest.

Applications may be submitted by water resources research institutes and other qualified educational institutions, private foundations, private firms, individuals, and agencies of State or local governments.

Closing Date for Transmittal of Applications: Applications are tentatively due on or before November 19, 1991. The announcement will state the actual due date for receipt of the application.

Program Information: This program supports research related to the following general areas of national interest: (1) Aspects of the hydrologic cycle; (2) supply and demand for water; (3) demineralization of saline and other impaired waters; (4) conservation and best use of available supplies of water and methods of increasing such supplies; (5) water reuse; (6) depletion and degradation of groundwater supplies; (7) improvements in the productivity of water when used for agricultural, municipal, or commercial purposes; and (8) the economic, legal, engineering, social, recreational, biological, geographic, ecological, and other aspects of water problems.

Application Forms: The announcement is expected to be available on or about August 12, 1991. The announcement may be obtained by writing to Ms. Mary Burkett, U.S. Geological Survey, Office of Procurement and Contracts—MS 205C, 12201 Sunrise Valley Drive, Reston, Virginia 22092 and requesting a copy of announcement 7846. All organizations that applied for a FY 1991 award, all Historically Black Colleges and Universities and Hispanic Association of Colleges and Universities known to have schools in earth sciences, physical sciences and related fields. All organizations that requested to be retained on the mailing list since the last announcement will be mailed a copy of the announcement.

Further Information: For further information contact Melvin Lew, U.S. Geological Survey, Water Resources Division—MS 424, 12201 Sunrise Valley Drive, Reston, Virginia 22092. Telephone: 703-648-6811.

(Catalog of Federal Domestic Assistance Number 1p5.806)

Dated: July 12, 1991.

Jack J. Stassi,

Assistant Director for Administration.

[FR Doc. 91-18317 Filed 8-1-91; 8:45 am]

BILLING CODE 4310-31-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercompany Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercompany hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office. Sonoco Products Company, One North Second Street, P.O. Box 160, Hartsville, SC 29550.

2. Wholly owned subsidiaries which will participate in the operations, and State(s) of incorporation:

Sonoco Fibre Drum, Inc.—Delaware
Sonoco Plasti-Drum, Inc.—Illinois
Sonoco International, Inc., Sonoco LTD.—Delaware, Canada (Federally Incorporated)

Paper Stock Dealers, Inc.—North Carolina

Sonoco Plasti-Drum—Southwest—Texas
Sonoco Plasti-Drum—Kentucky—Kentucky

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-18371 Filed 8-1-91; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-1 (Sub-No. 212)]

Chicago and North Western Transportation Co.—Abandonment—Between Palmer and Laurens in Pocahtontas County, IA; Findings

The Commission has found that the public convenience and necessity permit the Chicago and North Western Transportation Company to abandon its 20.4-mile line of railroad between milepost 453.6 near Palmer, IA, and milepost 474.0 near Laurens, IA, and 1.03 mile of side track.

A certificate will be issued authorizing abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase), to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Decided: July 26, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald. Commissioner Simmons was absent and did not participate in the disposition of this proceeding.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-18372 Filed 8-1-91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Consent Judgment in Action To Enjoin and Penalize Violations of the Clean Air Act ("CAA")

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a consent decree in *United States v. Michael T. Robinson and Associates, Inc.* ("Robinson"), (W.D. Wis.), Civil Action No. 90-C-0866-S was lodged with the United States District Court for the Western District of Wisconsin on July 22, 1991. The consent decree provides for penalties and injunctive relief for violating the notice requirements of the National Emission Standard for Hazardous Air Pollutants

("NESHAP") for asbestos, 40 CFR 61.146, promulgated pursuant to the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530 and should refer to *United States v. Michael T. Robinson and Associates, Inc.*, D.O.J. Ref. No. 90-5-2-1-1342.

The proposed consent decree may be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue NW., Washington, DC 20004 (202-347-2072). A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of \$3.00 (25 cents per page reproduction charge) payable to Consent Decree Library.

John C. Cruden,

Chief Environment Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 91-18408 Filed 8-1-91; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of

the nature of the particular submission they are interested in.
Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the

recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirement may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., room N-1301, Washington, DC 20210. Comments should also be sent to the Office of

Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETAOLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New Collection

Bureau of Labor Statistics

Current Population Survey CATI/CAPI Overlap Sample

Form #	Affected public	# Respondents	Freq.	Ave. time per response
CPS-260 & CPS-1 Version D.....	Households.....	2,150	4	0.1667 Hours.

1,433.62 Total Hours in 1991

The Current Population Survey is a household sample survey that is the primary source of data on the growth of the labor force and on trends in employment and unemployment. The

overlap sample will benchmark differences in labor force estimates between the current system and the proposed system.

Revision

Employment Standards Administration, 1215-0173.

Title	Agency Number	Affected Public	Frequency	Hours per response
Representative Payee Report.....	CM 623	Individuals or households; Businesses or other for profit; Non-profit institutions; Small businesses or organizations.	Annually.....	1½
Representative Payee Report.....	CM 623S	do.....	do.....	10 minutes.
Physician's/Medical Officer's Report.....	CM 787	do.....	On occasion.....	15 minutes.

2,480 total hours.

The Representative Payee Report forms are used to ensure benefits certified and paid to a representative are being used for the beneficiary's well-

being. The Physician's/Medical Officer's Report is used to determine the beneficiary's capability to manage monthly Black Lung Benefits.

Extension

Employment and Training Administration, UI Trust Fund Activities, 1205-0154; ETA 2112, 8401, 8405, 8413, 8414, 8403.

Form #	Affected Public	Respondents	Frequency	Average Time Per Response
ETA 2112.....	State/local governments.....	53	Monthly.....	30 min.
ETA 8401.....	do.....	53	Monthly.....	30 min.
ETA 8413.....	do.....	53	Monthly.....	30 min.
ETA 8414.....	do.....	53	Monthly.....	30 min.
ETA 8403.....	do.....	18	Monthly.....	30 min.

1,698 total hours.

ETA report 8403 monitors Reed Act funds. ETA Reports 2112, 8401, 8405, 8413 and 8414 are used to monitor Unemployment Trust Fund cash flow, disbursement, measure cash

management performance and regulate balances pertaining to unemployment benefits paid from Federal sources. These activities are coordinated with State government accounting systems.

Reinstatement

Employment Standards Administration, 1215-0028; Economic Survey Schedule, WH-1.

Biennially

State or local governments;
Businesses or other for-profit; Small
businesses or organizations.

60 respondents; 45 total hours; 45 min.
per response; 1 form Form WH-1 is used
by the Department of Labor to collect
data and prepare an economic report for
the industry committee which sets
industry wage rates in American Samoa.

Signed at Washington, DC this 26th day of
July, 1991.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 91-18397 Filed 8-1-91; 8:45 am]

BILLING CODE 4510-22-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions
of the Secretary of Labor are issued in
accordance with applicable law and are
based on the information obtained by
the Department of Labor from its study
of local wage conditions and data made
available from other sources. They
specify the basic hourly wage rates and
fringe benefits which are determined to
be prevailing for the described classes
of laborers and mechanics employed on
construction projects of a similar
character and in the localities specified
therein.

The determinations in these decisions
of prevailing rates and fringe benefits
have been made in accordance with 29
CFR part 1, by authority of the Secretary
of Labor pursuant to the provisions of
the Davis-Bacon Act of March 3, 1931, as
amended (46 Stat. 1494, as amended, 40
U.S.C. 276a) and of other Federal
statutes referred to in 29 CFR part 1,
appendix, as well as such additional
statutes as may from time to time be
enacted containing provisions for the
payment of wages determined to be
prevailing by the Secretary of Labor in
accordance with the Davis-Bacon Act.
The prevailing rates and fringe benefits
determined in these decisions shall, in
accordance with the provisions of the
foregoing statutes, constitute the
minimum wages payable on Federal and
federally assisted construction projects
to laborers and mechanics of the
specified classes engaged on contract
work of the character and in the
localities described therein.

Good cause is hereby found for not
utilizing notice and public comment
procedure thereon prior to the issuance

of these determinations as prescribed in
5 U.S.C. 553 and not providing for delay
in the effective date as prescribed in
that section, because the necessity to
issue current construction industry wage
determinations frequently and in large
volume causes procedures to be
impractical and contrary to the public
interest.

General wage determination
decisions, and modifications and
supersedes decisions thereto, contain
no expiration dates and are effective
from their date of notice in the **Federal
Register**, or on the date written notice is
received by the agency, whichever is
earlier. These decisions are to be used
in accordance with the provisions of 29
CFR parts 1 and 5. Accordingly, the
applicable decision, together with any
modifications issued, must be made a
part of every contract for performance
of the described work within the
geographic area indicated as required by
an applicable Federal prevailing wage
law and 29 CFR part 5. The wage rates
and fringe benefits, notice of which is
published herein, and which are
contained in the Government Printing
Office (GPO) document entitled
"General Wage Determinations Issued
Under The Davis-Bacon And Related
Acts," shall be the minimum paid by
contractors and subcontractors to
laborers and mechanics.

Any person, organization, or
governmental agency having an interest
in the rates determined as prevailing is
encouraged to submit wage rate and
fringe benefit information for
consideration by the Department.
Further information and self-
Explanatory forms for the purpose of
submitting this data may be obtained by
writing to the U.S. Department of Labor,
Employment Standards Administration,
Wage and Hour Division, Division of
Wage Determinations, 200 Constitution
Avenue, NW., Room S-3014,
Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added
to the Government Printing Office
document entitled "General Wage
Determinations Issued Under the Davis-
Bacon and Related Acts" are listed by
Volume, State, and page numbers(s).

Volume I

Maryland: MD91-9 (Aug. 2, 1991) p.493
p.494

Virginia:

VA91-71 (Aug. 2, 1991) p.1400a

p.1400b

VA91-72 (Aug. 2, 1991) p.1400c

p.1400d

Volume III

Colorado: CO91-10 (Aug. 2, 1991) p.192a
pp.192b-192d

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in
the Government Printing Office
document entitled "General Wage
Determinations Issued Under the Davis-
Bacon and Related Acts" being modified
are listed by Volume, State, and page
number(s). Dates of publication in the
Federal Register are in parentheses
following the decisions being modified.

Volume I

Florida: FL91-1 (Feb. 22, 1991) .. p. 101
p. 102

Maryland:

MD91-6 (Feb. 22, 1991) p. 487

p. 488

MD91-17 (Feb. 22, 1991) p. 513

p. 514

MD91-22 (Feb. 22, 1991) p. 523

p. 524

New Jersey:

NJ91-2 (Feb. 22, 1991)..... p. 701

p. 703,

pp.708-720

NJ91-3 (Feb. 22, 1991)..... p. 721

pp. 722-744b

Pennsylvania:

PA91-23 (Feb. 22, 1991)..... p. 1123

pp. 1124-

1128

PA91-24 (Feb. 22, 1991)..... p. 1129

pp. 1130-

1133

Rhode Island: RI91-1 (Feb. 22, 1991) p. 1149
p. 1150

Virginia:

VA91-15 (Feb. 22, 1991)..... p. 1273

pp. 1274-

1276

VA91-50 (Feb. 22, 1991)..... p. 1357

p. 1358

West Virginia: WV91-1 (Feb. 22, 1991) p. 1419
p. 1420

Volume II

Illinois: IL91-18 (Feb. 22, 1991) .. p. 237
p. 238

Michigan: MI91-4 (Feb. 22, 1991) p. 491

pp. 491-498

Nebraska: NE91-2 (Feb. 22, 1991) p. 749

pp. 749-752

Texas:

TX91-2 (Feb. 2, 1991)..... p. 1017

pp. 1017-

1020

TX91-19 (Feb. 22, 1991)..... p. 1067

pp. 1067-

1068

TX91-51 (Feb. 2, 1991)..... p. 1167

pp. 1167-

1170

Volume III

Alaska: AK91-1 (Feb. 22, 1991) p. 1
pp. 2-8b

Colorado:

CO91-2 (Feb. 22, 1991).....	p. 159
	pp. 160-161
CO91-3 (Feb. 22, 1991).....	p. 163
	pp. 164-165
CO91-4 (Feb. 22, 1991).....	p. 167
	pp. 167-173
Montana: MT91-1 (Feb. 22, 1991).	p. 231
	pp. 232-248e
Nevada: NV91-1 (Feb. 22, 1991).	p. 299
	pp. 313-315

Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include

an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 26th day of July 1991.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 91-18133 Filed 8-1-91; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether

the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 25, 1991.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 25, 1991.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 22nd day of July 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Amber Well Completion Rentals (Wkrs).....	Austin, TX.....	07/22/91	07/07/91	26,090	Oil and Gas.
Armstrong Drilling, Inc. (Co).....	Wooster, OH.....	07/22/91	07/08/91	26,091	Oil and Gas.
Atlas Soundolier (IUE).....	Parsippany, NJ.....	07/22/91	07/11/91	26,092	Commercial Sound Equipment.
Bellaire Tool Co (Wkrs).....	Bellaire, MI.....	07/22/91	07/11/91	26,093	Gear Cutting Tools.
Cable Craft, Inc. d/b/a/ Cable Star (Co).....	Glasgow, KY.....	07/22/91	07/12/91	26,094	Computer Cable Assembly.
Caloric Corporation (Wkrs).....	Topton, PA.....	07/22/91	07/12/91	26,095	Gas and Electric Ranges.
Carbon Fuel Resources, Inc. (Wkrs).....	Pittsburgh, PA.....	07/22/91	07/09/91	26,096	Coke.
Domestic Corp (Co).....	Evansville, IN.....	07/22/91	07/08/91	26,097	RV Refrigerators.
Donora Sportswear Co., Inc (Wkrs).....	Donora, PA.....	07/22/91	06/24/91	26,098	Ladies' and Men's Coats.
Empire-Orr, Inc. (Wkrs).....	Elizabeth, NJ.....	07/22/91	06/30/91	26,099	Warehouse/Distribution Handbags.
Fiber Materials, Inc. (Wkrs).....	Rumford Center, ME.....	07/22/91	06/27/91	26,100	Missile Nose Tips.
Ford Motor Co (Wkrs).....	Walton Hills, OH.....	07/22/91	06/24/91	26,101	Automotive Stamping Panels.
Frink America, Inc IAMAW.....	Clayton, NY.....	07/22/91	07/08/91	26,102	Snow Plows.
Gen Corp Automotive (UAW).....	Marion, IN.....	07/22/91	07/12/91	26,103	Automobile Rubber Weather Stripping.
General Kinetics, Inc (Wkrs).....	Herndon, VA.....	07/22/91	07/05/91	26,104	Fax Machines.
Gerber Textiles, Inc (Co).....	Marlboro, NJ.....	07/22/91	07/10/91	26,105	Piece Goods for Tablecloths and Scarves.
Grumman Boats (OMCGB Inc) (Wkrs).....	Marathon, NY.....	07/22/91	07/02/91	26,106	Aluminum Boats.
Gulfstream Aerospace Technologies (Wkrs).....	Oklahoma City, OK.....	07/22/91	07/03/91	26,107	Sheet Metal for Aircrafts.
Halliburton Services (Wkrs).....	Duncan, OK.....	07/22/91	07/08/91	26,108	Oil and Gas.
Kitchens of Sara Lee (Wkrs).....	Deerfield, IL.....	07/22/91	07/06/91	26,109	Frozen Baked Goods.
MECO International, Inc. (Wkrs).....	Warrendale, PA.....	07/22/91	07/03/91	26,110	Mining Roof Supports and Ancillary Equip.
Morrow Machine Co (Wkrs).....	Newington, CT.....	07/22/91	06/28/91	26,111	Industrial Sewing Machines.
Outokumpu American Brass (USWA).....	Kenosha, WI.....	07/22/91	07/09/91	26,112	Brass and Copper Tube.
Rina di Montella Manufacturing (Wkrs).....	Conshohocken, PA.....	07/22/91	07/10/91	26,113	Ladies Evening Wear.
Spotlight, Inc. (Wkrs).....	Marianna, AR.....	07/22/91	07/14/91	26,114	Nightgowns and Pajamas.
Stan-Lite Corp. (Wkrs).....	McAdoo, PA.....	07/22/91	07/09/91	26,115	Lampshades.
Unisys Corp (Wkrs).....	Flemington, NJ.....	07/22/91	06/26/91	26,116	IBM Personal Computers.
Wheatley Gaso (Wkrs).....	Tulsa, OK.....	07/22/91	06/21/91	26,117	Pump Oil.
Zenith Electronics Corp (Wkrs).....	El Paso, TX.....	07/22/91	05/06/91	26,118	Televisions.

[FR Doc. 91-18399 Filed 8-1-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-26,126]

Erico Fastening Systems, Moorestown, NJ; Public Hearing

Pursuant to the Department's regulations at 29 CFR 90.13 a public hearing is scheduled for 7 p.m. on Thursday, August 15, 1991 at the Masonic Temple, 151 N. Fellowship Road, Maple Shade, New Jersey. The public hearing is for petitioners or any other persons showing a substantial interest in the proceedings to furnish testimony and evidence of a relevant and material nature bearing upon petition TA-W-26,126 filed on behalf of workers and former workers at Erico Fastening Systems, Moorestown, New Jersey.

Such individuals who desire to furnish testimony as evidence should inform the Director, Office of Trade Adjustment Assistance, Department of Labor, of their intention to appear not later than Tuesday, August 13, 1991. Mr. Marvin M. Fooks, Director, OTAA, can be reached in Washington, DC at (202) 523-0555. The Director's Office is in room C-4318, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC, this 30th day of July 1991.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-18400 Filed 8-1-91; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-25,212]

NCR Corporation, a/k/a MicroEnergy, Inc.; Lake Mary Florida; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 15, 1991 applicable to all workers of NCR Corporation, Lake Mary, Florida. The Notice was published in the *Federal Register* on March 7, 1991 (56 FR 9740).

New information from the company shows that MicroEnergy, Inc. (MEI) purchased NCR Corporation in Lake Mary, Florida on July 1, 1991. MEI has retained the former employees who continue to produce power supplies for the same customers. Accordingly, MEI is a successor-in-interest firm to NCR

Corporation at Lake Mary, Florida. The notice, therefore is amended to properly reflect the correct worker group.

The amended notice applicable to TA-W-25,212 is hereby issued as follows:

All workers of NCR Corporation, Lake Mary, Florida also known as MicroEnergy, Inc., Lake Mary, Florida who became totally or partially separated from employment on or after November 29, 1989 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 26th day of July 1991.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-18401 Filed 8-1-91; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-25,302]

Storage Technology Corp., Customer Services-Printer Operations, Melbourne, FL; Revised Determination on Reopening

On July 22, 1991, the Department, on its own motion, reopened its investigation for former workers of the Customer Services-Printer Operations of Storage Technology Corporation in Melbourne, Florida. The initial investigation resulted in a notice of determinations issued on March 15, 1991 and published in *Federal Register* on April 2, 1991 (56 FR 13500). The notice denied the workers of the Customer Services-Printer Operations of Storage Technology in Melbourne, Florida (TA-W-25,302) and certified the workers of StorageTek Printer Operations in Melbourne, Florida (TA-W-25,303).

On April 30, 1991, the Department denied the application for reconsideration for the Customer Services-Printer Operations in Melbourne, Florida. The denial notice for application for reconsideration was published in the *Federal Register* on May 7, 1991 (56 FR 21176).

New findings show that the several employees of the Customer Services-Printer Operations separated before March 2, 1991 were directly affected by increased imports of the 6100 series computer printer. The workers were an integral support part of the 6100 series computer printer whose domestic production was lost as the result of a foreign joint venture. All such printers for the domestic market are now sourced overseas.

Conclusion

After careful consideration of the new facts obtained on reopening, it is concluded that workers laid off prior to

March 2, 1991 were adversely affected by increased imports of articles like or directly competitive with the 6100 series computer printers formerly produced at StorageTek Printer Operations, Melbourne, Florida. Increased imports of the 6100 series computer printer contributed importantly to the decline in sales or production and to the total or partial separation of workers at the Customer Services-Printer Operations of Storage Technology in Melbourne, Florida. In accordance with the provisions of the Act, I make the following revised certification for Customer Services-Printer Operations, Melbourne, Florida.

All workers of the Customer Services-Printer Operations of Storage Technology, Melbourne, Florida who became totally or partially separated from employment on or after January 3, 1990 and before March 2, 1991 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 24th of July 1991.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-18402 Filed 8-1-91; 8:45 am]
BILLING CODE 4510-30-M

Mine Safety and Health Administration**Petitions for Modification**

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. BethEnergy Mines, Inc.

[Docket No. M-91-63-C]

BethEnergy Mines, Inc., P.O. Box 143, Eighty Four, Pennsylvania 15330 has filed a petition to modify the application of 30 CFR 75.305 to its No. 84 Mine (I.D. No. 36-00958) located in Washington County, Pennsylvania. The petitioner proposes to establish ventilation evaluations points in a return aircourse in lieu of traveling the aircourse in its entirety.

2. Doverspike Bros. Coal Company, Inc.

[Docket No. M-91-64-C]

Doverspike Bros. Coal Company, Inc., R.D. #4, Box 271, Punxsutawney, Pennsylvania 15767 has filed a petition to modify the application of 30 CFR 75.1710 to its No. 84 Mine (I.D. No. 36-08191) located in Jefferson County, Pennsylvania. Due to low mining heights, the petitioner requests relief

from the use of canopies or cabs on self propelled face equipment.

3. Moline Consumers Company

[Docket No. M-91-07-M]

Moline Consumers Company, 1701 Fifth Avenue, Moline, Illinois 61265 has filed a petition to modify the application of 30 CFR 56.14107 to its Allied Stone Plant #30 Mine (I.D. No. 11-00135) located in Rock Island County, Illinois, and to its Valley Quarry #7 Mine (I.D. No. 11-00136) located in Warren County, Illinois. The petitioner proposes to use a gate with a padlock and electrical interlocks on moving machine parts in lieu of guards.

4. Jamieson Company

[Docket No. M-91-08-M]

Jamieson Company, P.O. Box 850, Pleasanton, California 95466-0872 has filed a petition to modify the application of 30 CFR 56.11001 to its Pleasanton Pit and Mill (I.D. No. 04-01924) located in Alameda County, California. The petitioner proposes that locked gates at the entrances to the conveyor catwalk and a policy to lock out the power to the conveyors before persons use the catwalks provide safe means of access.

5. J.S. Redpath Corporation

[Docket No. M-91-09-M]

J.S. Redpath Corporation, 1865 West Baseline Road, Mesa, Arizona 85202 has filed a petition to modify the application of 30 CFR 57.4131 to its Mine (I.D. No. R-83) located in Comet Beach, Alaska. The petitioner proposes to store more than one days supply of combustible material (fuel) within 100 feet of mine openings and fan installation.

6. J.S. Redpath Corporation

[Docket No. M-91-10-M]

J.S. Redpath Corporation, 1865 West Baseline Road, Mesa, Arizona 85202 has filed a petition to modify the application of 30 CFR 57.4131 to its Mine (I.D. No. R-83) located in Comet Beach, Alaska. The petitioner proposes to store fuel within 100 feet of the mine opening and other mine buildings.

7. J.S. Redpath Corporation

[Docket No. M-91-10-M]

J.S. Redpath Corporation, 1865 West Baseline Road, Mesa, Arizona 85202 has filed a petition to modify the application of 30 CFR 57.4131 to its Mine (I.D. No. R-83) located in Juneau, Alaska. The petitioner proposes to store fuel within 100 feet of the mine opening and other buildings.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 3, 1991. Copies of these petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 91-18403 Filed 8-1-91; 8:45 am]

BILLING CODE 4510-43-M

Office of Inspector General

Contracting Officer Appointment

The Office of Inspector General gives notice that Theodore Goldberg, Director, Division of Contracting and Administrative Services, is appointed the contracting officer for the Office of Inspector General. Mr. Goldberg's has the authority to enter into, administer, or terminate contracts and make related determinations and findings, except that this authority does not include the use of small purchase procedures, acquisition of Federal Information Processing Resources or any contract action that exceeds \$500,000.

FOR FURTHER INFORMATION CONTACT:

E.J. German, Assistant Inspector General, Office of Resource Management and Legislative Assessment, telephone no. 202-523-6730.

Signed at Washington, DC This 26th of July, 1991.

Julian W. De La Rosa,
Inspector General.

[FR Doc. 91-18398 Filed 8-1-91; 8:45 am]

BILLING CODE 4510-21-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 91-70]

NASA Advisory Council University Relations Task Force; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the

NASA Advisory Council University Relations Task Force.

DATES: August 26, 1991, 9 a.m. to 5 p.m.; and August 27, 1991, 9 a.m. to 3 p.m.

ADDRESSES: National Aeronautics and Space Administration, room 6004, Federal Office Building 6, 400 Maryland Avenue SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT:

Dr. Sylvia D. Fries, Code ADA-2, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-8766.

SUPPLEMENTARY INFORMATION:

The NASA Advisory Council was established as an interdisciplinary group to advise senior management on the full range of NASA's programs, policies, and plans. The University Relations Task Force, reporting to the Council, will examine current forecasts of future national requirements for aerospace science and engineering and their supporting university infrastructure; it will also evaluate the degree, mechanisms, and appropriateness of NASA support for university programs in these fields. The Task Force is chaired by Dr. Steven Muller and is composed of 11 members.

The meeting will be open to the public up to the seating capacity of the room, which is approximately 30 persons including Task Force members and other participants. Visitors will be requested to sign a visitor's register.

TYPE OF MEETING: Open.

Agenda:

August 26, 1991

- 9 a.m.—Introductory Remarks.
- 9:10 a.m.—NASA/University Funding Data.
- 1 p.m.—NASA/Federal Science Grants Process.
- 2 p.m.—NASA/University Engineering Community.
- 4 p.m.—Summary.
- 5 p.m.—Adjourn.

August 27, 1991

- 9 a.m.—Universities and the Federal Government.
- 11 a.m.—Format for Members' Poll.
- 1 p.m.—NASA Policy Toward Universities.
- 2 p.m.—Task Force Report Focus.
- 3 p.m.—Adjourn.

Dated: July 30, 1991.

John W. Gaff,

*Advisory Committee Management Officer,
National Aeronautics and Space
Administration.*

[FR Doc. 91-18361 Filed 8-1-91; 8:45 am]

BILLING CODE 7510-01-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 September 3, 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 are as follows:

1. Applicant

William R. Fraser, Old Dominion University, Long Lake, MN 55356.

Activity for Which Permit Requested

Enter specially protected area. The applicant is conducting research on birds and requests permission to enter Litchfield Island specially protected area to census penguins and seabirds.

Location

Litchfield Island, Antarctica Peninsula area.

Dates

October 1991-March 1992.

2. Applicant

William R. Fraser, Old Dominion University, Long Lake, MN 55356.

Activity for Which Permit Requested

Taking. The applicant is conducting research on the effects of an oil spill on seabirds. He requests permission to band, weigh and measure birds, examine stomach contents, and affix radio transmitters to up to 40 Adelie penguins and Skuas. All birds will be released unharmed. Species to be examined are:

Species	Number
Adelie penguin.....	3,590
Chinstrap penguin.....	15
Giant Fulmar.....	400
Kelp Gull.....	100
South Polar Skua.....	1,000
Brown Skua.....	50
Blue-Eyed Shag.....	200

Location

Palmer Station area, Antarctica.

Dates

October 1991-March 1992.

3. Applicant

William R. Fraser, Old Dominion University, Long Lake, MN 55356.

Activity for Which Permit Requested

Taking. Import into USA. The applicant is conducting long-term ecological research, and population studies of penguins and seabirds. He requests permission to take birds for diet analysis. The following will be taken:

Species	Number
Emperor penguin.....	50
Adelie penguin.....	50
Chinstrap penguin.....	50
Gentoo penguin.....	50
Snow Petrel.....	75
Antarctic Petrel.....	75
Cape Petrel.....	75
Antarctic Fulmar.....	75
South Polar Skua.....	25
Kelp Gull.....	25

Location

Antarctic Peninsula area. Access via Polar Duke or similar ship.

Dates

October 1991-March 1992.

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 91-18319 Filed 8-1-91; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Materials Research; Notice of Meetings

SUMMARY: In accordance with the Federal Advisory Committee Act (Public Law 92-463, as amended), the National Science Foundation announces the following meetings.

SUPPLEMENTARY INFORMATION: The purpose of the meetings is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Materials Research.

Dates and Times:

Aug. 20-21, 1991, 8:30 am-5 pm, rm. 417C,
Sept. 04-05, 1991, 8:30 am-5 pm, rm. 408,
Sept. 12-13, 1991, 8:30 am-5 pm, rm. 408,
Sept. 19-20, 1991, 8:30 am-5 pm, rm. 408,
Sept. 23-24, 1991, 8:30 am-5 pm, rm. 408.

Place: National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Agenda: To provide advice and recommendations concerning support for SBIR Phase I proposals.

Contact Person: Dr. Robert J. Reznick, Head, Office of Special Programs in Material, Division of Materials Research, room 408, National Science Foundation, Washington, DC 20550. Telephone (202) 357-9791.

Dated: July 29, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-18318 Filed 8-1-91; 8:45 am]

BILLING CODE 7555-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL**Lower Columbia River Wildlife Amendments**

July 22, 1991.

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of extension of comment period on proposed wildlife amendments to the Columbia River Basin Fish and Wildlife Program (Lower Columbia River wildlife amendments).

SUMMARY: On March 10, 1991, the Northwest Planning Council voted to initiate proceedings pursuant to section 4(d)(1) of the Northwest Power Act, 16 U.S.C. 839, *et seq.*, to consider amending the Columbia River Basin Fish and Wildlife Program (program) to include wildlife loss estimates for the McNary, John Day, The Dalles, and Bonneville hydroelectric projects. The Council initially requested that written comments on the proposed amendments be submitted through July 10, 1991. The Council now extends the deadline for submission of written comments to 5 p.m., Pacific time, on September 12, 1991. Comments should be submitted to Steven Crow, Director of Public Affairs, 851 SW. Sixth Avenue, suite 1100, Portland, Oregon, 97204. Comments should be clearly marked "Lower Columbia Wildlife Comments."

FOR FURTHER INFORMATION CONTACT: For further information contact the Council's Public Involvement Division, 851 SW. Sixth Avenue, suite 1100, Portland, Oregon 97204 or (503) 222-5161, toll free 1-800-222-3355.

Bobbe Fendall,
Liaison Officer.

[FR Doc. 91-18314 Filed 8-1-91; 8:45 am]
BILLING CODE 0000-00-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Areas #2514]

California; Declaration of Disaster Loan Area

Los Angeles County and the contiguous counties of Kern, Orange, San Bernardino, and Ventura in the State of California constitute a disaster area as a result of damages caused by an earthquake which occurred June 28, 1991. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on September 9, 1991 and for economic injury until the close of business on April 13, 1992 at the address listed below: Disaster Area 4 Office, Small Business Administration, P.O. Box 13795, Sacramento, CA 95853-4795 or other locally announced locations.

The interest rates are:

For physical damage	Percent
Homeowners with credit available elsewhere.....	8.000
Homeowners without credit available elsewhere.....	4.000
Businesses with credit available elsewhere.....	8.000
Businesses and non-profit organizations without credit available elsewhere.....	4.000

For physical damage	Percent
Others (including non-profit organizations) with credit available elsewhere.....	9.125
For economic injury: Businesses and small agricultural cooperatives without credit available elsewhere.....	4.000

The number assigned to this disaster for physical damage is 251402. For economic injury the number is 734100.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 11, 1991.

Patricia Saiki,
Administrator.

[FR Doc. 91-18381 Filed 8-1-91; 8:45 am]

BILLING CODE 8025-01-M

[Delegation of Authority No. 12-D, Revision 1]

Redelegation of Disaster Assistance

Delegation of Authority No. 12-D (48 FR 9981) is hereby superseded. Delegation of Authority No. 12-D (Revision 1). This revision reflects the organizational changes made by a reorganization of the Finance and Investment Activities of the Small Business Administration. Delegation of Authority No. 12-D (Revision 1) reads as follows:

I. Pursuant to the action of the Administrator dated February 12, 1990, the following authority relating to disaster assistance activities is hereby delegated to the specific positions as indicated herein:

A. To the Assistant Administrator for Disaster Assistance as follows:

1. To declare a disaster loan area in instances where the President has determined, pursuant to Public Law 100-707, as amended, that a "major disaster" has occurred, or to declare a disaster loan area for Economic Injury Disaster Loans upon notification that the Secretary of Agriculture has declared a natural disaster for that area.

2. To amend declarations made under authority of paragraph A.1 above.

3. To authorize the acceptance of disaster loan applications after expiration of the original disaster period or extension thereof.

4. To approve or decline applications for home or business physical disaster loans, economic injury disaster loans, and all other types of disaster loans authorized to be made by the Agency, including reconsideration thereof, and to execute authorizations and modifications pertaining to such loans, including waiving the limit of \$500,000 for major sources of employment as

permitted by section 7(c)(3) of the Small Business Act, 15 U.S.C. 636(c)(3).

5. To cancel, reinstate, modify, and amend authorizations for disaster loans.

6. To extend disbursement periods without limitation for disaster loans.

7. To determine eligibility and make size determinations of disaster loan applicants.

8. To close and disburse approved disaster loans.

9. To establish disaster field offices and to obligate the Small Business Administration, through the General Services Administration, for the rental of office space and ancillary services and to close disaster field offices when no longer advisable to maintain such offices.

10. To appoint any lender in the processing area as a processing representative.

11. To hire, reassign, and terminate disaster permanent, cadre, and temporary employees, as necessary.

12. To take necessary actions with respect to personnel, financial management, and administrative activities.

13. To contract for supplies, material, and equipment, printing (Government sources only), transportation, communications, and special services for the Agency pursuant to chapter 4 of title 41, U.S.C., as amended, subject to limitations contained in section 257 (a) and (b) of that chapter.

14. To amend, suspend, or revoke authority delegated to any position listed below.

15. The authority delegated herein may be redelegated, except for the authority provided in paragraphs A.1 and A.2 above.

16. The authority delegated herein may be exercised by an SBA employee officially designated as Acting in such position.

II. Pursuant to the authority delegated to the Assistant Administrator for Disaster Assistance, authority relating to disaster assistance activities is hereby redelegated as follows:

A. To the Area Director (Disaster) as follows:

1. To approve, up to the statutory limit, or decline, applications for home and business physical disaster loans, economic injury disaster loans, and all other types of disaster loans authorized to be made by the Agency, including reconsideration thereof, and to execute authorizations and modifications pertaining to such loans.

2. To cancel, reinstate, modify, and amend authorizations for disaster loans.

3. To authorize the acceptance of disaster loan applications after

expiration of the original disaster period or extension thereof.

4. To determine eligibility and make size determinations of disaster loan applicants.

5. To extend disbursement periods, without limitation, for disaster loans.

6. To close and disburse approved disaster loans, except loans which the delegatee previously approved or recommended approval.

7. To establish disaster field offices and to obligate the Small Business Administration, through the General Services Administration, for the rental of office space and ancillary services and to close disaster field offices when no longer advisable to maintain such offices.

8. To appoint any lender in the disaster area as a processing representative.

9. To hire, reassign, and terminate disaster permanent, cadre, and temporary employees, as necessary.

10. To take necessary actions with respect to personnel, financial management, and administrative activities.

11. To contract for supplies, materials, and equipment, printing (Government sources only), transportation, communication, and special services for the Agency pursuant to chapter 4 of title 41, U.S.C., as amended, subject to the limitations contained in section 257 (a) and (b) of that chapter.

12. To amend, suspend, or revoke authority delegated to any position listed below.

13. The authority delegated herein may not be redelegated.

14. The authority delegated herein may be exercised by an SBA employee officially designated as Acting in that position.

B. To the Assistant Area Director for Loan Processing as follows:

1. To approve, up to the statutory limit, or decline, applications for home and business physical disaster loans, economic injury disaster loans, and all other types of disaster loans authorized to be made by the Agency, including reconsideration thereof, and to execute authorizations and modifications pertaining to such loans.

2. To cancel, reinstate, modify and amend authorizations for disaster loans.

3. To authorize the acceptance of disaster loan applications after expiration of the original disaster period or extension thereof.

4. To determine eligibility of disaster loan applicants.

5. To extend disbursement periods without limitation for disaster loans.

6. To close and disburse approved unsecured disaster loans, except loans

which the delegatee previously approved or recommended approval.

7. The authority delegated herein may not be redelegated.

8. The authority delegated herein may not be exercised by an SBA employee officially designated as Acting in that position.

C. To the Disaster Branch Manager as follows:

1. To establish disaster branch field offices and to obligate the Small Business Administration, through the General Services Administration, for the rental of office space and ancillary services and to close disaster field offices when no longer advisable to maintain such offices.

2. To hire, reassign, and terminate disaster employees as necessary, and reassign permanent and cadre employees as necessary.

3. To take necessary actions with respect to personnel, financial management, and administrative activities.

4. To contract for supplies, materials, and equipment, printing (Government sources only), transportation, communications, and special services for the Agency pursuant to chapter 4 of title 41, U.S.C., as amended, subject to the limitations contained in section 257 (a) and (b) of that chapter.

5. The authority delegated herein may not be redelegated.

6. The authority delegated herein may be exercised by an SBA employee officially designated as Acting in that position.

D. To the Supervisory Loan Officer (Disaster) as follows:

1. To approve, up to the statutory limit, or decline, applications for home and physical disaster loans, economic injury disaster loans, and all other types of disaster loans authorized to be made by the Agency, including reconsideration thereof, and to execute authorizations and modifications pertaining to such loans.

2. To cancel, reinstate, modify, and amend authorizations for disaster loans.

3. To determine eligibility of disaster loan applicants.

4. To extend disbursement periods for disaster loans up to 6 months cumulative (on fully undisbursed loans only).

5. To close and disburse approved unsecured disaster loans, except loans which the delegatee previously approved or recommended approval.

6. The authority delegated herein may not be redelegated.

E. To the Area Counsel (Disaster) as follows:

1. To close and disburse approved disaster loans.

2. The authority delegated herein may not be redelegated.

3. The authority delegated herein may be exercised by an SBA employee officially designated as Acting in that position.

F. To the Attorney, Area Office (Disaster) as follows:

1. To close and disburse approved disaster loans.

2. The authority delegated herein may not be redelegated.

3. The authority delegated herein may be exercised by an SBA employee officially designated as Acting in that position.

Dated: July 25, 1991.

Patricia F. Saiki,

Administrator.

[FR Doc. 91-18390 Filed 8-1-91; 8:45 am]

BILLING CODE 8025-01-M

[Delegation of Authority No. 12-B; Revision 3]

Redelegation of Investment Activities; Financial Assistance

Delegation of Authority No. 12-B (Revision 2) (49 FR 11049) is hereby superseded by Delegation of Authority No. 12-B (Revision 3). This revision reflects the organizational changes made by a reorganization of the Finance and Investment activities of the Small Business Administration. Delegation of Authority No. 12-B (Revision 3) reads as follows.

I. Pursuant to the action of the Administrator dated February 12, 1990, the following authority relating to surety bond guarantee activities is hereby delegated as indicated herein:

A. To the Assistant Administrator for Surety Guarantees as follows:

1. To take any and all actions necessary to carry out the provisions of part B of title IV of the Small Business Act of 1958 as amended, and the regulations promulgated thereunder, without limitation, including the following:

a. To guarantee sureties of small business against portions of losses resulting from breach of bid, payment, or performance bonds and bonds ancillary thereto, on contracts up to the statutory limit.

b. To approve or decline all claim reimbursement requests from participating surety companies on contract defaults bonded with SBA guarantees.

c. To take all necessary actions in connection with establishing SBA loss reserves for potential liability on

contract defaults under guaranteed bonds.

d. To enter into agreements with participating surety and/or insurance companies and to modify and revise the same whenever necessary.

e. To approve or decline applications for guarantees received from participating surety and/or insurance companies.

f. To take all necessary actions in connection with the servicing, administration, collection and payment of claims arising under surety bond guarantees upon default.

g. To make size and eligibility determinations for the purpose of the surety bond guarantee program.

2. This redelegation does not authorize anyone serving in the above position:

a. To sell any primary obligations or other evidence of indebtedness owed to the Agency for a sum less than the total amount due thereof.

b. To deny liability of the Small Business Administration under terms of participation or guaranty agreement, or to initiate a suit for recovery from a participation or guaranty agreement.

c. To accept or reject a compromise settlement of an indebtedness owed to the Agency in connection with any matter covered hereunder for a sum less than the amount due thereon. (Authority for any other compromise settlements is delegated to the Central Office Claims Review Committee, see Delegation of Authority No. 12-A).

3. The authority delegated herein may be redelegated.

4. The authority delegated herein may be exercised by any SBA employee officially designated as Acting Assistant Administrator for Surety Guarantees, as appropriate.

Dated: July 25, 1991.

Patricia F. Saiki,
Administrator.

[FR Doc. 91-18379 Filed 8-1-91; 8:45 am]

BILLING CODE 8025-01-M

[Delegation of Authority No. 12-B, Revision 3]

Redelegation of Investment Activities; Financial Assistance

Delegation of Authority No. 12-B (Revision 2) (49 FR 11048) is hereby superseded by Delegation of Authority No. 12-A (Revision 3). This revision reflects the organizational changes made by a reorganization of the Finance and Investment activities of the Small Business Administration. Delegation of Authority No. 12-B (Revision 3) reads as follows:

I. Pursuant to the action of the Administrator dated February 12, 1990, the following authority relating to investment activities is redelegated to the specific positions indicated herein as follows:

A. To the Associate Administrator for Investment as follows:

1. To take any and all actions necessary to carry out the provisions of title I, II, and III (exclusive of all of section 310 of title III except that provision in subsection (b) which requires Licensees to report to the Administration at such time and in such form as the Administration may require) of the Small Business Investment Act of 1958, as amended, and the regulations promulgated thereunder, including, without limitation, all necessary action in connection with the purchasing of the preferred stock, or guaranteeing of debentures issued by, Small Business Investment Companies licensed under section 301(c) or 301(d) of the Small Business Investment Act of 1958, the serving, administration, collection, and sale of such stock and such debentures, and related loans, obligations, and property (real, personal, or mixed, tangible, or intangible) held by or assigned to SBA and arising out of activities under said Act, and, in connection therewith, to conduct all liquidation activities, including deciding whether to accept or reject compromise settlement of an indebtedness owed to the Agency in connection with any matter covered hereunder, including all offers of settlement for a sum less than the full value of obligations owed the SBA. (Authority for any other compromise settlements is delegated to the Central Office Claims Review Committee, see Delegation of Authority 12-A).

2. This redelegation does not authorize anyone serving in the above position to deny liability of the Small Business Administration under terms of participation or guarantee agreement, or to initiate a suit for recovery from a participation or guarantee agreement.

3. The authority delegated herein may be redelegated.

4. The authority delegated herein may be exercised by any SBA employee officially designated as Acting Associate Administrator for Investment, as appropriate.

Dated: July 25, 1991.

Patricia F. Saiki,
Administrator.

[FR Doc. 91-18378 Filed 8-1-91; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 91-040]

Chemical Transportation Advisory Committee (CTAC) Annual Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Chemical Transportation Advisory Committee (CTAC) annual meeting will be held on Wednesday, August 21, 1991 in room 2415, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001. The meeting is scheduled to begin at 9:30 a.m. and end at 4 p.m.

The agenda for the meeting follows:

1. Opening remarks.
2. U.S. Coast Guard Remarks.
3. Introduction of new members.
4. General interest topics.
Benzene Regulations (Written Brief)
Tankerman Regulations (Written Brief)
TSAC Work—Part 151 (Written Brief)
5. Subcommittee reports:
TSAC (Part 151 Liaison)
Marine Vapor Recovery
MOSH
Coal Tar
IGS
Filling Limits
Fire Fighting Media Review/Foam
6. New Tasks/Initiatives.
7. International Activities Update.
8. Other business.
9. Closing.

Attendance at this meeting is open to the public. Members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify the Executive Director of CTAC no later than the day before the meeting. Any member of the public may present a written statement to the Committee at any time.

FOR FURTHER INFORMATION CONTACT:

CDR K.J. Eldridge or Dr. M.C. Parnarouskis, U.S. Coast Guard Headquarters (G-MTH-1), 2100 Second Street SW., Washington, DC 20593-0001, (202) 267-1577.

Dated: July 24, 1991.

D.H. Whitten,

Deputy Chief, Office of Marine Safety,
Security and Environmental Protection.

[FR Doc. 91-18385 Filed 8-1-91; 8:45 am]

BILLING CODE 4910-14-M

[CGD8 90-19]

Houston/Galveston Navigation Safety Advisory Committee; Offshore Waterway Management Subcommittee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub.

L. 92-463; 5 U.S.C. app. I) notice is hereby given of a meeting of the Offshore Waterway Management Subcommittee of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, August 29, 1991, in the Blackthorn Pavilion, at the U.S. Coast Guard Base, Galveston, Texas. The meeting is scheduled to begin at 10:30 a.m. and end at 12 Noon. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Discussion of previous recommendations made by the full Advisory Committee and the Offshore Waterway Management Subcommittee.
3. Presentation of any additional new items for consideration by the Subcommittee.
4. Adjournment.

The meeting is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Lieutenant Commander E. N. Funk, USCG, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130-3396, telephone number (504) 589-4686.

Dated: July 23, 1991.

T. D. Fisher,

Captain, U.S. Coast Guard Commander, 8th Coast Guard Dist., Acting.

[FR Doc. 91-18387 Filed 8-1-91; 8:45 am]

BILLING CODE 4910-14-M

[CGD8 90-17]

Houston/Galveston Navigation Safety Advisory Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. I) notice is hereby given of the twenty-seventh meetings of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, September 26, 1991, in the conference room of the Houston Pilots Office, 8150 South Loop East, Houston, Texas. The meeting is scheduled to begin at approximately 9 a.m. and end at approximately 1 p.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Presentation of the minutes of the Offshore and Inshore Waterways Subcommittees and discussion of recommendations.
3. Discussion of previous recommendations made by the Committee.
4. Presentation of any additional new items for consideration of the Committee.
5. Adjournment.

The purpose of this Advisory Committee is to provide recommendations and guidance to

the Commander, Eight Coast Guard District on navigation safety matters affecting the Houston/Galveston area.

The meeting is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Lieutenant Commander E. N. Funk, USCG, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eight Coast Guard District (oan), room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130-3396, telephone number (504) 589-4686.

Dated: July 23, 1991.

T.D. Fisher,

Captain, U.S. Coast Guard Commander, 8th Coast Guard Dist., Acting.

[FR Doc. 91-18388 Filed 8-1-91; 8:45 am]

BILLING CODE 4910-14-M

[CGD8 90-18]

Houston/Galveston Navigation Safety Advisory Committee; Inshore Waterway Management Subcommittee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Inshore Waterway Management Subcommittee of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, August 29, 1991, in the Blackthorn Pavilion, at the U.S. Coast Guard Base, Galveston, Texas. The meeting is scheduled to begin at 09:00 A.M. and end at 10:30 A.M. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Discussion of previous recommendations made by the full Advisory Committee and the Inshore Waterway Management Subcommittee.
3. Presentation of any additional new items for consideration of the Subcommittee.
4. Adjournment.

The meeting is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Lieutenant Commander E.N. Funk, USCG, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130-3396, telephone number (504) 589-4686.

Dated: July 23, 1991.

T.D. Fisher,

Captain U.S. Coast Guard Commander, 8th Coast Guard Dist., Acting.

[FR Doc. 91-18386 Filed 8-1-91; 8:45 am]

BILLING CODE 4910-14-M

Federal Railroad Administration

Petition for Exemption or Waiver of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for exemptions from or waivers of compliance with a requirement of its safety standards. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number RSGM-91-7) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Communications received before September 18, 1991, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) in room 8201, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590.

The individual petitions seeking an exemption or waiver of compliance are as follows:

Atlanta, Stone Mountain and Lithonia Railway Company (Waiver Petition Docket Number RSGM 91-7)

The Atlanta, Stone Mountain and Lithonia Railway Company (ASML) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for one locomotive. The petitioner operates on approximately 4.3 miles of track between their quarry and an interchange with CSX in Lithonia, Georgia.

Waccamaw Coast Line Railroad Company (Wavier Petition Docket No. RSGM 91-8)

The Waccamaw Coast Line Railroad Company (WCLR) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for one locomotive. The railroad operates over approximately 14 miles of track between Conway and Myrtle Beach, South Carolina. The railroad states the locomotive is used exclusively in switching service. It is equipped with safety glass and there is no record of vandalism relating to glazing.

R.J. Corman Railroad Corporation (Wavier Petition Docket Number RSGM 91-9)

The R.J. Corman Railroad Corporation (RJCR) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) pertaining to: two locomotives used in dinner train service on the Bardstown Line (Bardstown Junction—Bardstown, Kentucky), one locomotive operating on the Cleveland Line (Holloway—Warwick, Ohio) and one locomotive operating on the Memphis Line (Memphis Junction, Kentucky—Zinc, Tennessee). The carrier reports there have been no glazing related accidents nor incidents involving vandalism.

Great River Railroad (Waiver Petition Docket Number RSGM 91-10)

The Great River Railroad (GRTR) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for two locomotives. The GRTR operates on approximately 30 miles of track between Rosedale and Great River Junction, Mississippi. The area of operation is largely rural and there have been no reports of vandalism nor incidents concerning glazing during operations according to the railroad.

Chevron USA (Waiver Petition Docket Number RSGM 91-11)

Chevron USA (ZCUI) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for two locomotives. The locomotives operate on approximately 7 miles of in-plant track and ½ mile of outside track.

Wisconsin and Southern Railroad Company (Wavier Petition Docket Number RSGM 91-12)

The Wisconsin and Southern Railroad Company (WSOR) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing

Standards (49 CFR part 223) for one locomotive.

The WSOR operates 148 miles of track, primarily in rural Wisconsin. The locomotive for which the waiver is requested will be used solely as a backup switcher during peak loading periods. It will operate only on WSOR track. All other WSOR locomotives which do interchange on other tracks do comply with part 223. The carrier states there have been no incidents of vandalism since their inception in 1980.

Whitewater Valley Railroad (Waiver Petition Docket Number RSGM 91-14)

The Whitewater Valley Railroad (WVRR) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for three locomotives. The WVRR is primarily an excursion railroad operating in rural Indiana between Connorsville and Metamora. A freight switching move of less than 2 miles is also provided. The railroad reports there have been incidents of vandalism resulting in broken glass when the locomotives have been inactive for extended periods.

Issued in Washington, DC on July 26, 1991.
Grady C. Cothen, Jr.

Associate Administrator for Safety.

[FR Doc. 91-18358 Filed 8-1-91; 8:45 am]

BILLING CODE 4910-06-M

Petition for Waiver of Compliance; Canadian

In accordance with 49 CFR Pacific Ltd. 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received from the Canadian Pacific Limited (CP Rail) a request for a waiver of compliance with a requirement of Federal rail safety standards. The petition is described below, including the regulatory provisions involved and the nature of the relief being requested.

Canadian Pacific Limited

Waiver Petition Docket Number LI-88-4A

The Canadian Pacific Limited (CP Rail) seeks an extension of their temporary waiver of compliance with certain provisions of the Locomotive Safety Regulations (49 CFR part 229). CP Rail was granted a temporary waiver of compliance with § 229.29, for 10 locomotives on October 14, 1988. Section 229.29 stipulates that all brake valves, with the exception of 26-L type, must be cleaned, tested and inspected every 736 calendar days. The 26-L type air brake equipment must be cleaned, inspected and tested every 1,104 calendar days.

CP Rail and the Canadian National Railway (CN Rail) in conjunction with Transport Canada participated in a test program covering a total of 60 locomotives with 26-L Brake Equipment for a period of 48 months. The 10 waived locomotives were equipped for international service and thus could be operated in the United States and be covered by § 229.29. During the test period, all failed valves were tested and inspected for cause of failure. At the completion of the 48 month period, six locomotive sets of air brake equipment were tested and disassembled for inspection of their internal condition. The remaining 54 sets of brake equipment were subjected to the normal COT&S. Results of this test were favorable and Transport Canada has now authorized an extended 48 month test, with certain conditions, to include all locomotives with 26-L type air brake equipment operating on CP Rail and CN Rail.

Since many of the CP Rail locomotives are equipped for international service, the possibility exists that they may enter the United States during the normal course of their operations. In order to preserve the integrity of the expanded test, CP Rail is requesting relief from the 1,104 calendar day (36 month) clean, inspect and test schedule contained in 49 CFR § 229.29 for all CP Rail locomotives equipped with 26-L Brake Equipment.

The following conditions which were previously specified will continue:

1. Each locomotive specified will have stencilled in a prominent location in the cab the following: "AIR BRAKE EQUIPMENT UNDER TEST WITH FRA WAIVER APPROVAL."
2. The test report, when completed, will be forwarded to the FRA.
3. If any incident occurs which involves one of these test locomotives and is attributable to the air brakes on the test locomotive, the FRA Office of Safety will be notified as soon as practicable.

A previous requirement that all valves be painted for identification is no longer necessary since all locomotives are included in the test.

Each locomotive will receive a COT&S on or before the expiration of the 48 month period.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the

end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number L1-88-4A) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before September 16, 1991 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) in room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Issued in Washington, DC on July 26, 1991.

Grady C. Cothen, Jr.,

Associate Administrator for Safety.

[FR Doc. 91-18359 Filed 8-1-91; 8:45 am]

BILLING CODE 4910-06-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: July 26, 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: 1545-0064.

Form Number: 4029.

Type of Review: Extension.

Title: Application for Exemption From Social Security and Medicare Taxes and Waiver of Benefits.

Description: Form 4029 is used by members of recognized religious groups to apply for exemption from social security and Medicare taxes under Internal Revenue Code sections 1402(g) and 3127. The information is used to approve or deny exemption from social security and Medicare taxes.

Respondents: Individuals or households.

Estimated Number of Respondents: 3,754.

Estimated Burden Hours Per Response/Recordkeeping:

	Minutes
Recordkeeping	7
Learning about the law or the form	10
Preparing the form	11
Copying, assembling, and sending the form to the SSA	35

Frequency of Response: Filed only once.

Estimated Total Recordkeeping/Reporting Burden: 3,942 hours.

OMB Number: 1545-0191.

Form Number: 4952.

Type of Review: Revision.

Title: Investment Interest Expense Deduction.

Description: Form 4952 is used by taxpayers who paid or accrued interest on money borrowed to purchase or carry investment property. The form is used to compute the allowable deduction for interest on investment indebtedness and the information obtained is necessary to verify the amount actually deducted.

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 800,000.

Estimated Burden Hours Per Response/Recordkeeping:

	Minutes
Recordkeeping	13
Learning about the law or the form	14
Preparing the form	11
Copying, assembling, and sending the form to the IRS	10

Frequency of Response: Annually.

Estimated Total Recordkeeping/Reporting Burden: 648,000 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91-18328 Filed 8-1-91; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: July 26, 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.

Office of Thrift Supervision

OMB Number: 1550-0026.

Form Number: FFIEC 001.

Type of Review: Extension.

Title: Annual Report of Trust Assets.

Description: The Annual Report of Trust Assets is submitted by financial institutions that operate trust departments. The report is the only source of information available regarding market values of assets held in trust departments. The information is compiled by the FDIC and published in an annual report that is used by financial institutions, Federal supervisory agencies and other groups.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 130.

Estimated Burden Hours Per Response: 1 hour, 49 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 235 hours.

Clearance Officer: John Turner (202) 906-6840, Office of Thrift Supervision, 1700 G Street, NW., 3rd Floor, Washington, DC 20552.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 91-18329 Filed 8-1-91; 8:45 am]

BILLING CODE 4810-25-M

Internal Revenue Service

Tax Counseling for the Elderly (TCE) Program; Availability of Application Packages

AGENCY: Internal Revenue Service, Treasury.

ACTION: Availability of TCE application packages.

SUMMARY: This document provides notice of the availability of Application Packages for the 1992 Tax Counseling for the Elderly (TCE) Program.

DATES: Application packages are available from the IRS at this time. The deadline for submitting an application package to the IRS for the 1992 Tax Counseling for the Elderly (TCE) Program is September 3, 1991.

ADDRESSES: Application Packages may be requested by contacting: Internal Revenue Service, Management and Operations Branch (T:T:M), Program Manager, Tax Counseling for the Elderly Program, 1111 Constitution Avenue NW., room 7207, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Haag, Management and Operations Branch (T:T:M) room 7207, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224. The non-toll-free telephone number is (202) 566-6603.

SUPPLEMENTARY INFORMATION: Authority for the Tax Counseling for the Elderly (TCE) Program is contained in section 163 of the Revenue Act of 1978, Public Law No. 95-600, 92 Stat. 12810, November 6, 1978. Regulations were published in the *Federal Register* (44 FR 72113) on December 13, 1979. Section 163 gives the Internal Revenue Service authority to enter into cooperative agreements with private or public non-profit agencies or organizations to establish a network of trained volunteers to provide free tax information and return preparation assistance to elderly individuals. Elderly individuals are defined as individuals age 60 or over at the close of their taxable year.

Cooperative agreements will be entered into based upon competition among eligible agencies and organizations. Because applications are being solicited before the FY 1992 budget has been approved, cooperative agreements will be entered into subject to appropriation of funds. Once funded, sponsoring agencies and organizations will receive a grant from the IRS for administrative expenses and to reimburse volunteers for expenses incurred in training and in providing tax

return assistance. The Tax Counseling for the Elderly (TCE) Program is referenced in the Catalog of Federal Domestic Assistance in section 21.006.

John J. Mannion,
Chief, Management and Operations Branch.

[FR Doc. 91-18420 Filed 8-1-91; 8:45 am]

BILLING CODE 4830-01-M

[Project No. IRS-91-064]

Proposed Establishment of a Federally Funded Research and Development Center

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of intent.

SUMMARY: The Internal Revenue Service (IRS) announces its intention to sponsor and establish a Federally Funded Research and Development Center (FFRDC) to conduct research and advise IRS officials on technical aspects of Tax Systems Modernization (TSM). TSM is a long-term initiative of major importance involving the modernization and redesign of the tax processing and administrative systems and methods employed by the IRS. The FFRDC will be established under the authority of 48 CFR subpart 35.017 and the Office of Federal Procurement Policy (OFPP) Policy Letter 84-1. This is the third of three announcements under the authority of 48 CFR 5.205(b).

Of paramount importance in fulfilling this requirement will be the absence of actual or potential conflicts of interest (whether personal or organizational, real or apparent, or financial or non-financial) in recommendations that may be made to IRS officials. The scope of work of the FFRDC will be governed by a Sponsoring Agreement encompassing technology assessment, strategic planning, and acquisition support. These three major areas of support are described below. (1) Technology Assessment—The FFRDC will conduct continuing laboratory research and experimentation to evaluate new and emerging data processing and telecommunications technologies, concepts, and methodologies for potential use in TSM including recommendations on how the technologies, concepts, and methodologies may be timely applied to improving tax processing and taxpayer services. (2) Strategic Planning—The FFRDC will combine technical expertise with knowledge gained from research to provide ongoing advice to IRS officials on strategic plans and designs for TSM.

Activities will include the review, critical assessment, verification of, as well as general participation in, the development of, high level plans, processes, and strategies for the timely delivery of systems that will meet TSM objectives. (3) Acquisition Support—The FFRDC will support and assist the acquisition of TSM components to ensure conformity with architectural standards and designs as well as the achievement of TSM goals and objectives. This will be accomplished through the review and evaluation of, and general participation in the development of technical requirements and specifications for critical TSM acquisitions. The FFRDC will participate in the development of technical evaluation criteria and, as an observer on technical evaluation panels, in the evaluation of proposals. In addition, the FFRDC will conduct periodic reviews of the effectiveness and efficiency of operational TSM systems. This notice is not a request for competitive proposals, however, expressions of interest and qualification or capability statements from entities interested and capable of fulfilling this requirement in the Washington, DC, metropolitan area will be considered. The qualification or capability statements received will be used to select potentially qualified entities, which at a later date may be requested to submit more detailed cost and technical proposals.

DATES: The final date for receipt of comments on this action, expressions of interest and qualification or capability statements, in order to be considered, is August 12, 1991.

ADDRESSES: Responses to this notice must be mailed to the Internal Revenue Service, A/C Procurement, Office of End User Acquisitions, 1111 Constitution Avenue NW., room 6418/ICC Building, P:HR:CE, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Michelle Faseru, Contracting Officer, (202) 401-4198 or Veronica Fernandez, Contract Specialist, (202) 401-4253.

SUPPLEMENTARY INFORMATION: Upon request, copies of a detailed scope of work for the intended FFRDC will be mailed to any interested party. Requests must be sent to the address stated above and must make reference to "Project No. IRS-91-064".

Gregory D. Rothwell,
Assistant Commissioner (Procurement).
[FR Doc. 91-18419 Filed 8-1-91; 8:45 am]

BILLING CODE 4830-01-M

**DEPARTMENT OF VETERANS
AFFAIRS****Information Collection Under OMB
Review**

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before September 3, 1991.

Dated: July 29, 1991.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Reinstatement

1. Application for Dependency and Indemnity Compensation or Death Pension by Parent(s), VA Form 21-535.

2. This form is used by parents of deceased veterans to file an application for benefits. The information is used to determine whether the applicant is eligible for dependency and indemnity compensation benefits.

3. Individuals or households.

4. 25,056 hours.

5. 1 hour and 12 minutes.

6. On occasion.

7. 20,880 respondents.

[FR Doc. 91-18344 Filed 8-1-91; 8:45 am]

BILLING CODE 8320-01-M

**Information Collection Under OMB
Review**

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before September 3, 1991.

Dated: July 29, 1991.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Revision

1. Claim for One Sum Payment, VA Form 29-4125, Claim for Government Life Insurance Policy, VA Form Letters 29-764P and 29-764S, and Claim for Monthly Payments, VA Form 29-4125A.

2. The forms are used by beneficiaries applying for the proceeds of Government Life Insurance policies.

3. Individuals or households.

4. 10,400 hours.

5. 6 minutes.

6. On occasion.

7. 104,000 respondents.

[FR Doc. 91-18345 Filed 8-1-91; 8:45 am]

BILLING CODE 8320-01-M

**Information Collection Under OMB
Review**

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233-3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before September 3, 1991.

Dated: July 29, 1991.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Extension

1. Student Verification of Enrollment, VA Form 22-8979.

2. This form is used by students in certifying attendance and continued enrollment in courses leading to a standard college degree and noncollege degree programs.

3. Individuals or households.

4. 151,958 hours.

5. 5 minutes.

6. On occasion; Monthly.

7. 260,500 respondents.

[FR Doc. 91-18346 Filed 8-1-91; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register

Vol. 56, No. 149

Friday, August 2, 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).

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Change in Subject of Meeting

The National Credit Union Administration Board determined that its business requires that the previously announced closed meeting (Federal Register, July 22, 1991) scheduled for 9:30 a.m. on Tuesday, July 30, 1991, include the following additional item, which is closed to public observation:

NCUA Delegations of Authority. Closed pursuant to exemption (2).

The Board voted unanimously to add this item to the closed agenda.

The previously announced items are:

1. Approval of Minutes of previous Closed Meeting.
2. Administration Action under Section 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
3. Administrative Action under Sections 208 and 307 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
4. Administrative Action under Sections 206, 208, and 307 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).

5. Administrative Actions under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).

6. Application for Federal Insurance. Closed pursuant to exemptions (8), (9)(A)(ii).

7. Appeal of Denial of Insurance. Closed pursuant to exemptions (6), (8), and (9)(B).

8. NCUA's Budget FY 92 and FY 93. Closed pursuant to exemptions (2), and (9)(B).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682-9600.

Becky Barker,

Secretary of the Board.

[FR Doc. 91-18458 Filed 7-30-91; 4:39 pm]

BILLING CODE 7535-01-M

Corrections

Federal Register

Vol. 56, No. 149

Friday, August 2, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 158

[Docket No. 26385; Part 158(new)]

RIN 2120-AD87

Passenger Facility Charges

Correction

In rule document 91-12576 beginning on page 24254 in the issue of

Wednesday, May 29, 1991, make the following corrections:

On page 24261, in the third column, in the fifth line from the top, "258.31" should read "158.31".

§ 158.15 [Corrected]

On page 24279, in the third column, in § 158.15(b)(5), in the third line, "2104" should read "2104".

§ 158.25 [Corrected]

On page 24281, in the first column, in § 158.25(c)(1)(iv) "(b)(25)" should read "(b)(15)".

§ 158.33 [Corrected]

On page 24282, in the third column, in § 158.33(c)(1)(iii), "158.35" should read "158.35".

§ 158.47 [Corrected]

On page 24284, in the first column, in § 158.47(a), "1.58.45" should read

"158.45". And in paragraph (c)(3), "158.45" should read "158.45".

§ 158.53 [Corrected]

On the same page, in the third column in § 158.53(a) the effective date should read "June 28, 1994".

BILLING CODE 1505-01-D

Continuing Activities

Continuing Activities

Continuing Activities

Continuing Activities

Continuing Activities

Continuing Activities

Continuing Activities

Continuing Activities

Continuing Activities

Continuing Activities

Continuing Activities

Corrections

Continuing Activities

Continuing Activities

Continuing Activities

Continuing Activities

Estimate Report

Friday
August 2, 1991

Part II

Department of Defense

Department of the Army

32 CFR Part 552

Control of Firearms, Ammunition and Other Dangerous Weapons, Fort Gordon, GA; Final Rule

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 552

Control of Firearms, Ammunition and Other Dangerous Weapons; Fort Gordon, GA

AGENCY: Department of the Army, DOD.

ACTION: Final rule.

SUMMARY: This part establishes the criteria for possessing, carrying, concealing, and transporting, firearms and/or other deadly or dangerous weapons and instruments on Fort Gordon. The provisions of this part are applicable to all persons employed on, visiting, or traveling through or on Fort Gordon including, but not limited to, Department of Defense (DOD) military and civilian personnel, retirees, United States Army Reserve/National Guard (USAR/NG) personnel, military family members, and civilians. This regulation will not become void in its entirety merely because one part or portion thereof is declared unconstitutional or void.

EFFECTIVE DATE: August 2, 1991.

FOR FURTHER INFORMATION CONTACT:

LTC Michael L. Wamsted, Headquarters, U.S. Army Signal Center and Fort Gordon, attn: ATZH-JA, Fort Gordon, Georgia 30905-5000, (404) 791-3043/3148.

SUPPLEMENTARY INFORMATION: This part is punitive in nature. Personnel subject to the Uniform Code of Military Justice (UCMJ) who fail to comply with the requirements of this part are subject to punishment under the UCMJ, as well as to adverse administrative action and other adverse action authorized by applicable United States Code sections or Federal Regulations. Personnel not subject to the UCMJ who fail to comply with the provisions of this part are subject to adverse administrative action or criminal prosecution as authorized by applicable laws of the United States.

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 552

Arms and munitions, Federal buildings and facilities, Government employees.

PART 552—REGULATIONS AFFECTING MILITARY RESERVATIONS

1. The authority citation for 32 CFR part 552 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. 3012; 15 U.S.C. 1601; 18 U.S.C. 1382; 31 U.S.C. 71; 40 U.S.C. 258a; 41 U.S.C. 14, U.S.C. 797.

2. Subpart J is added to part 552 to read as follows:

Subpart J—Control of Firearms, Ammunition and Other Dangerous Weapons on Fort Gordon

Sec.

552.126 Definitions.

552.127 Prohibitions.

552.128 Requirements for possession and use.

552.129 Requirements for carrying and use.

552.130 Disposition of confiscated/seized weapons.

Subpart J—Control of Firearms, Ammunition and Other Dangerous Weapons on Fort Gordon

§ 552.126 Definitions.

For the purpose of this part, the following definitions apply:

(a) *Ammunition.* Projectiles together with their fuses, propelling charges, and primers that are designed to be expelled from a firearm. This includes any type of military and commercial ammunition (ball, trace, incendiary, blank, shotgun, black powder, and shot). Items shall only be considered as ammunition when loaded into a cartridge with its bullet and primer.

(b) *Pellet and BB Guns.* Any type rifle, pistol, or other instrument designed or redesigned, made or remade, modified or remodified to expel BBs or pellets by springs, compressed air, CO₂, or any other compressed gas cartridge.

(c) *Dangerous Instruments.* Any device which is designed or redesigned, made or remade, modified or remodified to be used as an offensive or defensive weapon. Devices of this type include but are not limited to:

(1) "Constant companion" or any similar weapon, designed or redesigned, made, or remade modified or remodified to be worn as a belt buckle, brass knuckles, "Knucklers," and "Knucks."

(2) Studded or spiked wrist bands, or any device designed or redesigned, made or remade, modified or remodified to fit over the hand or wrist which can be used to cause grave bodily harm.

(3) Blackjacks, slapjacks, slappers, saps, including homemade substitutes, other bludgeons (with or without handles), and metal pipes.

(4) "Nanchaku" (num-chucks), two or more sticks connected by rope, cord, or chain and normally used as a martial arts weapon. "Shuriken," a disc or any geometrical object designed to be thrown as a weapon. "Manrikikusari" or "Kusari," a rope or cord joined to a weight at each end and designed to be used as a weapon. "Sai" fighting forks or other similar weapons.

(5) Any finger ring with blades or sharp objects that are capable of being projected/extended from the surface of the ring.

(6) Any device capable and primarily intended for discharging darts or needles.

(7) All firearms.

(8) Slingshots (not including small slingshots made for use by children), other missile throwing devices, or any other instrument designed to produce bodily harm.

(d) *Explosive, incendiary, and pyrotechnic devices.* Any type of military or commercial explosive, incendiary, gas or smoke bomb, grenade, rocket, missile, mine, blasting cap, "dummy" and/or practice device such as simulators, and other similar detonating devices which are capable of being altered to contain a live charge, and pyrotechnic devices such as firecrackers, cherry bombs, bottlerockets, and starclusters.

(e) *Firearms.* (1) A shotgun having a barrel or barrels of less than 18 inches in length.

(2) A weapon made from a shotgun, if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length.

(3) A rifle having a barrel or barrels of less than 16 inches in length.

(4) A weapon made from a rifle if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length.

(5) A machine gun.

(6) A muffler or a silencer for any firearm whether or not such firearm is included within this definition. The term

shall not include an antique firearm or any device (other than a machine gun) which, although designed as a weapon, by reason of the date of its manufacture, value, design, and other characteristics is primarily a collector's item and is not likely to be used as a weapon. For purpose of this definition, the length of the barrel on a shotgun or rifle shall be determined by measuring the distance between the muzzle and the face of the bolt, breech, or breechlock when closed and when the shotgun or rifle is cocked. The overall length of a weapon made from a shotgun or rifle is the distance between the extreme ends of the weapon measured along a line parallel to the center line of the bore.

(f) *Knives, sabers, swords, and machetes.* Any instrument having a sharp blade which is fastened to a handle, or made with a handle. Measurement of the blade will be from the tip of the blade to the point where the blade meets the handle. This includes folding knives, switchblades, gravity knives, stiletos, lock blade knives, swords, sabers, and machetes.

(g) *Machine gun and automatic weapon.* Any weapon which shoots, is designed to shoot, or can be readily restored to shoot automatically more than one shot without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machine gun, and any combination of parts from which a machine gun can be assembled if such parts are in the possession or under the control of a person.

(h) *Pistol.* A weapon originally designed, made, and intended to fire a projectile (bullet) from one or more barrels when held in one hand, and having:

(1) A chamber(s) as an integral part(s) of, or permanently aligned with, the bore(s).

(2) A short stock designed to be gripped by one hand and at an angle to and extending below the line of the bore(s).

(i) *Public gathering.* Shall include, but shall not be limited to, athletic or sporting events, schools or school functions, churches or church functions, rallies, or establishments at which alcoholic beverages are sold for consumption on the premises.

(j) *Revolver.* A projectile weapon, of the pistol type, having a breechloading chambered cylinder so arranged that the cocking of the hammer or movement of the trigger rotates it and brings the next

cartridge in line with the barrel for firing.

(k) *Rifle.* A weapon designed or redesigned, made or remade, and intended to be fired from the shoulder. Also, designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger, and shall include any such weapon which may be readily restored to fire a fixed cartridge.

(l) *Shotgun.* A weapon designed or redesigned, made or remade, and intended to be fired from the shoulder; and designed or redesigned, made or remade, to use the energy or the explosive in a fixed shotgun shell to fire through a smooth bore either a number of projecting (ball shot) or a single projectile for each single pull of the trigger and shall include any such weapon which may be readily restored to fire a fixed shotgun shell.

(m) *Silencer.* Any device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for the use in assembling or fabricating a firearm silencer or firearm muffler, and any part intended only for use in such assembly or fabrication.

(n) *Weapon.* An instrument used in an offensive or defensive manner.

§ 552.127 Prohibitions.

(a) *Prohibited items.* It is prohibited to possess, carry, conceal, transport, store, transfer or sell any of the following weapons or devices, on, through, or within the confines of Fort Gordon unless specifically allowed elsewhere in this part:

- (1) Sawed-off shotgun.
- (2) Sawed-off rifle.
- (3) Machine gun and automatic weapons.
- (4) Silencers.
- (5) Dangerous instruments as defined in § 552.126(c) of this part.
- (6) Explosives, Incendiary and Pyrotechnic Devices, as defined in § 552.126(d) of this part.
- (7) Knives with automatic blade openers (i.e., switch blades, gravity knives, stiletos) of any blade length. Folding or fixed bladed knives with a blade length of more than 3 inches. Swords, sabers, and machetes with sharpened blades.

(8) Any object which carries an electrical current of sufficient wattage to deliver a shock to a person, such as cattle prods, stun guns, "taser" or "public defenders."

(9) Umbrellas, canes, or walking sticks with sharpened points or removable

handles which convert into a sword type instrument.

(b) *Carrying a concealed weapon.* A person commits the offense of carrying a concealed weapon when he/she knowingly has or carries about his/her person, unless in an open manner and fully exposed to view, any bludgeon, metal knuckles, firearm, or knife designed for the purpose of offense and/or defense, or any other dangerous or deadly weapon or instrument of like character outside of his/her home or place of business.

(c) *Carrying deadly weapons to or at public gatherings.* A person commits an offense under this section when he/she carries to, or possesses while at, a public gathering any explosive compound, firearm, or knife designed for the purpose of offense and/or defense. This paragraph shall not apply to necessary equipment for military personnel in a formation when a weapon is required, or to police/security personnel while in performance of their duties.

(d) *Prohibited possession and storage.* It is prohibited to possess or store ammunition, firearms, knives with blades more than 3 inches, bows and arrows, crossbows, and BB and pellet guns, in locations other than those specified in § 552.129 except under conditions specified in § 552.129. Prohibited locations for these items include, but are not limited to, living spaces and common areas of billets, squad rooms, privately-owned vehicles, exterior storage sheds, camper trailers, and offices. Commanders will designate an arms room and times for weapons turn-in. During periods when arms rooms are closed, the Staff Duty Officer (SDO) will ensure the weapon is secured in accordance with (IAW) this subpart. A receipt will be given for each weapon received, reflecting the weapon's make, serial number, identity of owner and other data deemed appropriate.

(e) *Carrying of straight razors, unless the razor is in the original sealed package, is prohibited.*

(f) *Exemptions.* Nothing in this subpart shall prohibit:

(1) Military members or DOD civilian employees from possessing or using military weapons, military ammunition or explosives, or military devices in a lawful manner while in the performance of their military duties while acting under orders of superior military authority, for training, or other authorized purposes, as prescribed by applicable Army Regulations.

(2) Military and DOD civilian personnel, while in the performance of official law enforcement duties, from

possessing or using government ammunition, explosives or devices in a lawful manner, as prescribed by applicable laws or regulations or by their lawful superiors.

(3) Federal, state, county or local law enforcement personnel, while in the performance of official law enforcement duties, from possessing or using government or privately-owned weapons, ammunition, explosives or devices in a lawful manner, as prescribed by applicable laws or regulations or by their lawful superiors.

(4) Government contractors, while in performance of their contract from possessing or using weapons, ammunition, explosives or devices, IAW the provisions of their contract and as determined by the contracting officer.

(5) Individuals with Federal firearms licenses (class III) from possessing, carrying, and transporting class III weapons IAW Federal regulations; however, they are prohibited from concealing, storing, transferring, or selling class III weapons within the confines of Fort Gordon.

(6) Individuals from possessing, carrying, transporting, or storing decorative, ornamental, and ceremonial swords and sabers within the confines of Fort Gordon when used strictly for display and ceremonies.

(7) Individuals and agencies from possessing, transporting, storing, selling, or using fixed bladed knives with a blade length of more than 3 inches when used for their lawful purpose (i.e., steak knives, cooking knives, hunting knives) and when in compliance with all other requirements in this subpart.

(8) Flares used for emergency warning devices in automobiles may be transported in the locked trunk or glove compartment of an automobile.

§ 552.128 Requirements for possession and use.

All persons entering or otherwise on Fort Gordon may possess legally-defined and privately-owned firearms, ammunition, pellet and BB guns, knives, bows and arrows, and crossbows under the following conditions:

(a) Privately-owned firearms, crossbows, pellet and BB guns possessed or stored on the installation must be registered at the Installation's Provost Marshal Office within 3 working days after arrival on the installation, or after obtaining the weapon, except:

(1) Firearms legally brought onto the installation for the purpose of hunting or firing at an approved firing range, and only for the period of time the person possessing the firearms is hunting or firing on the range.

(2) Firearms carried by federal, state, county, or local law enforcement personnel when in the performance of official law enforcement duties.

(b) Personnel residing in family housing, bachelor officers' quarters/ bachelor enlisted quarters/visiting officer quarters (BOQ/BEQ/VOQ) and guest housing, may store legally-acquired, authorized ammunition, knives with a blade measuring more than 3 inches, bows and arrows, registered crossbows, registered pellet and BB guns, and registered firearms within their quarters.

(c) Personnel residing in troop billets may store legally-acquired authorized ammunition, knives and blades measuring more than 3 inches, bows and arrows, registered crossbows, registered pellet and BB guns and registered firearms in unit arms rooms. The unit arms room should utilize a standard weapons card and log book to document storage, removal, and return.

(d) Persons 17 or under must be accompanied by a person over the age of 21, who will be responsible for compliance with the requirements of this subpart while hunting or target shooting on the installation and when purchasing legal arms (including knives with blades over 3 inches) and ammunition from installation retail outlets.

(e) Persons must be in compliance with federal and state laws regarding possession (i.e., age, criminal record restrictions, etc.).

(f) Storage, accountability, and registration procedures will be in accordance with (IAW) Army Regulation (AR) 190-11 (Physical Security of Arms, Ammunition and Explosives) and supplements. Copies of the AR may be obtained from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

(g) Loss or theft of firearms and ammunition will be reported to the Fort Gordon military police desk sergeant immediately. Reports will contain all available details of the incident and a description of the lost item.

§ 552.129 Requirements for carrying and use.

Persons legally authorized to possess firearms, ammunition, knives (with blades longer than 3 inches), bows and arrows, and crossbows, may carry or transport legally possessed and registered (if required) weapons under the following conditions:

(a) For purposes of hunting: From quarters, on or off the installation, by the most direct route to hunting area and return. Stopping at other installation facilities while en route is prohibited

(i.e., post exchange, club, offices, etc.). Individual must have in his/her possession weapon registration (if applicable), valid state hunting license, valid Fort Gordon hunting permit and an area access pass (if applicable).

(b) For purposes of target shooting, selling the weapon or having the weapon repaired: From quarters by the most direct route to approved range or to the location where the weapon is to be sold or repaired and returned. Stopping at other installation facilities while en route is prohibited. Individual must have in his/her possession at all times his/her registration (if applicable).

(1) When carried, weapons will be carried in an open manner (not concealed). Firearms will be unloaded when carried (i.e., projectiles physically separated from the firearms, not just removed from the chamber), except when actually engaged in hunting or shooting. Knives will be carried in a sheath or scabbard worn in a clearly visible manner. Commanders may authorize the carrying of a privately-owned, knife with a blade over 3 inches to field duty. The provost marshal may authorize the carrying of a privately-owned, sheathed, lock blade knife on military and DOD police officers' pistol belts.

(2) When transported in a vehicle, weapons will be in plain view in the passenger area of the vehicle or secured (locked) in the trunk or other rear compartment of the vehicle, not readily accessible from the passenger area (i.e., locked tool box secured to bed of a truck). Firearms will be unloaded and the ammunition physically separated from the firearms. **THE GLOVE COMPARTMENT OF A VEHICLE IS NOT AN AUTHORIZED COMPARTMENT FOR STORING PISTOLS.**

(3) Firearms, bows and arrows, crossbows, pellet and BB guns will not be loaded, fired, or used within any housing area or cantonment area of the installation; within 50 yards of any public highway, street or Fort Gordon named street or numbered road, or across same; within 100 yards of any designated recreation area, managed waters, building or similar structures; any aircraft landing facility; any ammunition storage area (except on approved firing ranges when properly authorized); be discharged from vehicles.

§ 552.130 Disposition of confiscated/seized weapons.

All weapons, ammunition, explosives, or other devices defined in this subpart, that are confiscated pursuant to the

commission of a crime or violation of this subpart or other regulation or found unsecured/unattended on the installation, will be immediately turned over to the military police, U.S. Army Criminal Investigation Command (USACIDC), or the Federal Bureau of Investigation (FBI) for investigation, retention as evidence, or other law disposition. When retention for investigation or evidence is no longer required by military police, USACIDC, or other law enforcement or judicial agencies, the items will be disposed of under the provisions of AR 195-5, Evidence Procedures. Copies of the AR may be obtained from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

Kenneth L. Denton,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 91-18172 Filed 8-1-91; 8:45 am]

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1991 Federal Register

Friday
August 2, 1991

Part III

The President

Proclamation 6319—Helsinki Human
Rights Day, 1991

Friday
August 2, 1991

Part III

The President

Proclamation 6319—Helping Human
Rights Day, 1991

Presidential Documents

Title 3—

Proclamation 6319 of July 31, 1991

The President

Helsinki Human Rights Day, 1991

By the President of the United States of America

A Proclamation

In 1975, when the United States, Canada, and 33 European states joined in adopting the Helsinki Final Act of the Conference on Security and Cooperation in Europe, we affirmed "the close link between peace and security in Europe and in the world as a whole." Signatories to the Helsinki accords also recognized that respect for human rights and fundamental freedoms is essential not only to achieving lasting peace among nations but also to promoting their social and economic development. During the past 16 years, the CSCE process begun at Helsinki has played a leading role in building mutual confidence, reducing the risk of conflict, and enhancing the growth of democracy and openness in Europe. This year we welcome Albania's entry into the CSCE community and its commitment to respect human rights and fundamental freedoms that this symbolizes.

The tremendous changes that have swept central and eastern Europe underscore the CSCE's effectiveness in advancing the goal of universal compliance with the Helsinki accords. At their meeting in Paris last November, CSCE members welcomed the emergence of a new transatlantic partnership of nations based on a mutual commitment to upholding human rights and the rule of law. In signing the Charter of Paris for a New Europe, members added to existing CSCE principles new and sweeping commitments to political pluralism, free elections, free enterprise, and the rule of law. New CSCE institutions established at the Paris summit—such as the Office for Free Elections in Warsaw, the CSCE Secretariat in Prague, and the Conflict Prevention Center in Vienna—strengthen the CSCE's ability to help consolidate and to build upon recent gains. The United States encouraged and welcomed these developments as evidence that the CSCE can serve not only as a catalyst for change but also itself change to reflect the demands of an evolving Europe.

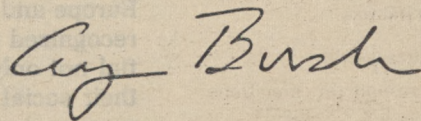
During the June meeting of CSCE foreign ministers in Berlin, the Conference endorsed the report of the Valletta Meeting on the Peaceful Settlement of Disputes and agreed to designate the Conflict Prevention Center in Vienna as the nominating institution to help settle disputes. Members also agreed on a mechanism for holding emergency official-level meetings of the CSCE, which has first been called into action in the current Yugoslav crisis.

As the Yugoslav crisis demonstrates, major challenges remain. The United States will continue to suggest that the CSCE strengthen its capacity to address the political sources of conflict. One area of special concern to us is the persecution of ethnic minorities. Ethnic tensions in Europe provide a solemn and urgent reminder that we still have much work to do in achieving universal compliance with both the letter and the spirit of the Helsinki accords. The United States has sought to lead other member-states in exploring ways that the CSCE can help reduce those tensions and fulfill the promise of a Europe that is whole and free, and at peace with itself.

As an expression of the special importance that the United States continues to attach to the CSCE in a changing Europe, the Congress, by House Joint Resolution 264, has designated August 1, 1991, as "Helsinki Human Rights Day" and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim August 1, 1991, as Helsinki Human Rights Day and reaffirm the United States dedication to the principles of human dignity and freedom—principles that are enshrined in the Helsinki Final Act. As we Americans observe this day with appropriate programs, ceremonies, and activities, let us call on all signatories of the Final Act to fulfill their obligation to respect the rights and dignity of all their citizens.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of July, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and sixteenth.



[FR Doc. 91-18567

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Billing code 3195-01-M

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