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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[Docket No. FV-91-438]

South Texas Onions; Amended Expenses and Establishment of Assessment Rate

AGENCY: Agricultural Marketing Service.

ACTION: Final rule.

SUMMARY: This final rule increases the level of authorized expenses and establishes the assessment rate under Marketing Order No. 959 for the 1991–92 fiscal period. Authorization of this budget enables the South Texas Onion Committee (committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATES: August 1, 1991, through July 31, 1992.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone 202–720–2020.

SUPPLEMENTARY INFORMATION: This rule is effective under Marketing Agreement No. 143 and Order No. 959 (7 CFR part 959), regulating the handling of onions grown in South Texas. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 34 handlers of South Texas onions under this marketing order, and approximately 47 producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of South Texas onion producers and handlers may be classified as small entities.

The budget of expenses for the 1991–92 fiscal period was prepared by the South Texas Onion Committee, the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of South Texas onions. They are familiar with the committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of South Texas onions. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the committee's expenses.

Committee administrative expenses of $91,237, recommended in a mail vote completed August 5, 1991, were approved on September 24, 1991, and published in the **Federal Register** on September 30, 1991 (56 FR 49391). The committee subsequently met on October 15, 1991, and unanimously recommended funding for numerous research and promotion projects and adjustments to a number of the previously approved administrative items. The 1991–92 budget of $341,605.67 is $43,605.67 more than the previous year. Major increases are in the manager and field salaries, rent and utilities, field travel, promotion, and research categories.

The committee also unanimously recommended an assessment rate of $0.07 per 50-pound container or equivalent of onions, the same as last season. This rate, when applied to anticipated shipments of 5,019,054 50-pound containers or equivalents, will yield $351,333.78 in assessment income. This, along with $15,759.84 in interest income, will be adequate to cover budgeted expenses. Funds in the reserve as of September 30, 1991, estimated at $342,401, were within the maximum permitted by the order of two fiscal periods' expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was published in the **Federal Register** on November 19, 1991 (56 FR 58324). This document contained a proposal to amend § 959.232 to increase the level of authorized expenses and establish an assessment rate for the committee. This rule provided that interested persons could file comments through November 29, 1991. No comments were filed.

It is found that the specified expenses are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this section until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the committee needs to have sufficient funds to pay its expenses which are incurred on a

continuous basis. The 1991–92 fiscal period for the program began on August 1, 1991, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable South Texas onions handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committee at a public meeting.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 959 is hereby amended as follows:

PART 959—ONIONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 959 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 959.232 is revised to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 959.232 Expenses and assessment rate.

Expenses of $341,605.67 by the South Texas Onion Committee are authorized and an assessment rate of $0.07 per 50-pound container or equivalent quantity of assessable onions is established for the fiscal period ending July 31, 1992. Unexpended funds may be carried over as a reserve.

Dated: December 12, 1991.

William J. Doyle,

Associate Deputy, Director, Fruit and Vegetable Division.

[FR Doc. 91–30139 Filed 12–17–91, 8:45 am]

BILLING CODE 3410–02–M

RAILROAD RETIREMENT BOARD

20 CFR Part 320

RIN 3220–AA73

Initial Determinations Under the Railroad Unemployment Insurance Act and Review of and Appeals From Such Determinations

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) hereby amends part 320 of its regulations to provide for a right of notice, intervention and appeal to railroad employers with respect to the payment of claims under the Railroad Unemployment Insurance Act. These changes are required by the Railroad Unemployment Insurance and Retirement Improvement Act of 1988 Title VII of Public Law 100–647.

EFFECTIVE DATES: December 18, 1991.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Assistant General Counsel, Bureau of Law, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4513 FTS 386–4513, TDD (312) 751–4701, TDD (FTS 386–4701).

SUPPLEMENTARY INFORMATION: Prior to the enactment of the Railroad Unemployment Insurance and Retirement Improvement Act of 1988 (Improvement Act), title VII of Public Law 100–677, (102 Stat. 3342, 3757), the contribution rate of employers under the Railroad Unemployment Insurance Act (RUIA) did not vary with the number of claims for unemployment or sickness benefits paid for employees of that employer. The Improvement Act introduced the concept of experience rating into the RUIA. Under experience rating, an employer's tax rate will vary depending on the amount of unemployment or sickness benefits paid to employees employed by the employer in the base year (the calendar year prior to the benefit year). The Improvement Act also provides for the right of employers to challenge the payment of benefits if the claimant was employed in the base year by the employer. These amendments were effective January 1, 1990.

Specifically, section 7104(a) of the Improvement Act adds a provision to section 5(b) of the RUIA which requires that the Board notify a claimant's base-year employer(s) at the time of filing a claim so that the employer(s) may provide information with respect to the claim (§ 320.5). Since the base-year employer(s) will be charged for benefits erroneously paid but waived under part 340 of this chapter, this rule also provides that in making a waiver determination the Board shall notify the claimant's base-year employer(s), and most recent employer, if different, and provide the employer(s) an opportunity to submit information with respect to whether waiver is appropriate (§ 320.11(g)).

Section 7104(b) provides that when a claim is paid, the base-year employer(s) may appeal to the Board for review of such determination. Upon such an appeal the Board may appoint an individual to take evidence and submit a recommended decision. Since most appeals filed by employers under this part will require the appointment of a hearings officer to develop a factual record, the Board under its authority in section 5(d) of the RUIA (dealing with the Board's authority to establish intermediate appellate bodies) requires that before a base-year employer may present this case to the Board, the employer must seek reconsideration from the initial adjudicating unit (§ 320.10). If the decision on reconsideration is unfavorable, the employer may have the case heard before an independent hearings officer (§ 320.12), and if dissatisfied by that decision, may appeal to the Board (§ 320.38). This procedure will ensure that by the time a case reaches the three-member board an adequate record will have been developed. This procedure parallels the procedure presently provided for in this part with respect to an appeal by a claimant from a denial of benefits.

Section 320.2 provides that the term "party" as used in this part includes not only the claimant but also the base-year employer(s) and any person designated as a party during the appellate process provided for in this part. Decisions are binding on all parties with respect to all claims involving the same issues under dispute (§§ 320.32 and 320.42).

Section 320.19 provides that whenever an appeal is taken to a hearings officer the hearings officer shall notify the parties other than the appellant that an appeal has been filed and that they have a right to participate in the proceedings. A party who elects not to participate in the appeal shall be bound by any subsequent decision of the hearings officer and shall have no further right to review.

Likewise, when a party who is aggrieved by a decision of a hearings officer files an appeal with the Board, § 320.40 provides that the Secretary to the Board shall notify all parties to the hearings officer's decision that an appeal has been filed.

Section 320.25(d) provides that in the discretion of the hearings officer and with the approval of the Director of Hearings and Appeals any hearing required under this part may be held by telephone conference rather than "face to face" but only if all parties to the appeal agree. In the case of multiple party appeals where issues on appeal are simple, the use of the "telephone hearing" will provide a prompt and efficient means of fulfilling the requirement for a hearing under this part.

A new § 320.49 is added which provides that for purposes of this part the date of filing shall be the date of receipt at an office of the Board. By agreement between the Board and an employer, any document required to be filed with the Board or any notice

required to be sent to the employer may be accomplished by electronic mail.

The rule also makes some technical corrections by eliminating in certain places the phrases "interested party" or "properly interested party"and substituting therefor, simply "party." By definition a "party" to a proceeding under this part is "properly interested" and thus this rule removes this confusing redundancy.

Section 320.9(c) of the proposed rule has been deleted from the final rule and now appears as the last sentence of § 320.11(a). The final rule also corrects certain section references found in the proposed rule.

Finally, on January 28, 1990, provisions in the regulations affording claimants the opportunity for a pre-recovery hearing with respect to waiver requests expired by operation of the sunset provision in § 320.11(k). Consequently, all references to a pre-recovery hearing now present in § 320.11 are removed.

On July 5, 1991, the Board published this rule as a proposed rule [56 FR 30714], inviting comments on or before August 5, 1991. No comments were received.

The Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore, no regulatory impact analysis is required by the Regulatory Flexibility Act (5 U.S.C. 601–611). In addition, the requirements for the collection of information within the meaning of the Paperwork Reduction Act of 1980 have been approved by the Office of Management and Budget.

List of Subjects in 20 CFR Part 320

Railroad employee, Railroad unemployment insurance.

Initial Determinations Under the Railroad Unemployment Insurance Act and Review of and Appeals from Such Determinations.

For the reasons set out in the preamble, title 20, chapter II, part 320 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 320 is revised to read as follows:

Authority: 45 U.S.C. 355 and 362(1).

2. Section 320.1 is revised to read as follows:

§ 320.1 Introduction.

This part explains which units of the Board are authorized to make initial determinations with respect to entitlement to benefits under the Railroad Unemployment Insurance Act and waiver of recovery of overpayments under that Act. This part explains how notice of such determinations is to be communicated to the claimant and to his or her base-year employer(s) and how these determinations may be appealed.

3. A new § 320.2 is added to read as follows:

§ 320.2 Definitions.

As used in this part—

Base-year employer means the railroad employer(s) for whom a claimant worked and earned compensation creditable under the Railroad Unemployment Insurance Act during the base year. The base year is the calendar year immediately preceding the benefit year for which a claim is being filed. A benefit year is generally the period July 1 through the following June 30.

Party means the claimant, the base-year employer(s), or any person so designated under this part.

4. Section 320.5 is revised to read as follows:

§ 320.5 Initial determinations.

An initial determination shall be made with respect to each claim for unemployment or sickness benefits by the appropriate adjudicating office as provided by § 320.6 of this part. Prior to making an initial determination the Board shall provide the claimant's base-year employer(s) and most recent employer if different with notice that a claim has been filed and that the employer(s) has an opportunity to submit information which may be pertinent to the adjudication of the claim. The adjudicating office shall make its determination on the basis of the claimant's application and claim and any relevant information or evidence including any information received from the base-year employer(s). A determination allowing payment of an initial claim shall not establish a presumption that benefits for subsequent claims in the same period of unemployment or sickness are also payable. The Director of Unemployment and Sickness Insurance shall issue instructions with respect to the adjudication of claims and initial determination on such claims. If it is found that only part of the benefits claimed may initially be paid, a partial payment shall be made prior to a final decision on the whole claim.

5. Paragraph (a) of § 320.8 is revised to read as follows:

§ 320.8 Notice of initial determination.

(a) *Benefits payable.* If benefits are payable for a claim, no special notice of the award will be issued to the claimant. A notice of the award will be sent to the base-year employer(s). The amount of benefits due will be certified to the United States Treasury Department for payment.

* * * * *

6. Section 320.10 is revised to read as follows:

§ 320.10 Reconsideration of initial determination.

(a) *Request.* A claimant shall have the right to request reconsideration of an initial determination under § 320.5 of this part which denies in whole or in part his or her claim for benefits. A claimant shall have the right to request reconsideration of a notice of overpayment under § 320.9 of this part. The base-year employer(s) shall have the right to request reconsideration of an initial determination under § 320.5 of this part which awards in whole or in part a claimant's claim for benefits. A reconsideration request shall be made in writing and addressed to the adjudicating office that issued the initial determination and must be received by the adjudicating office no later than 60 days from the date of the notice of the initial decision.

(b) *Review of evidence.* Upon request, the party requesting reconsideration shall have an opportunity to review all evidence and documents that pertain to the initial determination. The Board shall made all reasonable efforts to protect the identity of the source of adverse evidence.

(c) *Notice of decision.* The adjudicating office shall, as soon as possible, render a decision on the request for reconsideration. If a decision rendered by a district office, as the adjudicating office, sustains the initial determination, either in whole or in part, the decision shall be referred to the appropriate regional office for review prior to issuance. The party who requested reconsideration shall be notified, in writing, of the decision on reconsideration no later than 15 days from the date of the decision or, where the regional office has conducted a review of the decision, within 7 days following the completion of the review. If the decision results in denial of benefits, the claimant shall be notified of the right to appeal as provided in § 310.12 of this part. If the decision results in payment of benefits, the base-year employer(s) shall be notified of the right to appeal as provided in § 310.12 of this part.

(d) *Right to further review of initial determination.* The right to further review of a determination made under §§ 310.5 or 320.6 of this part shall be forfeited unless a written request for reconsideration is filed within the time

period prescribed in this section or good cause is shown by the party requesting reconsideration for failing to file a timely request for reconsideration.

(e) *Timely request for reconsideration.* In determining whether either the claimant or the base-year employer(s) has good cause for failure to file a timely request for reconsideration, the adjudicating office shall consider the circumstances which kept either the claimant or the base-year employer(s) from filing the request on time and whether any action by the Board misled either of them. Examples of circumstances where good cause may exist include, but are not limited to:

(1) A serious illness which prevented the claimant from contacting the Board in person, in writing, or through a friend, relative or other person;

(2) A death or serious illness in the claimant's immediate family which prevented him or her from filing;

(3) The destruction of important and relevant records;

(4) A failure to be notified of a decision; or

(5) The existence of an unusual or unavoidable circumstance which demonstrates that either the claimant or the base-year employer(s) would not have known of the need to file timely or which prevented either of them from filing in a timely manner.

7. Section 320.11 is revised to read as follows:

§ 310.11 Request for waiver of recovery.

(a) *Time limitation.* The claimant shall have 30 days from the date of the notification of the erroneous payment determination in which to file a request for waiver, except that where an erroneous payment is not subject to waiver in accordance with § 340.10(e) of this chapter, waiver may not be requested and recovery will not be stayed. Such requests shall be made in writing and be filed by mail or in person at any Board office. The claimant shall, along with the request, submit any evidence and argument which he or she would like to present in support of his or her case. A request solely for reconsideration of an overpayment shall not be considered a request for waiver under this section but shall be treated as a request for reconsideration under § 320.10 of this part.

b. *Recovery action.* Where a claimant has made a timely request for waiver of recovery, no action will be taken to recover the erroneous payment by setoff against current benefits prior to a decision on such request; *provided however,* That the Board may, prior to a decision, withhold the amount of the erroneous payment from benefit payments under any of the following circumstances:

(1) The claimant admits he or she was at fault in causing the overpayment;

(2) The claimant is found to have committed fraud;

(3) The claimant authorizes recovery by setoff or agrees to repayment; or

(4) The amount of erroneous payment is not subject to waiver or provided for in § 340.10(e) of this chapter.

(c) *Review of evidence.* Upon request, the claimant shall have an opportunity to review all evidence and documents that pertain to the erroneous payment determination.

(d) *Decision.* The Director of Unemployment and Sickness Insurance shall make a decision on the claimant's request for waiver of recovery and shall notify the claimant accordingly. The decision of the Director shall include the basis of the decision, setting forth his or her reasons for the decision including the impact, if any, of any evidence submitted by the base-year or last employer. If the Director decides that waiver of recovery is not appropriate, the adjudicating office shall wait 15 days from the date of the notification of the waiver decision before taking any action to recover the erroneous payment. If the Director decides that recovery should be waived, any amount of the erroneous payment so waived but previously recovered by setoff shall be refunded to the claimant.

(e) *Appeal.* If the Director of Unemployment and Sickness Insurance decides that waiver of recovery is not appropriate, the claimant shall have the right to appeal such decision as provided under § 320.12 of this part.

(f) *Requests made after 30 days.* Nothing in this section shall be taken to mean that waiver of recovery will not be considered in those cases where the request for waiver is not filed within 30 days, but action to recover the erroneous payment will not be deferred if such a request is not timely filed. Further, it shall not be considered that a claimant prejudices his or her request for waiver by tendering all or a portion of the erroneous payment or by selecting a particular method for repaying the debt. However, no waiver consideration will be given to any debt which is settled by compromise.

(g) *Evidence provided by base-year employer(s) and most recent employer, if different.* In making a decision under paragraph (d) of this section, the Director of Unemployment and Sickness Insurance shall consider all evidence of record including any evidence submitted by the claimant's base-year employer(s) and the most recent employer, if different. Where a claimant has requested waiver the Director shall notify his or her base-year employer(s) and the most recent employer, if different, of the right to submit, within 30 days, any information which may be pertinent to the waiver decision.

8. Section 320.12 is revised to read as follows:

§ 320.12 Appeal to the Bureau of Hearings and Appeals.

Any party aggrieved by a decision under § 320.10 of this part or a claimant aggrieved by decision under § 320.11 of this part may appeal such decision to the Bureau of Hearings and Appeals. Such an appeal shall be made by filing the form prescribed by the Board. The appeal must be filed with the Bureau of Hearings and Appeals within 60 days from the date upon which the notice of the decision on reconsideration or waiver of recovery was mailed to either a claimant or the base-year employer(s). If no appeal is filed within the time limits specified in this section, the decision of the adjudicating office under §§ 320.10 or 320.11 of this part shall be considered final and no further review of such decision shall be available unless the hearings officer finds that there was good cause for the failure to file a timely appeal as described in § 320.10 of this part.

9. Section 320.18 is revised to read as follows:

§ 320.18 Hearings officer.

Within a reasonable time after a party has filed a properly executed appeal, the Director of Hearings and Appeals shall appoint a hearings officer to act in the appeal. Such hearings officer shall not have any interest in the parties or in the outcome of the proceeding, shall not have directly participated in the initial determination from which the appeal is made, and shall not have any other interest in the matter which might prevent a fair and impartial hearing. In any case in which employee status or creditability of compensation is an issue, the hearings officer shall receive evidence and report to the Board thereon with recommendations. In all other cases, the hearings officer shall consider and decide the appeal; in each such case where the hearings officer determines that an issue of fact exists, the parties shall have the right to a hearing.

10. A new § 320.19 is added to read as follows:

§ 320.19 Election to participate.

(a) *Claimant files an appeal.* Where the claimant has filed an appeal under § 320.12 of this part the hearings officer

shall notify the claimant's base-year employer(s) that such an appeal has been filed and shall provide the base-year employer with a statement of issues on appeal. The hearings officer shall inform the base-year employer(s) that such employer(s) shall have a right to be present at any hearing which is to be held under this part and the right to submit evidence with respect to the issues on appeal. Within 30 days of the date of such notice a base-year employer shall provide the hearings officer with a statement in writing which summarizes the evidence which such employer intends to present with respect to the issues on appeal, which indicates whether the employer wishes to be present at any hearing which may be held, and which designates who will represent the employer with respect to the appeal. An employer who fails to respond in the time prescribed shall be barred from further participation in the appeal and shall forfeit any further right to review as provided for in this part.

(b) *Base-year employer files an appeal.* Where a base-year employer files an appeal under § 320.12 of this part, the hearings officer shall notify the claimant that such an appeal has been filed and shall provide the claimant with a statement of issues on appeal. The hearings officer shall inform the claimant that he or she or a duly authorized representative shall have a right to be present at any hearing which is to be held under this part and the right to submit evidence with respect to the issues on appeal. Within 30 days of the date of such notice the claimant shall file with the hearings officer an election to participate in the appeal. A claimant who fails to file an election in the time prescribed shall be barred from further participation in the appeal and shall forfeit any right of review as provided for in this part.

11. Section 320.25 is amended by striking the words "properly interested" in the first sentence of paragraph (b), and by revising paragraph (c) and adding a new paragraph (d) to read as follows:

§ 320.25 Hearing of appeal.

* * * * *

(c) *Where no oral hearing required.* Where the hearings officer finds that no factual issues are presented by an appeal, and the only issues raised by the parties are issues concerning the application or interpretation of law, the parties or their representatives shall be afforded full opportunity to submit written argument in support of their position but no oral hearing shall be held.

(d) *Hearing by telephone.* In the discretion of the hearings officer and with the approval of the Director of Hearings and Appeals and agreement of all parties, any hearing required under this part may be conducted by telephone conference.

§ 320.28 [Amended]

12. Section 320.28 is amended by striking the words "properly interested" in the last sentence.

§ 320.30 [Amended]

13. Section 320.30 is amended by striking the word "interested" in the last two sentences.

14. Section 320.32 is revised to read as follows:

§ 320.32 Effect of decision of hearings officer.

A decision of the hearings officer, subject to review as hereinafter provided, shall be binding upon any adjudicating office and upon all parties;

(a) With respect to the initial determination involved, and

(b) With respect to other initial determinations, irrespective of whether they have been appealed, which involved the same parties and which were based upon the same issue or issues determined in the decision of the hearings officer.

15. Section 320.38 is revised to read as follows:

§ 320.38 Appeal to Board from decision of hearings officer.

Any claimant aggrieved by a decision of the hearings officer and any base-year employer(s) whose employee was awarded benefits, who participated in the appeal before the hearings officer, may appeal to the Board for review of the decision.

16. Section 320.39 is revised to read as follows:

§ 320.39 Execution and filing of appeal to Board from decision of hearings officer.

An appeal to the Board from the decision of a hearings officer shall be filed on the form provided by the Board and shall be executed in accordance with the instructions on the form. Such appeal shall be filed within 60 days from the date upon which notice of the decision of the hearings officer was mailed to the parties. The right to further review of a decision of a hearings officer shall be forfeited unless formal final appeal is filed in the manner and within the time prescribed in this section. However, when a party fails to file an appeal before the Board within the time prescribed in this section, the Board may waive this requirement if, along with the final appeal, the party in writing requests an extension of time. The request for an extension of time must give the reasons why the final appeal form was not filed within the time limit prescribed in this section. If in the judgment of the Board the reasons given establish that the party has good cause for not filing the final appeal form within the time limit prescribed, the Board will consider the appeal to have been filed in a timely manner. The Board will use the standards found in § 320.10(e) of this chapter in determining if good cause exists.

(Approved by the Office of Management and Budget under control number 3220–0020)

17. Section 320.40 is revised to read as follows:

§ 320.40 Procedure before Board on appeal from decision of hearings officer.

Upon the filing of an appeal to the Board from a decision of a hearings officer, the Secretary to the Board shall notify all parties to the decision of the hearings officer that an appeal has been filed. The parties shall not have the right to submit additional evidence, except that:

(a) The Board may permit the submission of additional evidence upon a showing by a party that he or she has additional evidence to present which, for valid reasons, he or she was unable to present at an earlier stage;

(b) The Board may request the submission of additional evidence; and

(c) The Board may designate any employee of the Board to take additional evidence and to report his or her findings to the Board. Any such additional evidence shall be submitted in such manner as the Board may indicate and shall be included in the record.

18. Section 320.42 is amended by revising paragraph (b) to read as follows:

§ 320.42 Decision of the Board.

* * * * *

(b) With respect to other initial determinations, irrespective of whether they have been appealed, which involve the same parties and which were based on the same issue or issues determined in the decision of the Board. In a case in which there has been a hearings officer's report, in an appeal involving employee status or the creditability of compensation, the decision of the Board on all issues determined in such decision shall be final and conclusively establish all rights and obligations, arising under the Act, of every party notified as hereinabove provided of his or her right to participate in the proceedings.

§ 320.45 [Amended]

19. Section 320.45 is amended in paragraph (b) by striking the word "the" before the word "party" in the first sentence and by substituting therefor, the words, "an aggrieved".

20. A new § 320.49 is added to read as follows:

§ 320.49 Determination of date of filing.

For purposes of this part the date of filing of any document or form shall be the date of receipt at an office of the Board. By agreement between a base-year employer and the Board any document required to be filed with the Board or any notice required to be sent to the employer may be transmitted by electronic mail.

Dated: December 10, 1991.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 91-30111 Filed 12-17-91; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulations No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled; Presumptive Disability and Presumptive Blindness

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: We are removing § 416.934(k), a regulation section under which we made findings of presumptive disability for people who sought supplemental security income benefits based on disability due to acquired immunodeficiency syndrome (AIDS). Under new procedures, our Social Security Field Offices may make a finding of presumptive disability for any individual with the human immunodeficiency virus (HIV) whose disease manifestations are of listing-level severity, not only those who have been diagnosed with AIDS. Moreover, when we last amended our regulations at § 416.934(k) to extend its expiration date, the appendix to which it referred, appendix 1 to subpart I of the Supplemental Security Income (SSI) regulations, was inadvertently deleted from the Code of Federal Regulations. Inasmuch as our new operating procedures are more inclusive than the policy in § 416.934(k), we believe that, instead of restoring the appendix, the better public policy is to remove § 416.934(k) from our regulations. At the same time, we are also publishing, in a separate section of this **Federal Register**, proposed rules which would revise § 416.933 to include all people who have HIV infection with disease manifestations of listing-level severity.

EFFECTIVE DATE: These rules are effective December 18, 1991.

FOR FURTHER INFORMATION CONTACT: Harry J. Short, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (301) 965-1753.

SUPPLEMENTARY INFORMATION: On December 29, 1989, at 54 FR 53607, we amended our regulations at § 416.934(k) to extend the expiration date for the regulatory authority under which we may make a finding of presumptive disability when a person seeks SSI benefits based on disability due to AIDS, with one or more of the manifestations listed in appendix 1 to subpart I of part 416 of the Code of Federal Regulations (CFR) as diagnosed by a licensed physician. As a result of an error, the appendix was inadvertently deleted from the CFR. We nevertheless continued to make findings of presumptive disability on the basis of AIDS. However, under new operating guidelines, findings of presumptive disability are no longer tied to a diagnosis of AIDS. Any person who is infected with the human immunodeficiency virus (HIV) may be found eligible for presumptive disability benefits if the manifestations of the disease are of listing-level severity, as confirmed by medical evidence. In a separate section of this **Federal Register** we are proposing rules, with a request for public comment, that would codify our new operating procedures.

In this final rule, we are correcting the error that deleted appendix 1 of subpart I of part 416, because § 416.934(k) requires reference to criteria that technically no longer exist within these regulations. We considered restoring the appendix to subpart I, but since it is more restrictive than our new operating procedures, we believe that the better course of action is to delete § 416.934(k).

Under section 1631(a)(4)(B) of the Social Security Act (the Act) and implementing regulations, we may pay a person SSI benefits on the basis of presumptive disability or blindness before we make a formal determination on the issue of whether the person is disabled or blind. Findings of presumptive disability or blindness may be made when the available evidence is not sufficient for a formal determination of disability or blindness but reflects a high degree of probability that the individual will be found disabled or blind when complete evidence is obtained; the individual must also meet the nonmedical requirements for SSI eligibility.

Thus, the law that provides for the payment of benefits based on a finding of presumptive disability or presumptive blindness establishes a means by which we may make payments to some individuals who file for supplemental security income benefits while we are adjudicating their claims. Currently, presumptive disability or blindness payments may be made for no more than 6 months. (Prior to May 1, 1991, the effective date of section 5038 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508, presumptive payments could be made for no more than 3 months.)

Findings of presumptive disability or presumptive blindness may be made at our Social Security Field Offices or at the State agencies that make disability determinations for us. The employees at our Social Security Field Offices are not trained disability adjudicators; therefore, they are authorized to make presumptive disability or blindness findings only for certain impairments, which are specified in § 416.934. Under § 416.933, however, presumptive disability and blindness determinations are not limited to the list of specific impairment categories in § 416.934.

Our original intent for the list in § 416.934 was to catalogue a group of impairments that could be the basis for a finding of presumptive disability or blindness based on a claimant's allegations and a Social Security interviewer's observations, without the need for any confirming medical evidence. These specific impairment categories generally include impairments that may be readily observed by a lay interviewer.

Although at times the manifestations of AIDS or of HIV infection are apparent, there are times when they are not. For this reason, § 416.934(k) included a requirement that an allegation of AIDS be confirmed by a diagnosis by a licensed physician.

Disability adjudicators at the State agencies are not confined to the impairments specified in § 416.934; they may make findings of presumptive disability or presumptive blindness in any case in which the evidence is sufficient to establish a high degree of probability that the individual will be found disabled. Section 416.933 shows that any impairment not on the list in

§ 416.934 could be the basis for a finding of presumptive disability or blindness, provided that the decision is based on medical or other information which, though not sufficient for a formal determination of disability, is sufficient to determine that there is a high degree of probability that the individual will be found disabled on consideration of all medical and other evidence.

The rules in §§ 416.933 and 416.934 have enabled us to provide presumptive disability payments to a substantial number of people who are infected by the HIV. Nevertheless, we recognize that the field of study of HIV infection is especially dynamic and that improvements to our rules and procedures are still possible and necessary. For this reason, we recently expanded our operating instructions to help Social Security offices identify individuals who should be found presumptively disabled because of HIV infection at the earliest possible stage in the application process. Social Security offices may now make a finding of presumptive disability for any HIV-infected individual whose disease manifestations are of listing-level severity, based on information obtained from the individual's physician. It is our hope that the new procedures will help us ensure that eligibility for presumptive disability payments is routinely and expeditiously considered for every HIV-infected claimant, both now and in the future.

Under the new procedures, the Social Security office mails a check-block form to the claimant's physician for completion and return to the Social Security office. The form lists manifestations of HIV infection that we currently consider sufficient to establish listing-level severity, including criteria for some of the most rare manifestations of the illness and for considering the functional impact of the illness on individuals who do not demonstrate listing-level severity based on the medical findings alone. Of course, if the Social Security office is unable to make a finding of presumptive disability, the State agency may still make such a finding at any time that the evidence is sufficient to establish a high degree of probability that the individual will be found disabled.

After a presumptive disability finding is made, the State agency completes the development of the evidence and decides the claim using the full sequential evaluation process for determining if the requirements for establishing disability are met. We believe that the check-block form obtained by the Social Security office will also help to expedite the formal determination process at the State agency for individuals who have HIV infection. It will help the State agency pinpoint the kind of evidence it will need to develop for its formal disability determination. In addition, we believe that the check-block design of the form will not be viewed by medical practitioners as onerous or an excessive intrusion into their time. The form is a simple mechanism that quickly provides us with information upon which we can accurately make findings of presumptive disability.

Justification for Final Rule

The Department, even when not required by statute, generally follows the Administrative Procedure Act (APA) notice of proposed rulemaking and public comment procedures specified in 5 U.S.C. 553, in the development of its regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that under 5 U.S.C. 553(b)(B), good cause exists for waiver of notice of proposed rulemaking because such procedures would be unnecessary and contrary to the public interest. Formal notice and comment procedures would be unnecessary in this case since the notice of proposed rulemaking on § 416.933 that is being published in the **Federal Register** will afford the public the opportunity to comment on the general SSA policy and procedures regarding presumptive disability and presumptive blindness for HIV infection and AIDS. In addition, we have concluded that it would be contrary to the public interest to also issue the instant rule through notice and comment rulemaking, since it would delay the correction of § 416.934. The alternative to this regulation would have been to restore Appendix 1 to Subpart I and to return to our former procedures for considering AIDS for presumptive disability purposes. By deleting § 416.934(k) instead and operating under our new and broader procedures, we are including people who have symptomatic HIV infection of listing-level severity, but who are not diagnosed with AIDS.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because this final regulation does not meet any of the threshold criteria for a major rule and a regulatory impact analysis is not required.

Paperwork Reduction Act

This final regulation contains information collection requirements. As required by 2(a) of the Paperwork Reduction Act of 1980, 44 U.S.C. 3504(h), we will submit a copy to the Office of Management and Budget (OMB) for its review. Other organizations and individuals desiring to submit comments on these information collection requirements should direct them to the agency official whose name appears in this preamble and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, room 3208, Washington, DC 20503, Attention: Desk Officer for HHS.

Public reporting burden for this collection of information is estimated to average 10 minutes per response. This includes the time it will take to read the instructions, gather the necessary facts, and fill out the forms, if any. If you have any comments or suggestions on this estimate, or on any other aspect of this proposed rule, write to the Social Security Administration, ATTN: Reports Clearance Officer, 1–A–21 Operations Building, Baltimore, MD 21235, and to the Office of Management and Budget, Paperwork Reduction Project (0960–0000), Washington, DC 20503.

Regulatory Flexibility Act

We certify that this final regulation will not have a significant economic impact on a substantial number of small entities because it affects only individuals and States.

(Catalog of Federal Domestic Assistance Program No. 93.807, Supplemental Security Income Program)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Disability benefits, Medicaid, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: October 1, 1991.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: October 22, 1991.

Louis W. Sullivan,

Secretary of Health and Human Services.

Part 416 of chapter III of title 20 of the Code of Federal Regulations is amended to read as follows:

1. The authority citation for subpart I of part 416 is revised to read as follows:

Authority: Secs. 1102, 1614(a), 1619, 1631 (a) and (d)(1), and 1633 of the Social Security Act; 42 U.S.C. 1302, 1382c(a), 1382h, 1383 (a) and (d)(1), and 1383b.

§ 416.934 [Amended]

2. Section 416.934 is amended by removing paragraph (k).

[FR Doc. 91–30033 Filed 12–17–91; 8:45 am]

BILLING CODE 4190–29–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8367]

RIN 1545–AL29, 1545–AM13, 1545–AN53

Transition Rules for Certain Qualified Business Units Using a Profit and Loss or a Net Worth Method of Accounting for Tax Years Beginning Before January 1, 1987 and the Definition of the Weighted Average Exchange Rate; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to the final regulations (T.D. 8367), which were published Wednesday, September 25, 1991, (56 FR 48433). The regulations contain final Income Tax Regulations setting forth transition rules for qualified business unit (QBU) branches of United States persons, and regulations providing the definition of the weighted average exchange rate.

EFFECTIVE DATE: Taxable years beginning on or after October 25, 1991.

FOR FURTHER INFORMATION CONTACT: Carol Murphy (202–566–6795, not a toll free call).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections relate to procedures to be followed by qualified business unit (QBU) branches of United States persons, using a profit and loss or a net worth method of accounting prior to the enactment of subpart J of the Internal Revenue Code of 1986, and final regulations relating to the definition of the weighted average exchange rate.

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (T.D. 8367), which were the subject of FR Doc. 91–22856, is corrected as follows:

Paragraph 1. On page 48434, column two, in the authority citation for Part 1, the language "1.987-5 are also issued under 26 U.S.C. 987" is corrected to read "1.987–5 are also issued under 26 U.S.C. 987".

§ 1.987–5 [Corrected]

Par. 2. On page 48436, column three, in § 1.987–5(g), paragraph (ii) of *Example 1*, under *Step 2*, line 3, the language "and $5,000 in 1986 and less than $1,000 dollar" is corrected to read "and $5,000 in 1986 and less than $1,000".

Par. 3. On page 48437, in § 1.987–5(g), paragraph (v) of *Example 2*, line 2, the language "$1,800 (dollar value of remittance) — $7,826 (dollar basis in remittance) = ($6,026) (loss on remittance)" is corrected to read "$1,800 (dollar value of remittance) — $7,826 (dollar basis in remittance) = <$6,026> (loss on remittance)".

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91–30070 Filed 12–17–91; 8:45 am]

BILLING CODE 4830–01–M

26 CFR Parts 156 and 602

[T. D. 8379]

RIN 1545–AL47

Excise Tax Relating to Gain or Other Income Realized By Any Person on Receipt of Greenmail

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the manner and method of reporting and paying the nondeductible 50 percent excise tax imposed with respect to the receipt of greenmail. This excise tax was added to the Internal Revenue Code of 1986 by the Revenue Act of 1987, as amended by the Technical and Miscellaneous Revenue Act of 1988. The regulations provide recipients of greenmail with the guidance necessary to comply with the reporting requirements for this excise tax.

DATES: The regulations are effective December 18, 1991, and apply to any consideration received after December 22, 1987.

FOR FURTHER INFORMATION CONTACT: Warren Joseph of the Office of the Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:CORP:T:R) or telephone 202–566–4430 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control number 1545–1049. The estimated average annual burden per respondent/recordkeeper for filing Form 8725 is 6 hours and 55 minutes. The estimated average annual burden per respondent/recordkeeper for §§ 156.6081–1 and 156.6161–1 is .5 hours.

These estimates are an approximation of the average time expected to be necessary for the collections of information. It is based on such information as is available to the Internal Revenue Service. Individual respondents/recordkeepers may require greater or less time depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attention: IRS Reports Clearance Officer, T:FP, Washington, DC 20224, and to the Office of Management and Budget (1545–1049), Paperwork Reduction Project, Washington DC 20503.

Background

This document contains final regulations under subtitle E, chapter 54 of the Internal Revenue Code of 1986. The regulations provide guidance for the proper manner and method of reporting and paying the 50 percent excise tax imposed on a person with respect to the receipt of greenmail. The regulations reflect the addition to the Internal Revenue Code of chapter 54 and section 5881 by section 10228 of the Revenue Act of 1987 (Pub. L. 100–203, 101 Stat. 1330), as amended by section 2004(o) of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100–647, 102 Stat. 3608). On June 10, 1991, the **Federal Register** published a notice of proposed rulemaking (56 FR 26631) proposing a new part 156, Excise Tax on Greenmail, to title 26 of the Code of Federal Regulations. The Internal Revenue Service did not receive any comments on the proposed regulations. No public hearing was requested or held. For this reason, the final regulations adopt the proposed regulations wihtout any substantive changes.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553 (b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805 (f) of the Internal Revenue Code, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comments on its impact on small business.

Drafting Information

The principal author of these regulations is Warren Joseph of the Office of the Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 156

Excise taxes, Greenmail.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, title 26 of the Code of Federal Regulations is amended as follows:

Paragraph 1. A new part 156 is added to read as follows:

PART 156—EXCISE TAX ON GREENMAIL

Subpart A—Tax on Greenmail

Sec.

156.5881–1 Imposition on excise tax on greenmail.

Subpart B—Procedure and Administration

156.6001–1 Notice or regulations requiring records, statements, and special returns.
156.6011–1 General requirement of return, statement, or list.
156.6061–1 Signing of returns and other documents.
156.6065–1 Verification of returns.
156.6071–1 Time for filing returns relating to greenmail.
156.6081–1 Extension of time for filing the return.
156.6091–1 Place for filing chapter 54 (Greenmail) tax returns.
156.6091—2 Exceptional cases.
156.6151–1 Time and place for paying of tax shown on returns.
156.6161–1 Extension of time for paying tax or deficiency.
156.6165–1 Bonds where time to pay tax or deficiency has been extended.

Authority: Sections 6001, 6011, 6061, 6071, 6091, 6161, and 7805 of the Internal Revenue Code of 1986 (26 U.S.C. 6001, 6011, 6061, 6071, 6091, 6161, and 7805), unless otherwise noted.

Subpart A—Tax on Greenmail

§ 156.5881–1 Imposition of excise tax on greenmail.

(a) *In general.* Section 5881 of the Code imposes a tax equal to 50 percent of the gain or other income realized by any person on the receipt of greenmail, whether or not the gain or other income is recognized.

(b) *Transactions occurring on or after March 31, 1988.* For transactions occurring on or after March 31, 1988, greenmail is defined as any consideration transferred by a corporation (or any person acting in concert with the corporation) to directly or indirectly acquire stock of the corporation from any shareholder if:

(1) The transferring shareholder has held the stock (as determined under section 1223) for less than two years before entering into the agreement to transfer the stock,

(2) The shareholder, any person acting in concert with the shareholder, or any person related to the shareholder or to a person acting in concert with the shareholder made or threatened to make a public tender offer for stock of the corporation at some time during the two-year period ending on the date of the acquisition of the stock by the corporation, and

(3) The acquisition is pursuant to an offer that was not made on the same terms to all shareholders.

(c) *Transactions occurring before March 31, 1988.* For transactions occurring before March 31, 1988, greenmail has the same meaning as in paragraph (b) of this section, except that it does not include any consideration transferred by any person acting in concert with the corporation described in that paragraph.

(d) *Effective date.* Generally, section 5881 of the Code applies to consideration received after December 22, 1987, in taxable years ending after that date. However, section 5881 does not apply to any acquisition of stock pursuant to a written binding contract in effect on December 15, 1987, and at all times thereafter before the acquisition.

Subpart B—Procedure and Administration

§ 156.6001–1 Notice or regulations requiring records, statements, and special returns.

(a) *In general.* Any person subject to tax under chapter 54 (Greenmail) of the Code shall keep such complete and detailed records as are sufficient to enable the district director to determine accurately the amount of liability under chapter 54.

(b) *Notice by district director requiring returns, statements, or the keeping of records.* The district director may require any person, by notice served upon him, to make such returns, render such statements, or keep such specific records as will enable the district director to determine whether or not the person is liable for tax under chapter 54 of the Code.

(c) *Retention of records.* The records required by this section shall be kept at all times available for inspection by authorized internal revenue offices or employees, and shall be retained so long as the contents thereof may become material in the administration of any internal revenue law.

§ 156.6011–1 General requirement of return, statement, or list.

Every person liable for tax under section 5881 of the Code shall file a return with respect to the tax on the form prescribed by the Internal Revenue Service (Form 8725). Each such person shall include therein the information required by the form and the instructions issued with respect thereto.

§ 156.6061–1 Signing of returns and other documents.

Any return, statement, or other document required to be made with respect to a tax imposed by chapter 54 (Greenmail) of the Code or the regulations thereunder shall be signed by the person required to file the return, statement, or other document, or by the persons required or duly authorized to sign in accordance with the regulations, forms, or instructions prescribed with respect to such return, statement, or document. An individual's signature on such a return, statement, or other document shall be prima facie evidence that the individual is authorized to sign the return, statement, or other document.

§ 156.6065–1 Verification of returns.

If a return, statement, or other document made under the provisions of chapter 54 (Greenmail) or of subtitle F of the Code, or the regulations thereunder with respect to any tax imposed by chapter 54, or the form and instructions

issued with respect to such return, statement, or other document, requires that it shall contain or be verified by a written declaration that it is made under the penalties of perjury, it must be so verified by the person or persons required to sign such return, statement, or other document. In addition, any other statement or document submitted under any provision of chapter 54 or of subtitle F of the Code, or the regulations thereunder with respect to any tax imposed by chapter 54 may be required to contain or be verified by written declaration that is made under the penalties of perjury.

§ 156.6071–1 Time for filing returns relating to greenmail.

(a) *In general.* Returns required by § 156.6011–1 (relating to liability for tax on greenmail under section 5881) shall be filed on or before the ninetieth day following receipt of any portion of the greenmail. Greenmail is considered to be received when gain or other income is realized, as determined according to the taxpayer's method of accounting, without regard to any provision of the Code providing for deferral of recognition.

(b) *Returns relating to greenmail received before the date these regulations become final.* Returns required by § 156.6011–1 that relate to greenmail received on or before December 18, 1991, shall be filed on or before March 18, 1992.

§ 156.6081–1 Extension of time for filing the return.

(a) *Authority to grant extension.* District directors and directors of service centers are authorized to grant a reasonable extension of time for filing any return, statement, or other document that relates to any tax imposed by chapter 54 (Greenmail) of the Code and that is required under the provisions of chapter 54 or the regulations thereunder. However, except in the case of taxpayers who are abroad, such an extension of time shall not be granted for more than 6 months. An extension of time for filing a return shall not extend the time for the payment of the tax or any part thereof unless specified to the contrary in the grant of extension.

(b) *Application for extension.* The application for an extension of time for filing the return shall be addressed to the district director or the director of the service center with whom the return is to be filed and must contain a full recital of the causes for the delay. It should be made before the expiration of the time within which the return otherwise must be filed, and failure to do so may indicate negligence and constitute sufficient cause for denial. It should, where possible, be made sufficiently early to permit consideration of the matter and reply before what otherwise would be the due date of the return.

(c) *Filing of return.* If an extension of time for filing the return is granted, a return shall be filed before the expiration of the period of extension.

§ 156.6091–1 Place for filing chapter 54 (Greenmail) tax returns.

Except as provided in § 156.6091–2 (relating to exceptional cases):

(a) *Individuals, estates, and trusts.* In general, tax returns under chapter 54 of the Code of individuals, estates, and trusts shall be filed with the district director for the internal revenue district in which is located the legal residence or the principal place of business of them person required to make the return.

(b) *Corporations.* In general, tax returns under chapter 54 of the Code of corporations shall be filed with the district director for the internal revenue district in which is located the principal place of business or the principal office or agency of the corporation.

(c) *Partnerships.* In general, tax returns under chapter 54 of the Code of partnerships shall be filed with the district director for the internal revenue district in which is located the principal place of business or the principal office or agency of the partnership.

(d) *Returns of taxpayers outside the United States.* The return of a person (other than a partnership or a corporation) outside the United States having no legal residence or principal place of business or agency in any internal revenue district, or the return of a partnership or a corporation having no principal place of business or principal office or agency in any internal revenue district, shall be filed with the Assistant Commissioner (International), Internal Revenue Service, 950 L'Enfant Plaza South, SW., Washington, DC 20224, unless the principal place of business or the legal residence of such person, or the principal place of business or principal office or agency of the partnership or corporation, is located in the Virgin Islands or Puerto Rico, in which case the return shall be filed with the Assistant Commissioner (International), Internal Revenue Service, Hato Rey, Puerto Rico 00918.

(e) *Returns filed with service centers or by hand carrying.* Notwithstanding paragraph (a), (b), (c), or (d) of this section, unless a return is filed by hand carrying, whenever instructions applicable to tax returns under chapter 54 of the Code provide that the returns be filed with a service center, the returns must be so filed in accordance with the instructions. Returns that are filed by hand carrying shall be filed with the district director (or with any person assigned the administrative supervision of an area, zone, or local office constituting a permanent post of duty within an internal revenue district of such director) in accordance with paragraphs (a), (b), (c), or (d) of this section.

§ 156.6091–2 Exceptional cases.

Notwithstanding the provisions of § 156.6091–1, the Commissioner may permit the filing of any tax return under chapter 54 (Greenmail) of the Code with any internal revenue district.

§ 156.6151–1 Time and place for paying of tax shown on returns.

The tax under chapter 54 (Greenmail) of the Code shown on any return shall, without notice of assessment and demand, be paid to the internal revenue officer with whom the return is filed at the time and place for filing such return (determined without regard to any extension of time for filing the return). For provisions relating to the time and place for filing such return, see § § 156.6071–1 and 156.6091–1. For provisions relating to the extension of time for paying the tax, see § 156.6161–1.

§ 156.6161–1 Extension of time for paying tax or deficiency.

(a) *In general*—(1) *Tax shown or required to be shown on return.* A reasonable extension of the time for payment of the amount of any tax imposed by chapter 54 (Greenmail) of the Code and shown or required to be shown on any return may be granted by the appropriate district director at the request of the taxpayer. The period of such extension shall not exceed 6 months from the date for payment of such tax.

(2) *Deficiency.* The time for payment of any amount determined as a deficiency in respect of tax imposed by chapter 54 of the Code may, at the request of the taxpayer, be extended by the internal revenue officer to whom the tax is required to be paid. The extension may be for a period not to exceed 18 months from the date fixed for payment of the deficiency, as shown on the notice and demand. In exceptional cases, a further extension for a period not in excess of 12 months may be granted. No extension of time for payment of a deficiency shall be granted if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

(3) *Extension of time for filing distinguished.* The granting of an extension of time for filing a return does not operate to extend the time for the payment of the tax or any part thereof unless so specified in the extension.

(b) *Certain rules relating to extensions of time for paying income tax to apply.* The provisions of § 1.6161–1 (b), (c), and (d) of this chapter (relating to a requirement for undue hardship, to the application for extension, and to payment pursuant to an extension) shall apply to extensions of time for payment of the tax imposed by chapter 54 of the Code.

§ 156.6165–1 Bonds where time to pay tax or deficiency has been extended.

If an extension of time for payment is granted under section 6161 of the Code, the district director or the director of the service center may, if he deems it necessary, require a bond for the payment of the amount in respect to which the extension is granted in accordance with the terms of the extension. However, the bond shall not exceed double the amount with respect to which the extension is granted. For provisions relating to form of bonds, see the regulations under section 7101 of the Code contained in part 301 of title 26 (Regulations on Procedure and Administration).

PART 602—[AMENDED]

Paragraph 2. The authority citation of 26 CFR part 602 continues to read as follows:

Authority: (26 U.S.C. 7805)

§ 602.101 [Amended]

Paragraph 3. Section 602.101 (c) is amended by adding in the appropriate place in the table:

§ 156.6001–1	1545–1049
§ 156.6011–1	1545–1049
§ 156.6081–1	1545–1049
§ 156.6161–1	1545–1049

Dated: November 21, 1991.

Michael J. Murphy

Acting Commissioner of Internal Revenue.

Approved:

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 91–30069 Filed 12–17–91; 8:45 am]

BILLING CODE 4830–01–M

Proposed Rules

Federal Register
Vol. 56, No. 243
Wednesday, December 18, 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

Agricultural Marketing Service

7 CFR Part 51

[Docket Number FV-90-301]

Kiwifruit; Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed action would revise the United States Standards for Grades of Kiwifruit. The proposal would redefine discoloration and separate "alligator skin" (rough, checking pattern of the skin) from other forms of discoloration such as black sooty mold. In addition, the definition for maturity would be revised so that procedures other than soluble solids measurement may be used as indices of maturity. The Kiwifruit Administrative Committee (KAC), the marketing order committee representing the kiwifruit growers and packers in California, has requested the USDA make these changes to bring the standards in line with current marketing trends. These changes would improve marketing information and communication between shippers and receivers of kiwifruit. The Agricultural Marketing Service (AMS) has the responsibility to develop and improve standards of quality, condition, quantity, grade, and packaging in order to encourage uniformity and consistency in commercial practices. In addition, these changes would also apply to the regulations issued under Marketing Order No. 920 for Kiwifruit grown in California, and to the requirements for imported kiwifruit.

DATES: Comments must be postmarked or courier dated on or before February 18, 1992.

ADDRESSES: Interested parties are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, room 2056 South Building, Washington, DC 20090–6456. Comments should make reference to the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: Thomas G. Gambill, at the above address or call (202) 720–5024.

SUPPLEMENTARY INFORMATION: This rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "nonmajor" rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule for the revision of U.S. Standards for Grades of Kiwifruit will not impose substantial direct economic cost, recordkeeping, or personnel workload changes on small entities, and will not alter the market share or competitive position of these entities relative to large businesses. In addition, under the Agricultural Marketing Act of 1946, the use of these standards is voluntary. Regulations issued under the Marketing Order No. 920 for Kiwifruit grown in California, 7 CFR 920.302, and the requirements under 7 CFR 944.550 for imported kiwifruit incorporate, by reference, the requirements of the U.S. No. 1 grade, except with respect to shape. Although the proposed rule would apply to both domestic handlers and importers of kiwifruit, the proposed changes to the standards should not affect the volume of kiwifruit handled or imported pursuant to the marketing order and import requirements.

The United States Standards for grades of Kiwifruit were last revised in October 1986. The standards are covered under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*). Industry representatives have requested that the standards be revised to include new definitions and to further simplify existing terms.

The growers and shippers represented by the KAC requested a revision because the present standards do not, in their judgement, reflect current marketing practices. They believe that this proposed rule would give the industry grade standards that would reflect today's modern marketing and packaging methods.

Specifically, the first recommended change refers to § 51.2340 Classification of Defects. The KAC points out that there are basically two types of discoloration (excluding water staining): Black sooty mold and alligator skin. The proposed standard lessens the amount of black sooty mold allowed and adds alligator skin to this section as a specific defect with specific scoring guides.

The most common defect to be scored under the discoloration defect classification is black sooty mold. Black sooty mold is almost black in color and appears on the fruit after storage. The mold is caused by juice that gets on the belts of the packing equipment during the packing process. Routine cleaning of the packing equipment can normally prevent black sooty mold from ever appearing. When black sooty mold does appear, it is usually on several pieces of fruit in the pack and is very detractive in appearance. According to the KAC, there were several buyer complaints in the 1989/90 season in regard to black sooty mold. In most cases, these complaints were on kiwifruit that had recently passed inspection under the current grade requirements.

In most instances, packers are eliminating black sooty mold by routinely cleaning their packing equipment or by removing any signs of this mold when repacking fruit after it has been in storage. However, the California kiwifruit industry agrees that when black sooty mold is present to the maximum extent currently allowed under the discoloration defect, it is unacceptable and projects a negative impression to kiwifruit buyers and consumers. The KAC unanimously voted to recommend that no black sooty mold (discoloration) be allowed in the U.S. Fancy grade (injury) and to allow lesser amounts in the U.S. No. 1 grade (damage) and U.S. No. 2 grade (serious damage) than are currently allowed in the standards.

Alligator skin is a condition that occurs when the fruit has been exposed to excessive sun and/or the vine was deprived of necessary water. The skin is dark in color, fuzzless, and has a noticeable checking pattern. Currently,

there is no specific defect classification in which to score alligator skin except discoloration. Discoloration is scored only when both pattern and color cause a distinct noticeable appearance affecting a specific percentage of the surface. Therefore, if alligator skin covers a large portion or the entire surface of a kiwifruit, which is not uncommon with this defect, it would not be scoreable under the discoloration classification because there would not be enough noticeable difference in both color and pattern.

Alligator skin mainly occurs on fruit in immature vineyards and/or vineyards that have not been cared for properly. Generally, kiwifruit is protected from excessive sun with proper leaf coverage. Immature vineyards may not have enough leaf coverage to adequately protect the fruit. Improper cultural practices, such as not watering the vines enough and pruning too heavily, can also prohibit leaf coverage and let too much sun on the kiwifruit. According to the KAC, the maturing of the vineyard and proper cultural practices can prevent alligator skin.

The KAC has spent numerous hours analyzing kiwifruit and developing defect language that would help eliminate alligator skin without infringing on the concentric growth rings that are common on almost every piece of kiwifruit. Concentric growth rings are rings that appear around the stem end generally believed to be caused by spurts in growth of the kiwifruit. Each proposed defect category for alligator skin includes a free zone of a 1¼" diameter circle centered around the stem cavity to allow for acceptable concentric growth rings. This free zone mainly covers to the shoulders of the fruit. Outside of the free zone, the KAC recommends not more than a ½" diameter circle aggregate area of alligator skin be allowed on a piece of fruit that will grade U.S. Fancy. When the alligator skin allowable becomes a larger area in the case of damage and serious damage, it is easier to measure using a percent of surface covered.

The other proposed change involves the test for maturity. The current definition for mature includes the sentence: "The minimum average soluble solids, unless otherwise specified, shall be not less than 6.5 percent." This sentence makes it mandatory that the soluble solids test be performed at inspection. The California Kiwifruit Commission has contracted with the University of California, Davis over the past several years to conduct tests on the validity of soluble solids in relation to maturity. U.C. Davis concluded that soluble solids measurement is not a reliable means of indicating the ultimate maturity of kiwifruit. The soluble solids reading can be manipulated by storing the fruit for a period of time after harvest before performing the inspection or by withholding water from a vineyard prior to harvest. Also, results have shown that some fruit can test 5.5 percent soluble solids at time of harvest and ripen to a soluble solids level acceptable under the current standards, while some fruit can test 6.5 percent soluble solids and never reach an acceptable level of ripeness. Presently, the standard requires a minimum of 6.5 percent soluble solids, unless otherwise specified, at time of inspection.

U.C. Davis has developed a testing method measuring the total solids of the kiwifruit. According to the Commission, the test is a much more accurate indicator of maturity than the soluble solids test. After three years of testing, the new procedure has consistently resulted in over 90 percent accuracy in indicating ultimate maturity. The KAC will be implementing this test on a voluntary basis in 1990/91. Therefore, the proposal provides that the definition for mature be changed to allow more flexibility in determining maturity and eliminate the required use of the soluble solids test.

List of Subjects in 7 CFR Part 51

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

PART 51—[AMENDED]

For reasons set forth in the preamble, it is proposed that 7 CFR part 51 be amended as follows:

1. The authority citation for 7 CFR part 51 continues to read as follows:

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

2. In Subpart—United States Standards for Grades of Kiwifruit, § 51.2335 is amended by redesignating paragraphs (a)(3)(iv) through (xii), (b)(3)(iv) through (xii), and (c)(3)(iv) through (xii) as paragraphs (a)(3)(v) through (xiii), (b)(3)(v) through (xiii), and (c)(3)(v) through (xiii), respectively, and by adding new paragraphs (a)(3)(iv), (b)(3)(iv), and (c)(3)(iv) respectively, to read as follows:

§ 51.2335 Grades.

(a) * * *

(3) * * *

(iv) Alligator skin;

* * * * *

(b) * * *

(3) * * *

(iv) Alligator skin;

* * * * *

(c) * * *

(3) * * *

(iv) Alligator skin;

* * * * *

3. Section 51.2339 is amended by placing the definitions in alphabetical order and by revising the definition of "Mature" to read as follows:

§ 51.2339 Definitions.

* * * * *

Mature means the fruit has reached the stage of development which will ensure the proper completion of the ripening process.

* * * * *

4. Section 51.2340 Classification of defects is revised to read as follows:

§ 51.2340 Classification of defects.

Defects	Injury	Damage	Serious damage
Bruises	When any slight indentation of the fruit or discoloration of the flesh extends more than 1/16 inch (1.6 mm) in depth.	When surface of fruit is indented and discoloration of the flesh extends deeper than 1/8 inch (3.2 mm), or causing slight discoloration exceeding the area of a circle 3/8 inch (9.5 mm) in diameter, or lesser bruises aggregating an area of a circle 3/8 inch (9.5 mm) in diameter which materially detract from the appearance, edible or shipping quality.	When surface of the fruit is indented and discoloration of the flesh extends deeper than 1/4 inch (6.4 mm), or causing discoloration exceeding the area of a circle 1/2 inch (12.7 mm) in diameter, or lesser bruises which seriously detract from the appearance, edible or shipping quality.
Leaf or Limbrubs	When not smooth, or not light colored, or aggregating more than the area of a circle 3/8 inch (9.5 mm) in diameter.	When not smooth, or not light colored, or aggregating more than the area of a circle 1/2 inch (12.7 mm) in diameter.	When smooth and light colored and aggregating more than the area of a circle 1 1/2 inches (38.1 mm) in diameter, or dark or slightly rough and barklike scars aggregating more than the area of a circle 3/4 inch (19.1 mm) in diameter.
Discoloration	When any amount of color and pattern causing a distinct noticeable change in appearance is present (excluding water staining).	When color and pattern cause a distinct noticeable appearance (excluding water staining) aggregating more than the area of a circle 1/2 inch (12.7 mm) in diameter.	When color and pattern cause a distinct noticeable appearance (excluding water staining) aggregating more than the area of a circle 3/4 inch (19.1 mm) in diameter.
Alligator Skin	When a checking pattern causes a noticeable change in appearance aggregating more than the area of a circle 1/2 inch (12.7 mm) in diameter occurring outside a 1 1/4 inch (31.8 mm) diameter circle centered around the stem cavity.	When a checking pattern causes a noticeable change in appearance affecting more than 10% aggregate surface area occurring outside a 1 1/4 inch (31.8 mm) diameter circle centered around the stem cavity.	When a checking pattern causes a notice change in appearance affecting more than 20% aggregate surface area occurring outside a 1 1/4 inch (31.8 mm) diameter circle centered around the stem cavity.
Hail Injury	When unhealed or deep, or aggregating more than the area of a circle 1/16 inch (1.6 mm) in diameter.	When unhealed or deep, or aggregating more than the area of a circle 1/4 inch (6.4 mm) in diameter.	When unhealed or deep, or aggregating more than the area of a circle 1/2 inch (12.7 mm) in diameter
Growth Cracks	When not healed, or more than one in number, or more than 1/8 inch (3.2 mm) in length or depth.	When not healed, or more than one in number, or more than 1/8 inch (3.2 mm) in depth, or more than 3/8 inch (9.5 mm) in length if within the stem cavity, or more than 1/4 inch (6.4 mm) in length if outside the stem cavity.	When not healed and more than 1/8 inch (3.2 mm) in length or depth, or healed and more than 3/16 inch (4.8 mm) in depth, or healed and aggregating more than 5/8 inch (15.9 mm) in length if within the stem cavity, or healed and aggregating more than 1/2 inch (12.7 mm) in length if outside the stem cavity.
Scab	When cracked, or the aggregate area exceeds that of a circle 1/8 inch (3.2 mm) in diameter.	When cracked, or the aggregate area exceeds that of a circle 1/4 inch (6.4 mm) in diameter.	When the aggregate area exceeds that of a circle 1/2 inch (12.7 mm) in diameter.
Scars	When not smooth, or surface of the fruit is depressed more than 1/32 inch (.8 mm), or not light in color, or when exceeding any of the following aggregate areas, or a combination of two or more types of scars, the seriousness of which exceeds the maximum allowed for any one type: (1) Dark or rough scars when the area exceeds that of a circle 1/8 inch (3.2 mm) in diameter; (2) Fairly light colored, fairly smooth scars when the area exceeds that of a circle 1/4 inch (6.4 mm) in diameter; (3) Light colored, smooth scars when the area exceeds that of a circle 1/2 inch (12.7 mm) in diameter.	When not smooth, or surface of the fruit is depressed more than 1/16 inch (1.6 mm), or when exceeding any of the following aggregate areas, or a combination of two or more types of scars, the seriousness of which exceeds the maximum allowed for any one type: (1) Dark or rough scars when the area exceeds that of a circle 1/4 inch (6.4 mm) in diameter; (2) Fairly light colored, fairly smooth scars when the area exceeds that of a circle 1/2 inch (12.7 mm) in diameter; (3) Light colored, smooth scars when the area exceeds that of a circle 3/4 inch (19.1 mm) in diameter.	When the surface of the fruit is depressed more than 3/16 inch (4.8 mm), or when exceeding any of the following aggregate areas, or a combination of two or more types of scars, the seriousness of which exceeds the maximum allowed for any one type: (1) Dark or rough scars when the area exceeds that of a circle 3/4 inch (19.1 mm) in diameter; (2) Not dark or rough when the area exceeds one-fourth of the fruit surface.
Heat, Sprayburn and Sunburn.	When the normal color of the skin or flesh is more than slightly changed, or any indentation is present.	When the skin is blistered, cracked or decidedly flattened, or the normal color of the skin or flesh has materially changed, or more than one indentation, or indentation exceeds 3/16 (4.8 mm) in diameter.	When the skin is blistered, cracked or decidedly flattened, or causing any dark discoloration of the flesh, or more than two indentations are present, or the aggregate area of indentations exceeds that of a circle 3/8 inch (9.5 mm) in diameter, or when causing a noticeable brownish or darker discoloration over more than one-fourth of surface.
Scale or Scale Marks	When more than one large scale or scale mark or more than three scales or scale marks of any size are present.	When the aggregate area exceeds that of a circle 1/4 inch (6.4 mm) in diameter.	When the aggregate area exceeds that of a circle 3/8 inch (9.5 mm) in diameter.
Insects	When feeding injury is evident on fruit or any insect is present in fruit.	When feeding injury materially detracts from appearance or any insect is present in fruit.	When feeding injury seriously detracts from appearance or any insect is present in fruit.

Note: Classification of defects guidelines are based on fruit 2 inches or smaller in diameter. Accordingly, *larger fruit* are permitted to have defects relative to their size.

Dated: December 12, 1991.

Daniel Haley,

Administrator.

[FR Doc. 91-30140 Filed 12-17-91; 8:45 am]

BILLING CODE 3410-02-M

FARM CREDIT ADMINISTRATION

12 CFR Part 615

RIN 3052-AB25

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Management of Investments; Liquidity; Interest Rate Risk; Eligible Investments

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board (Board) proposes to amend regulations at 12 CFR part 615 to allow Farm Credit Banks (FCBs), banks for cooperatives (BCs), and Agricultural Credit Banks (ACBs) (collectively, System banks) to hold specified eligible investments, in an amount not to exceed 20 percent of the total outstanding loans of such banks, for: (1) Maintaining a liquidity reserve; (2) investing short-term surplus funds; and (3) reducing interest rate risk (IRR). The FCA also proposes to establish by regulation a liquidity reserve requirement for all Farm Credit System (System) banks. The proposed regulations would require FCBs, BCs, and ACBs to follow certain procedures for measuring and managing interest rate risk in their portfolios. The FCA also proposes to strengthen existing requirements that compel the board of directors of each bank to adopt investment policies and procedures that ensure that the bank's investment activities are conducted in a safe and sound manner. The proposed regulations would enable System banks to achieve greater diversification in their investment portfolios by expanding the list of eligible investments, but would place limits on the amount, maturity, and credit rating of eligible investments.

DATES: Comments should be received on or before February 18, 1992.

ADDRESSES: Comments may be mailed or delivered (in triplicate) to Jean Noonan, General Counsel, Farm Credit Administration, McLean, Virginia 22102-5090. Copies of all communications received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. General

The FCA proposes to amend its regulations that govern the investment activities of System banks. The existing regulations authorize Farm Credit banks to hold specified investments for the purposes of maintaining sufficient liquidity, investing surplus short-term funds, and managing short-term debt. The current regulation expressly prohibits System banks from maintaining investment portfolios primarily as a means of generating additional income. The proposed regulations would restrict the amount that each FCB, BC, or ACB could invest in certain eligible investments to 20 percent of its total outstanding loans. These eligible investments could only be used to maintain a liquidity reserve, manage short-term surplus funds, and reduce interest rate risk. For the first time, the FCA is proposing regulations that establish a liquidity reserve and requirements for reducing IRR at all System banks. The FCA also proposes to strengthen requirements in the existing regulation that compel the board of directors of each FCB, BC, or ACB to adopt investment policies and procedures that conform with applicable law, and ensure that competent personnel conduct the bank's investment activities in a safe and sound manner. The proposed regulation would expand the list of eligible investments that Farm Credit banks may use to achieve permissible investment objectives. Eligible investments, however, would be subject to percentage of asset limitations, as well as maturity and credit rating requirements.

Several provisions of the Farm Credit Act of 1971 (Act), 12 U.S.C. 2001 *et seq.*, authorize the FCA to regulate the investment activities of System banks. Section 1.2(a) of the Act, 12 U.S.C. 2002, states that all System institutions are subject to FCA regulations. Sections 1.5(10) [1] and 2.1(13)(A) [2] of the Act authorize FCBs and BCs respectively to "buy or sell obligations of, or insured by the United States or any agency thereof, or securities backed by the full faith and credit of any such agency, and make such other investments as may be authorized under regulations issued by the Farm Credit Administration." Section 5.17(a)(4) of the Act, 12 U.S.C. 2252(a)(4), authorizes the FCA to approve the issuance of System debt obligations to fund the authorized operations of Farm Credit banks and associations. Section 5.17(a)(9) of the Act, 12 U.S.C. 2252(a)(9), authorizes the FCA to prescribe rules and regulations necessary or appropriate for carrying out the Act. Furthermore, section 5.17(a)(10), 12 U.S.C. 2252(a)(10), authorizes the FCA to exercise its enforcement powers to ensure the safety and soundness of System institutions.

The FCA now proposes to exercise the powers conferred on it by the above-referenced sections of the Act to amend existing regulations, and to promulgate new regulations, governing the investment activities of Farm Credit banks. The current investment regulations, §§ 615.5135 and 615.5140, have not been substantially revised since they were promulgated by the former Federal Farm Credit Board in 1982. See 47 FR 12136, 12147 (March 22, 1982). The FCA proposed in 1985, and again in 1986 to amend these regulations, however, no final regulations were adopted. See 50 FR 50798 (December 12, 1985); 51 FR 44310 (December 9, 1986). The FCA now withdraws its proposals of December 12, 1985 and December 9, 1986 and offers this proposed regulation.

In the past decade, the investment strategies of all financial institutions, including Farm Credit banks, have been significantly transformed by the development of new financial instruments, the global integration of financial markets, and technological innovations that enhance the ability to manage investment profolios. The FCA is concerned that these financial and technological developments are rendering the current regulations obsolete. Accordingly, the FCA is proposing to revise these regulations so that FCBs, BCs, and ACBs can diversify their investment portfolios and conduct their investment activities prudently in a rapidly changing financial environment.

II. Definitions

Proposed § 615.5131 defines many of the terms that would appear throughout subpart E of part 615. For the most part, proposed § 615.5131 contains definitions of financial instruments that the FCA

[1] 12 U.S.C. 2013(15).

[2] 12 U.S.C. 2122(13)(A).

proposes either the authorize or prohibit as eligible investments under § 615.5140. These definitions are consistent with terms used by Federal regulators of depository institutions and the securities industry.

Proposed § 615.5131 also defines concepts that are crucial for managing liquidity and interest rate risk exposure. "Liquid investments" means assets that can be promptly converted into cash without substantial loss to the investor. The term "interest rate risk" refers to the impact that interest rate fluctuations have upon the bank's net interest income and market value of equity. The term "net interest income" (NII) refers to the difference between interest income and interest expense, while "market value of equity " (MVE) measures the impact that interest rate changes have on the market value of a bank's assets, liabilities, and off-balance sheet items.

III. Investment Purposes

Currently, § 615.5135(a) restricts the purposes for which Farm Credit banks may hold investment portfolios to maintaining sufficient liquidity, investing short-term surplus funds, and managing short-term debt. The existing regulation also states that "[t]he banks are not authorized to maintain investment portfolios primarily as a means of generating additional income."

The FCA now proposes to amend and redesignate § 615.5135(a) as § 615.5132. As amended, proposed § 615.5132 would limit the size of a bank's investment portfolio to 20 percent of its outstanding loans. The banks would be allowed to hold these investments solely for the purposes of: (1) Complying with the new liquidity reserve requirement in proposed § 615.5134; (2) managing short-term cashflow needs; and (3) reducing interest rate risk pursuant to proposed § 615.5135.

The FCA proposes to allow FCBs, BCs, and ACBs to hold eligible investments in an amount not to exceed 20 percent of their outstanding loans so they will have greater flexibility in managing their assets and liabilities. This approach should enable Farm Credit banks to maintain a liquid pool of investments as a protection against market disruptions. Farm Credit banks are sensitive to fluctuations in interest rates. Carefully planned investment strategies should enable financial institutions to combat maturity mismatches and interest rate fluctuations that could threaten their solvency. The proposed 20-percent formula represents the FCA's best judgment on what is a sufficient amount for System banks to maintain liquidity, reduce IRR, and invest short-term surplus funds.

The proposed limitation on total investment holdings is also designed to prevent FCBs, BCs, and ACBs from engaging in arbitrage activities that are incompatible with their status as a government-sponsored enterprise (GSE), which finances agriculture. Farm Credit banks, as instrumentalities of the United States government, generally have access to the money and capital markets at lower interest rates than their private sector competitors. The FCA does not believe it appropriate for the banks to use their GSE status to borrow funds for the purpose of accumulating large investment portfolios for arbitrage activities. As a result, the proposed regulation would continue to prohibit Farm Credit banks from misusing their GSE status to engage in arbitrage activities.

After careful consideration, the FCA proposes the 20-percent limit on investments to balance these two competing objectives. The proposed regulation would provide management with greater flexibility to reduce risks to bank solvency and liquidity, while simultaneously ensuring that Farm Credit banks do not abuse their GSE status by engaging in arbitrage activities primarily for the purpose of generating additional income.

The investment of short-term surplus funds is one of three authorized activities under the proposed regulation. A Farm Credit bank would be authorized to invest excess funds created during the normal course of operations until such time as maturing debt and expenses become due. The management of surplus funds and short-term debts concern the cashflow needs of the bank. These cashflow needs are used for operational matters that should not result in large investment positions over extended periods of time. The banks have daily access to funds through the sale of short-term debt instruments and, therefore, they have limited needs for holding large amounts of operating funds. Funds held for cashflow purposes should be kept to a minimum and be justified by historical analysis of cashflow needs.

The maintenance of a liquidity reserve and interest rate risk management are the only other investment purposes which are authorized by the proposed regulation. Since the FCA is proposing separate sections of the regulations governing liquidity and interest rate risk management, these issues will be discussed elsewhere in this preamble.

IV. Investment Management

Currently, § 615.5135(b) requires the board of directors of each bank to adopt a policy regarding the management of its investments. The current regulation requires the policy to address the following items: (1) The purpose of the bank's investments; (2) portfolio objectives; (3) liquidity; (4) the size and quality of the investment portfolio; (5) maturity of investments; (6) internal authority to manage investments; (7) reporting and monitoring controls; and (8) other issues as deemed appropriate by the bank.

The FCA now proposes to redesignate § 615.5135(b) as § 615.5133, and to strengthen its requirements. As amended, the proposed regulation would continue to require that the board of directors of each bank adopt policies regarding the management of its investment portfolio. The proposed regulation would also expressly prohibit the board of directors from delegating its responsibility for supervising and reviewing the investment practices of the bank.

Under the proposed regulation, the board of directors would be responsible for adopting written investment policies and procedures that comply with the Act, FCA regulations, and other applicable provisions of law. Additionally, these written policies and procedures should ensure that investment management practices do not expose the bank to excessive levels of risks. More specifically, the proposed rule would require System banks to implement sufficient internal controls to preclude investment activities that would undermine the solvency and liquidity of the bank. The board of directors would also be responsible for ensuring that the portfolio managers conduct the bank's investment activities in accordance with board policies. Section 615.5133 of the proposed regulation would also require the board of directors of each Farm Credit bank to review its investment policies annually, and determine whether current investment strategies are achieving the portfolio objectives. The board should also annually review the quality of all investments in the portfolio.

The proposed regulation would require the board of each bank to address, at a minimum, eight broad areas in an acceptable investment policy. The board of directors of any Farm Credit bank could, in its discretion, adopt additional items which are appropriate for achieving the investment objectives of that bank. These policies should establish

boundaries for decisionmaking and represent the investment objectives of the bank's board of directors.

The proposed regulation would combine existing §§ 613.5135(b) (1) and (2) into a single provision. Proposed § 615.5133(a) would require that the board's policies address the purpose of investments and portfolio objectives. This revision would not substantively change the current requirements. The FCA emphasizes that the board's portfolio objectives should address a long-term view of investment objectives, and provide direction for the portfolio managers.

The existing regulation requires the board to address the bank's liquidity needs in its investment policy. The FCA is proposing a new regulation, § 615.5134, which would establish, for the first time, a liquidity reserve requirement. Accordingly, the FCA proposes to amend current § 615.5135(b)(3) (redesignated as § 615.5133(b)) to require the board's liquidity policy to comply with the requirements of proposed § 615.5134. As amended, proposed § 615.5133(b) would require board policy to identify which investments should be held for liquidity management. The relation between proposed §§ 615.5133(b) and 615.5134 is discussed in greater detail in the section of this preamble concerning liquidity.

Proposed § 615.5133(c) would require the board of directors of each bank to establish policies pertaining to the management of interest rate risk pursuant to § 615.5135 of these proposed regulations. The factors that the board should address in its policy on interest rate risk management are discussed in the preamble to § 615.5135.

The FCA proposes to add to the regulation a requirement that the board of directors for each bank develop appropriate guidelines so that portfolio managers place bank funds only through financially sound brokers, dealers, and financial institutions. The proposed regulation would also require the board to establish the maximum amount of funds that portfolio managers are authorized to invest or place with individual brokers, dealers, or financial institutions. In the aftermath of the recent collapse of major investment firms the financial institutions, the FCA emphasizes that Farm Credit banks must take adequate precautions to ensure that their investment portfolios are diversified and that their funds are only placed through solvent parties.

Accordingly, proposed § 615.5133(d) would require the board of directors to establish criteria to guide portfolio managers in selecting brokers, dealers, and financial institutions where bank funds will be invested. The credit rating and capital position of the broker, dealer, or financial institution are among the factors that board policy should require portfolio managers to consider when investing bank funds. The proposed regulation would require the portfolio managers, at least semiannually, to update and submit for board approval, a list of institutions where bank funds may be invested Additionally, proposed § 615.5133(e) would require the board of directors to adopt procedures to that portfolio managers routinely monitor and evaluate the financial condition of institutions where bank funds are invested, pursuant to proposed § 615.5140.

Proposed § 615.5133(e) would retain the requirement in current § 615.5135(b)(4) that the board adopt policies concerning the size and quality of investments in the portfolio. The board should structure the investment portfolio in the context of the requirements in proposed § 615.5132 pertaining to liquidity, management of surplus short-term funds, and reduction of interest rate risk. While the maximum size of the investment portfolio would be limited by proposed § 615.5132 to 20 percent of all outstanding loads, the board of directors, as a matter of policy, may choose to maintain a smaller investment portfolio. The size of the liquidity portfolio should be determined by the maturity structure of the bank's liabilities, as computed under the liquidity reserve requirement of proposed § 615.5134. Similarly, the exposure to interest rate risk in the balance sheet should determine the amount of investments maintained for reducing interest rate risk. Furthermore, the board may adopt more stringent requirements concerning the quality of eligible investments than those set forth in proposed regulation § 615.5140.

Section 615.5133(f) of the proposed regulation would require the board to establish risk diversification policies. The objective of this proposed provision is to ensure that the board of directors establish boundaries that would prevent an undue concentration of risk in the bank's investment portfolio. An acceptable risk diversification policy should, at a minimum preclude a bank from concentrating its investments in: (1) Particular types of financial instruments (i.e. mortgage-backed securities or prime commercial paper); (2) individual institutions or securities issued by a particular issuer or obligor; (3) particular industries; or (4) certain geographic regions. The risk diversification policies adopted by the board under proposed § 615.5133(f) should be consistent with the requirements of proposed §§ 615.5140(a) and (b).

Section 615.5133(g) of the proposed regulation would require the investment policies of the board to assign responsibility and accountability for managing the bank's investment portfolio to specific management positions or committees. The objective of this provision is to formalize the investment management process and establish clear lines of responsibility. Section 615.5133(g) of the proposed regulation is similar to current § 615.5135(b)(6).

Section 615.5133(h) of the proposed regulation would continue the requirement in existing § 615.5135(b)(7) that the board of directors of each bank establish formal monitoring controls and reporting requirements. The proposed regulation would add a requirement that the portfolio managers present to the board, on a quarterly basis, a detailed report of investment practices and activities. These quarterly reports should summarize past investment actions, detail the performance of current investments, and project planned investment strategies for the next 12 months. The proposed regulation envisions that the board of directors establish controls to prevent theft, fraud, and unauthorized investment practices. Controls should include dual authorizations for security transactions, audit requirements, approval processes, authorization limits, and separation of duties. Policies established by the board pursuant to proposed § 615.5133(h) should require senior management to monitor market conditions, portfolio values, investment strategies, and investment activities on a continual basis to ensure that risk exposures are prudently managed.

V. Liquidity Reserve Requirement

Liquidity is based upon the ability to fund assets and liabilities. Since the Farm Credit System is funded through the sale of debt obligations, the liquidity of Farm Credit banks depends largely upon daily access to money and capital markets. In the event that access to these money and capital markets is totally or partially denied, Farm Credit banks draw upon their liquidity reserve, which is an emergency source of funds, to meet short-term funding needs, such as retiring maturing debt obligations, making current interest payments, and paying normal operating expenses.

Historically, the size of the liquidity reserve has been influenced by the Federal Reserve Board, the United States Treasury, and external economic

events. The Farm Credit banks are considerably exposed to the vagaries of the marketplace. When Systemwide debt obligations are in demand by investors, and the basis point spreads to comparable maturity United States Treasury issues are near their historical levels, the Farm Credit banks retain a liquidity reserve to fund their exposure to short-term needs for approximately 15 days. However, during a financial crisis, such as the agricultural credit crisis of 1985–1987, loan defaults accelerate and credit quality deteriorates, while bank earnings decline. As a result, interest rate spreads widen dramatically as investor confidence in Systemwide obligations erodes and the Farm Credit banks experience difficulty raising funds in the money and capital markets. When this situation occurs, the Farm Credit banks increase their liquidity reserve so that they are able to fund their operations for approximately 30 days.

In recent years, the banks, acting in concert through the Board of Directors of the Federal Farm Credit Banks Funding Corporation, established a minimum Systemwide liquidity requirement. Under the current System formula, the Farm Credit banks are required, at a minimum, to maintain a liquidity reserve to fund 50 percent of the principal amount of bonds and interest due within 90 days divided by 3, plus 50 percent of the principal amount of discount notes due within 30 days. In effect, this formula requires all Farm Credit banks to maintain a liquidity reserve sufficient to fund their operations for approximately 15 days.

In practice, most Farm Credit banks maintain considerably more liquidity than this minimum requirement. On the average, System banks exceeded this requirement as of June 30, 1991, by about 1.4 times, while the liquidity at some banks was double or triple this requirement. In recent times, some banks have held liquidity up to 4 to 5 times the minimum liquidity requirement. Some Farm Credit banks claim that this excess liquidity is necessary to: (1) Protect market access; (2) hedge against potential increases in the cost of funding Systemwide debt obligations by using liquidity to bypass a Systemwide debt maturity; or (3) build short-term investment portfolios for the purpose of financing potential increases in loan demand. Some banks issue short-term (under 30 days) discount notes to fund and maintain their liquidity requirements.

From the perspective of FCA, these practices go beyond those needed to provide System liquidity. The practice of using excess liquidity to build and maintain an investment portfolio for generating additional income constitutes an abuse of GSE status. Additionally, the practice of issuing short-term obligations to fund current operations actually increases the bank's short-term debt load, and thus increases the amount of liquidity that a bank must maintain in order to meet the minimum Systemwide liquidity requirement. This practice of using the liquidity reserve to generate additional income can no longer be justified since proposed § 615.5132 would enable each Farm Credit bank to invest an amount, not to exceed 20 percent of its total outstanding loans, in eligible investments pursuant to proposed § 615.5140, for managing liquidity, investing surplus short-term funds and reducing interest rate risk.

Although the FCA endorses the current Systemwide formula which requires all FCBs, BCs, and ACBs to maintain sufficient liquidity to fund a portion of their maturing obligations, interest payments, and discount notes for the next 15 days, the agency, however, believes that this liquidity reserve requirement should not operate as a fixed liquidity level. The proposed regulation would prohibit Farm Credit banks for exceeding the liquidity reserve requirement unless the Farm Credit Administration Board modified or waived the requirement during an emergency.

Accordingly, the FCA proposes § 615.5134, which would require each FCB, BC, and ACB to maintain a liquidity reserve to fund: (1) 50 percent of its bonds and interest due within the next 90 days divided by 3; and (2) 50 percent of discount notes due within the next 30 days. The proposed regulation would also require each Farm Credit bank to calculate its liquidity reserve requirement as of the last calendar day of March, June, September, and December, based upon the average daily balance of outstanding loans during the same quarter. The liquidity reserve requirement would remain in effect until it is recalculated for the next reporting period.

As noted above, Farm Credit banks will not be able to comply with this liquidity reserve requirement if their access to the capital and money markets is impeded during a crisis. Proposed § 615.5134(b) would enable the FCA Board to modify or waive this liquidity reserve requirement by resolution, whenever the FCA determines in its sole discretion, after consultations with the Federal Farm Credit Banks Funding Corporation, that an agricultural, economic, financial, or national defense emergency impedes normal access to the money or capital markets.

VI. Reduction of Interest Rate Risk

The growing complexity and competitiveness of the financial intermediary market, the volatility of interest rates, and the greater diversity of financial instruments complicate the task of bank management. Interest rate fluctuations have a significant impact upon the net interest income (NII) and market value of equity (MVE) of Farm Credit banks. In this context, it becomes clear that changes in interest rates can undermine the solvency of Farm Credit banks. The effective management of IRR, therefore, is among the most difficult challenges facing boards of directors and bank managers.

Today, some Farm Credit banks utilize investments to help manage a part of their IRR. However, current § 615.5135, does not explicitly authorize Farm Credit banks to hold eligible investments for the purpose of managing IRR. The FCA now proposes a new § 615.5135, which identifies IRR management as a permissible investment activity by FCBs, BCs, and ACBs.

Bank management must ascertain the impact that interest rate changes could have on the bank's balance sheet, before it can devise an effective investment strategy that will help insulate the bank from IRR. More specifically, the bank management must determine how sudden changes in interest rates would effect the NII and MVE of the bank. Traditionally, bank management has conducted a series of stress tests to measure the bank's exposure to IRR. One of the most significant stress tests requires the bank to simulate the impact that an instantaneous and sustained 200-basis-points (interest rates shock or shocking) increase and decrease in interest rates would have on a bank's current NII and MVE. The FCA recognizes that in conducting IRR shocking, the assumptions used are of paramount importance and FCA would expect the board of directors to be aware of those assumptions.

Interest rate shock tests provide bank management with a method of measuring the impact of changing interest rates on the bank's balance sheet from one reporting period to the next. Interest rate shocks are primarily used for comparative purposes and are not intended to provide realistic expectations concerning future risk exposures. Shocking enables bank management to gauge the bank's exposure to IRR on a continual basis.

and understand its impact on NII and MVE over extended periods of time.

Current FCA policy guidance suggests that each Farm Credit bank should conduct an interest rate shock test as part of its strategy to control IRR.[3] The FCA now proposes to require this test by regulation. Accordingly, proposed § 615.5135(a) would require the board of directors of each bank to adopt IRR management sections under asset/liability management policies which establish interest rate risk (IRR) exposure limits. Additionally, proposed § 615.5135(b) would require all FCBs, BCs, and ACBs to simulate, on a quarterly basis, the impact of an instantaneous and sustained 200-basis-points increase and decrease in interest rates over the next 12 months on the bank's current NII and MVE. Proposed § 615.5135(c) would require each Farm Credit bank to develop, at least every quarter, the following three projections of the impact of interest rate changes on the bank's NII and MVE: (1) A best case scenario; (2) a worst case scenario; and (3) a most likely case scenario. Section 615.5135(d) of the proposed regulation would authorize Farm Credit banks to purchase and hold the eligible investments listed in § 615.5140 of this subpart in order to reduce IRR resulting from the bank's normal lending operations. Under the proposed regulation, each bank would be required to document, prior to purchase, the reasons why a particular investment is needed to meet IRR objectives. Furthermore, the proposed regulation would require subsequent quarterly reports to indicate whether such investments are satisfying the IRR objectives of the bank.

The regulatory limits that would be placed on specific investment categories by proposed § 615.5140 and overall limits based on loan volume pursuant to § 615.5132, should not materially affect IRR practices of the banks because there may be other means for meeting IRR objectives, such as off-balance sheet alternatives, or other asset/liability management techniques.

VII. Eligible Investments

The FCA proposes to expand the list of eligible investments in existing § 615.5140 that Farm Credit banks are authorized to hold in order to meet the requirements of proposed § 615.5132. The FCA also proposes to promote portfolio diversification by establishing percentage limits on most eligible investments that FCBs, BCs, and ACBs could hold at any particular time. The FCA is concerned that investments by Farm Credit banks are, at the present time, unduly concentrated in the commercial banking industry. The FCA is proposing to amend § 615.5140 in order to encourage Farm Credit banks to diversify their investment portfolios.

The expanded list of eligible investments proposed by the FCA are designed to help Farm Credit banks meet the requirements of proposed § 615.5132 pertaining to liquidity, IRR, and the investment of surplus short-term funds. Only investments that can be promptly converted into cash, without significant loss, on an established secondary market are suitable for liquidity, IRR management, and the investment of surplus short-term funds. For these reasons, all eligible investments listed in proposed § 615.5140 share the following characteristics: (1) Short-term maturities or short-term repricing mechanism; (2) a high investment grade credit rating by a nationally recognized credit rating service; and (3) an active and universally recognized secondary market exists for trading of these investments; and (4) these investments are valuable as collateral.

The proposed regulation would continue to require that all eligible investments be denominated in United States dollars. The FCA believes that currency exchange transactions would unduly complicate the already complex tasks of maintaining liquidity, reducing IRR, and investing surplus short-term funds. The FCA is concerned that Farm Credit banks could suffer significant losses if they engage in currency exchange transactions as part of their investment activities. The FCA emphasizes that nothing in proposed § 615.5140(a) would prohibit BCs from exercising their powers to engage in currency exchange transactions for the purpose of financing exports or imports of agricultural products pursuant to section 3.7 of the Act, 12 U.S.C. 2128, and subpart Q of part 614 of these regulations.

A. Obligations of the United States, its Agencies and Instrumentalities

As noted above, sections 1.5(15) and 3.1(13)(A) of the Act authorize FCBs and BCs to invest in obligations issued or insured by the United States or its agencies, as well as securities backed by the full faith and credit of Federal agencies. Existing §§ 615.5140(a) (1)–(8), currently authorize Farm Credit banks to hold obligations issued or fully guaranteed by the United States government, as well as securities issued by the System, the Federal Home Loan Banks, the Federal Home Loan Mortgage Corporation (FHLMC), the Federal National Mortgage Association (FNMA) and the Tennessee Valley Authority. The FCA notes that obligations of the United States, its agencies, and instrumentalities are suitable for managing liquidity, reducing IRR, and investing short-term surplus funds, because they pose virtually no risk of default, and are marketable investments within the meaning of proposed § 615.5131(i).

The FCA proposes to allow FCBs, BCs and ACBs to hold obligations (other than mortgage-backed securities) issued or fully guaranteed as to both principal and interest by the United States or any of its agencies or instrumentalities. Although explicit references to the obligations of specific Federal agencies or instrumentalities would be deleted from § 615.5140, Farm Credit banks would still be authorized to hold these securities in their investment portfolios. The FCA believes that this proposed amendment will grant Farm Credit banks greater flexibility to invest in obligations issued or guaranteed by the United States, its agencies and instrumentalities.

Proposed § 615.5140(a)(1) would not impose any restrictions on the percentage of Federal obligations that Farm Credit banks could hold in their investment portfolios because these obligations are, from a regulatory perspective, inherently safe and sound.

Mortgage-backed securities (MBS) that are issued by an instrumentality of the United States, would be expressly excluded from coverage under proposed § 615.5140(a)(1). Instead, proposed § 615.5140(a)(2) would authorize Farm Credit banks to hold such MBSs that meet certain requirements. The FCA emphasizes that Farm Credit banks could not rely on proposed § 615.5140(a)(1) for authority to hold MBSs that do not meet the requirements of proposed § 615.5140(a)(2).

B. Mortgage-Backed Securities

Proposed § 615.5140(a)(2) would authorize FCBs, BCs and ACBs to hold MBSs issued by, or fully guaranteed as to principal and interest by the Government National Mortgage Association (GNMA), FNMA, FHLMC, and the Federal Agricultural Mortgage Corporation (Farmer Mac) so long as: (1) All adjustable rate MBSs reprice within 12 months; or (2) All fixed-rate MBSs have an absolute final maturity of 5 years from the time of purchase. The proposed regulation would limit investments in qualified MBSs to 30 percent of the total investment portfolio of the bank.

[3] See bookletter 281–OE (January 15, 1991) Re: Asset/Liability Management Practices.

A MBS represents a fractional undivided interest in a specific pool of mortgages. The mortgages in the pool collateralize the MBS. Basically, as the mortgages in a pool are repaid, both principal and interest payments are passed through to the investor in proportion (pro rata) to the investor's ownership interest in that pool. In contrast to other securities, the investor lacks certainty about the timing and cashflows from these MBSs because most mortgagors (whose loans underlie the security) have the option to prepay the mortgage at any time.

Each MBS has a stated maturity date, a weighted average maturity (WAM), and a coupon rate. The stated maturity date is the date on which the principal amount of the security, based on the longest contractual maturity of any mortgage in the pool, is due and payable to the registered owner of the MBS. The WAM, which is also referred to as the expected average life, represents an estimate of the weighted average length of time that each dollar of principal will be outstanding. The coupon rate is the stated annual percentage rate of interest paid on a fixed-rate MBS for the remaining amount of principal in the pool.

The term "mortgage-backed securities" is a generic term that refers to securities backed by mortgages including pass-through securities, mortgage-backed bonds, mortgage pay-through securities and collateralized mortgage obligations. As noted earlier, the FCA intends to authorize Farm Credit banks to hold only those MBSs which have little or no risk, and therefore, are suitable for maintaining a liquidity reserve, reducing IRR, and investing surplus short-term funds.

Under proposed § 615.5140(a)(2), Farm Credit banks would only be authorized to hold certain MBSs issued, or guaranteed as to both principal and interest by FNMA, FHLMC, GNMA, or Farmer Mac. The MBSs issued by GNMA are explicitly backed by the full faith and credit of the United States, while MBSs issued by FNMA and FHLMC are implicitly backed by the United States, and accordingly, are rated AAA by nationally recognized credit rating services. The FCA assumes that once Farmer Mac issues MBSs, they will also enjoy a AAA rating. These MBSs possess little or no risk of default to investors. An active and universally recognized secondary market exists for MBSs issued by these Federal instrumentalities. The virtual absence of credit risk and the size of the secondary market establish a significant level of liquidity for MBSs issued or guaranteed by FHLMC, FNMA, and GNMA.

The FCA also proposes to impose short fixed maturities or short-term repricing characteristics on eligible MBSs in order to reduce the bank's exposure to IRR and prepayment risk. Short maturities also encourage Farm Credit banks to maintain liquid and marketable investments. Proposed § 615.5140(a)(2) would allow Farm Credit banks to hold only MBSs backed by: (1) Adjustable rate mortgages (ARMs) which reprice within 12 months; or (2) fixed-rate mortgages (FRMs) with an absolute final maturity of 5 years. Under proposed §§ 615.5131 and 615.5140(a)(2), the "absolute final maturity" of a FRM means that at the time of purchase, the longest contractual maturity of any mortgage remaining in the pool for a fixed-rate MBS shall not exceed 5 years. MBSs, which provide investors with the option to convert the underlying ARMs into FRMs, would not be eligible investments under proposed § 615.5140(a)(2).

The current coupon on fixed-rate MBSs and the 12-month repricing mechanism on adjustable rate MBSs provide the liquidity for this type of investment. Farm Credit banks face greater IRR exposure from fixed-rate MBSs than from adjustable rate MBSs. The FCA recognizes that FRMs with an absolute final maturity of 5 years are in short supply in financial markets. While IRR exposure is higher for a FRM with an absolute maturity of 5 years, than an ARM, such FRMs could, in certain situations, be suitable for a bank's investment strategy to manage IRR.

The FCA proposes to exclude derivative products of MBSs from coverage under proposed § 615.5140(a)(2). The prime derivatives of MBSs are: (1) Stripped Mortgage-Backed Securities (SMBS); and (2) Collateralized Mortgage Obligations (CMO) or Real Estate Mortgage Investment Conduits (REMIC).

SMBSs are created by segregating the monthly principal and interest cashflows from the underlying mortgages or mortgage securities. As a result, two classes of securities are derived from SMBSs. Investors in interest only (IO) SMBSs receive all of the interest cashflows and none of the principal payments from the underlying mortgages. Conversely, principal only (PO) SMBSs pass through to investors all of the principal cashflows, but none of the interest payments from the underlying mortgages.

The price characteristics of all IOs and POs are extremely volatile because interest rate changes impact the prepayment pattern of the underlying mortgages, which in turn, affects the realized maturity of the stripped securities. From the perspective of the FCA, investors in IOs and POs are speculating on future interest rate movements, and how these movements will affect the prepayment pattern of the underlying mortgages, which in turn, impacts the market value of the SMBS. The FCA notes that the SMBS is a relatively new financial instrument, and accordingly, the secondary market for this investment is not well developed. As a result, a SMBS is not a marketable investment for the purposes of proposed § 615.5131(i). For these reasons, the FCA proposes to exclude SMBSs as an eligible investment under proposed § 615.5140(a)(2).

CMOs, or REMICs (hereafter CMOs), are also derivatives of MBSs. CMOs were developed in response to investor concerns about the uncertainty of cashflows resulting from mortgage prepayments. Generally, a CMO is collateralized by MBSs issued or guaranteed by GNMA, FNMA, or FHLMC, and held in trust for CMO investors. In contrast to holders of MBSs, who receive a pro rata share of the cashflow, CMO investors hold different classes (tranches) of the bonds, and are paid in accordance with a predetermined schedule. Tranches are created by segmenting the different cashflows from the pool of mortgages that underlie the CMO. Some tranches consist of the earliest cashflows from the mortgages in the pool, while other tranches contain cashflows from the final years of the underlying mortgages. Since the cashflows from the mortgages in the pool are prioritized among separate tranches, different classes of bonds are created with their own maturity, estimated average life, coupon rate, and prepayment risk characteristics.

Many CMOs have one or more Planned Amortization Class (PAC) tranches, which usually have a fixed monthly principal amortization over a set period of time. PAC tranches, which are designed to meet specific investor requirements, are often illiquid and volatile, and therefore, they are not suitable for managing liquidity or investing surplus short-term funds. While these PCA tranches may be effective in reducing IRR, the universe of PAC tranches available in the marketplace is too diverse for effective regulation.

The PAC tranche transfers the prepayment risk to certain higher risk support or subordinated tranches. As a result of the increased prepayment risk,

these support or subordinated tranches display highly volatile average life, yield and market price. for these reasons, the FCA is concerned that these support tranches will expose Farm Credit banks to an unacceptable level of interest rate risk, and therefore, proposes to prohibit Farm Credit banks from investing in CMOs.

C. Negotiable Certificates of Deposit

The FCA proposes several modifications to current § 615.5140(a)(10), which authorizes Farm Credit banks to hold negotiable certificates of deposit (CDs). As discussed earlier, the FCA is concerned that investments by Farm Credit banks are heavily concentrated in commercial banks. The FCA, therefore, believes that remedial measures are needed to ensure that Farm Credit banks diversify their investment portfolios. The existing regulation, § 615.5140(a)(10), imposes no limits on the amount of negotiable CDs that a Farm Credit bank can hold in its investment portfolio. Under proposed (and redesignated) § 615.5140(a)(5), negotiable CDs would be limited to 30 percent of the bank's total investment portfolio.

The FCA proposes other revisions to this regulation so that Farm Credit banks hold only negotiable CDs that are suitable for the purposes of proposed § 615.5132. For the first time, the FCA proposes that all CDs held by Farm Credit banks mature within 1 year or less. The proposed regulation retains the current requirement that Farm Credit bands only hold negotiable CDs. A CD is negotiable if the instrument contains no restrictions on its transferability.

The FCA is aware that FCBs and BCs currently hold negotiable CDs at depository institutions located in the United States and abroad. Essentially, the three classes of CDs are domestic, Yankee and Eurodollar accounts. Domestic CDs are issued inside the United States by commercial banks, savings associations, and credit unions that are chartered by the United States, or any State or territory thereof. Yankee CDs are issued by the United States branch of a foreign bank. Eurodollar CDs are denominated in United States dollars, and are issued in foreign countries by either local banks or the overseas branches of American banks.

The FCA is concerned that the current difficulties in the commercial banking and thrift industry potentially expose Farm Credit banks to undue financial risks on CDs. Accordingly, proposed § 615.5140(b) would prohibit Fram Credit banks from concentrating their CD investments in a limited number of depository institutions. To the extent that a domestic, Yankee, or Eurodollar CD is not insured by an agency of a Federal or national Government, the proposed regulation would require that the depository institution maintain at least a B, or equivalent credit rating by a nationally recognized credit rating service (such as Thompson Bankwatch). The proposed regulation would additionally require the foreign country where Eurodollar CDs are held to maintain an AAA, or equivalent rating for political and economic stability from a nationally recognized credit rating service.

D. Federal Funds

As noted by proposed § 615.5131(f), Federal funds are loans, for 1 business day or under a continuing contract, to a Federally insured depository institution. Federal funds increase the depository institution's reserve account with the Federal Reserve Bank. The proposed regulation would authorize Farm Credit banks to hold Federal funds which mature within 1 business day, or are subject to a callable contract. The short maturity on Federal funds are suitable for managing liquidity and investing surplus short-term funds. The FCA proposes to limit Federal funds investment to 30 percent of the bank's investment portfolio in order to encourage risk diversification.

E. Prime Commercial Paper

Currently, § § 615.5140(a)(11) and (12) authorize Farm Credit banks to hold highly rated prime commercial and finance paper, and limit the investment in each category to 15 percent of the bank's investment portfolio. The FCA proposes to combine existing § § 615.5140(a)(7).

As amended, the term "commercial paper" will henceforth include finance paper. Both commercial and finance paper are unsecured promissory notes which mature within a timeframe that is usually 270 days or less. The issuer of the debt obligation distinguishes commercial paper from finance paper. Finance paper is issued by financial intermediaries, such as bank holding companies, financial companies, insurance companies, and leasing and factoring companies. Commercial paper is issued by commercial corporations such as public utilities, manufacturers, retailers, wholesalers, and transportation companies. Since this distinction is irrelevant to the objectives of these proposed regulations, the FCA proposes to eliminate the dual terminology.

Proposed § 615.5140(a)(6) would continue to authorize Farm Credit banks to only hold prime commercial paper. From a regulatory perspective, commercial paper is compatible with the objectives of proposed § 615.5132 regarding the maintenance of a liquidity reserve, the reduction of IRR, and the investment of surplus short-term funds. Proposed § 615.5140(a)(6) combines the two existing portfolio limits of 15 percent on commercial paper, to create a single limit of 30 percent. The FCA emphasizes that the amount of commercial paper issued by a single issuer would still be subject to the restrictions of proposed § 615.5140(b).

Proposed § 615.5140(a)(6) would not change the requirement in the existing regulation that Farm Credit banks only hold commercial paper that is rated P–1 or A–1 by a nationally recognized credit rating service. In situations where the commercial paper is issued by a foreign corporation, or the overseas subsidiary of a United States corporation, the country where the issuer is incorporated would be required by proposed § 615.5140(a)(6) to receive the highest possible rating (AAA) for political and economic stability from a nationally recognized credit rating service.

F. Corporate Debt Obligations

For the first time, the FCA is proposing to authorize Farm Credit banks to hold corporate debt obligations that: (1) Mature within 3 years or less; (2) are rated in the two highest investment grades (AA or AAA) by a nationally recognized credit rating service; and (3) are not convertible into equity securities. Additionally, the proposed regulation would limit corporate debt obligations to 15 percent of the bank's total investment portfolio.

The FCA believes that this proposed new authority to invest in high quality, short-term corporate debt obligations will encourage Farm Credit banks to diversity their investment portfolios. Also, the FCA is proposing a short-term maturity deadline and a superior credit rating in order to ensure that Farm Credit banks only purchase highly liquid corporate debt obligations with limited IRR. While an obligation rated AA is of lesser credit quality than a AAA-rated instrument, it is still a superior credit risk, and it is cushioned against any potential downgrading to A or BBB rating, which are also regarded as investment grade.

The FCA proposes to prohibit Farm Credit banks from holding corporate debt obligations that are convertible into equity securities, because the agency believes that it is inappropriate for the banks to have an ownership interest in commercial enterprises. The FCA emphasizes that proposed

§ 615.5140(a)(8) would not prevent the BCs from exercising their powers under section 3.7(b) of the Act, 12 U.S.C. 2128(b), and § 615.5143 to directly purchase an ownership interest in a foreign business entity that facilitates the export or import of agricultural products. Similarly, nothing in proposed § 615.5140(a)(8) would prohibit System institutions from purchasing and holding Class B common stock in Farmer Mac pursuant to section 8.4 of the Act, 12 U.S.C. 2279aa–4 and proposed § 614.5173.

G. Repurchase Agreements

Current § 615.5410(a)(13) authorizes Farm Credit banks to hold repurchase agreements on eligible investments enumerated in this section. This provision would be redesignated as § 615.5140(a)(9). As defined by proposed § 615.5131(p), a repurchase agreement is a transaction where a Fram Credit bank agrees to purchase an eligible security from a vendor, and to sell the same or identical security back to the same party at a later date for a specified price. In effect, these transactions are secured loans. Repurchase transactions usually have a term of 1 day, or are by a continuing contract. Since proposed § 615.5140(a)(9) only authorizes repurchase agreements of eligible investments during short periods of time, the FCA determines that these investments are suitable for the purposes of proposed § 615.5132.

H. State Obligations

The FCA proposes to redesignate current § 615.5140(a)(11), which authorizes Farm Credit banks to hold the full faith and credit obligations of a State, municipality, political subdivision, or agency or instrumentality thereof as § 615.5140(a)(10). The FCA proposes no substantive changes to this provision. The FCA notes that Farm Credit banks enjoy tax-exempt status, and therefore, they rarely invest in tax-exempt State obligations. Instead, Farm Credit associations, which are subject to Federal income tax, occasionally purchase the obligations of the States where they are chartered in order to invest in their communities. The investment authority of associations will be addressed in further detail, later in this preamble.

I. Other Investments

New financial instruments are constantly being developed in financial markets. Many of these new instruments may be suitable for managing liquidity, reducing interest rate risk, and investing surplus short-term funds. The FCA seeks to design proposed § 615.5140(a)(11) so that Farm Credit banks have flexibility to invest in new financial instruments that fulfill the requirements of proposed § 615.5132.

Accordingly, proposed § 615.5140(a)(11) would authorize FCBs, BCs, and ACBs to hold, subject to FCA approval, other financial instruments which: (1) have short maturities; (2) are marketable investments pursuant to proposed § 615.5131; and (3) maintain a high rating from a nationally recognized credit rating service. In the event that proposed § 615.5140(a)(11) is adopted as a final regulation, the FCA would determine on a case-by-case basis whether a new financial instrument meets the requirements of this section.

VIII. Risk Management and Diversification

Proposed § 615.5140(b) would impose a percent of capital limit on investments held by Farm Credit banks with a single obligor, issuer or financial institution. The FCA believes that this restriction is necessary for safety and soundness purposes because it compels Farm Credit banks to diversify their risk. Proposed § 615.5140(b) would limit investments with individual domestic issuers, obligors or financial institutions to 20 percent of the bank's total capital, while investments with each foreign issuer, obligor or financial institution could not exceed 10 percent of a bank's total capital. The political and/or economic risks in many foreign countries justify the more stringent limit on overseas investments. Obligations of, or fully guaranteed as to both principal and interest by, the United States, its agencies and instrumentalities would be exempt from these restrictions.

As discussed earlier, proposed § 615.5133 would require the board of directors of each FCB, BX, or ACB to adopt policies that ensure that portfolio managers invest bank funds only with creditworthy brokers, dealers and financial institutions. Proposed § 615.5140(c) would require each bank to continually perform internal evaluations of the creditworthiness of institutions where bank funds are invested. The proposed regulation would require the banks to subscribe to at least one nationally recognized credit rating service in order to assure that the credit quality of all investments are properly monitored. Acceptable nationally recognized credit rating services would include such organizations as Standard and Poor's, Moody Investor's Services, Fitch, Thompson Bankwatch, Duff and Phelps, and International Bank Credit Association.

While rating services provide an important source of information, Farm Credit banks cannot substitute these ratings for their own credit analysis. The FCA recognizes that the credit rating of the same investment differs from one rating service to another. There may also be a lag time between credit rating services as downgrades or upgrades in ratings occur. Accordingly, proposed § 615.5140(c) would still require management of each bank to exercise their independent credit judgment when evaluating credit rating information.

IX. Investments by Associations

The associations of the System derive their investment authority from the Act Production credit associations (PCAs) and Federal land bank associations (FLBAs) are respectively authorized by sections 2.2(11) and 2.12(17) of the Act, 12 U.S.C. 2073(11) and 2093(17) to "buy and sell obligations of or insured by the United States or of any agency thereof or of any banks of the [System]." PCAs are authorized by section 2.2(10) of the Act, 12 U.S.C. 2073(10) to "invest funds of the association as may be approved by the [FCB] under the regulations of the [FCA] and deposit the current funds and securities of such with the [FCB], a member bank of the Federal Reserve System, or any bank insured under the Federal Deposit Insurance Corporation." FLBAs are authorized by section 2.12(18), 12 U.S.C. 2093(18), to "invest association funds in such obligations as may be authorized in regulations of the [FCA] and approved by the bank and deposit securities and current funds of the association with any member bank of the Federal Reserve System, with the [FCB], or with any bank insured by the Federal Deposit Insurance Corporation."

Existing regulations implement these statutory provisions. Current § 615.5141 permits PCAs to hold eligible investment under § 615.5140, as authorized by the supervising bank. Similarly, existing § 615.5142 allows FLBAs to invest its excess cash in the unsecured obligations of its supervising banks and eligible investments under § 615.5140, as authorized by its supervising bank.

Current § 615.5180 requires the FCBs to semiannually review the investment strategies and investment portfolio of every association in the district. This regulation also requires associations to hold investments listed in § 615.5140, as the FCB instructs. Section 615.5180 requires the FCBs to assist the associations in the management of their investment portfolios.

These three regulations were promulgated before the Agricultural Credit Act of 1987 [4] (1987 Act)

[4] Pub. L. No. 100–233, 101 Stat. 1635 (1988).

restructured the System by merging and consolidating both banks and associations. As a result of the 1986 Act, two new types of associations, the agricultural credit association (ACA) and the Federal land credit association (FLCA) have been created. The FCA proposes to revise its regulations pertaining to the investment activities of System associations to reflect these structural changes.

Current § 615.5180 is the most comprehensive regulation governing the investment activities of the associations. As noted earlier, this regulation requires FCBs to monitor and supervise the investment activities of associations, while associations are permitted to hold investments listed in § 615.5140, subject to FCB approval. This regulation reflects the current relationship between the FCBs and the associations.

The associations receive most of their funding from the FCB in their district. Associations normally use their excess funds to repay direct loan balances with the district bank. Therefore, associations do not maintain large or permanent investment portfolios. Associations do not need to maintain a separate liquidity reserve because they rely upon their district bank for funding.

The FCA proposes to redesignate § 615.5180 as new § 615.5141, and relocate it to subpart E of part 615. Newly redesignated § 615.5141 would be amended to expressly cover PCAs, ACAs, FLCAs, and FLBAs. The FCA also proposes to delete existing §§ 615.5141 and 615.5142 because they are redundant.

X. Divestment of Impermissible Investments

The FCA realizes that some FCBs and BCs may currently hold investments that would no longer be permissible in the event that proposed § 615.5140 is promulgated as a final regulation. Certain investments would become ineligible because they would not comply with the investment criteria (such as credit ratings or maturity deadlines) of proposed § 615.5140(a). Other investments would qualify as eligible investments under proposed § 615.5140, but the bank currently exceeds the percentage limitations that the proposed regulation would impose on a certain category of investments.

Proposed § 615.5142 would require FCBs and BCs either to dispose of all prohibited investments within 6 calendar months from the effective date of the final regulation, or in the alternative, to obtain approval from the director of the Office of Examination for a comprehensive plan to bring the bank's portfolio into compliance with § 615.5140. While the FCA intends that all Farm Credit banks dispose of ineligible investments as quickly as possible, the agency seeks to avoid situations where the banks are exposed to heavy losses. The FCA is aware that many of these investments will either mature or reprice in the near future. As a result, Farm Credit banks should be able to divest of such investments without significant loss. The FCA proposes to delegate to the director of the Office of Examination authority to approve comprehensive compliance plans, submitted by the banks, to divest ineligible investments over a longer period of time. The proposed regulation would require all applications, and all subsequent approvals or denials to be in writing. The director would be required to consider all relevant factors, such as earnings and capital, when deciding whether to approve a compliance plan. An acceptable compliance program would enable a bank to divest of impermissible investments as soon as possible, without substantial loss.

XI. Miscellaneous

The FCA proposes to rename subpart F as "Property and Other Investments" and to redesignate § 615.5150 as § 615.5170, § 615.5151 as § 615.5171, and § 615.5160 as § 615.5172. The FCA proposes to add a new § 615.5173, which would explicitly permit System institutions to purchase and hold Class B common stock in Farmer Mac pursuant to section 8.4 of the Act. These four regulations would become provisions in subpart F.

List of Subjects in 12 CFR Part 615

Accounting, Agriculture, Banks, banking, Government securities, Investments, Rural areas.

For the reasons stated in the preamble, part 615 of chapter VI, title 12 of the Code of Federal Regulations is proposed to be amended to read as follows:

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

1. The authority citation for part 615 continues to read as follows:

Authority: Secs. 1.5, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26; 12 U.S.C. 2013, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b–6; sec. 301(a) of Pub. L. 100–233.

2. The heading of subpart E is revised to read as follows:

Subpart E—Investment Management

§§ 615.5141 and 615.5142 [Removed]

3. Subpart E is amended by removing §§ 615.5141 and 615.5142.

4. A new § 615.5131 is added to read as follows:

§ 615.5131 Definitions.

(a) *Absolute final maturity* means the date on which the remaining principal amount of a mortgage-backed security is due and payable (matures) to the registered owner. It shall not mean the average life, the expected average life, the duration, or the weighted average maturity.

(b) *Adjustable rate mortgage (ARM)* means a mortgage-backed security that features a predetermined adjustment of the interest rate at regular intervals tied to an index.

(c) *Asset/liability management* means the process used to plan, acquire, and direct the flow of funds through a Farm Credit bank in order to generate adequate and stable earnings and to steadily build equity, while taking reasonable and measured business risks.

(d) *Collateralized mortgage obligation (CMO)* means a multi-class pay-through bond representing a general obligation of issuer backed by mortgage collateral. Each CMO consists of a set of, at least, four tranches of bonds with different maturities and cashflow patterns. An accrual bond is last tranche.

(e) *Interest rate risk* means the risk of loss resulting from the impact of interest rate fluctuations upon the net interest income and market value of equity of a bank.

(f) *Federal funds* means funds sold to or bought from a Federally insured depository institution for 1 business day or under a continuing callable contract which increases or decreases that institution's reserve account of immediately available funds with a Federal Reserve Bank.

(g) *Liquid investments* are assets that can be promptly converted into cash without significant loss to the investor. In the money market, a security is liquid if the spread between bid and ask prices is narrow, and a reasonable amount can be sold at those prices.

(h) *Loans* is defined as in § 621.2(a)(13) of this chapter, and is calculated quarterly (as of the last day of March, June, September, and December) by using the average daily balance of loans outstanding for the previous 90 days.

(i) *Marketable investment* is an asset that can be sold with reasonable promptness at a price that reasonably reflects its fair value in an active and

universally recognized secondary market.

(j) *Market value of equity* measures the impact that interest rate changes have upon the market value of the bank's assets, liabilities and off-balance sheet items.

(k) *Mortgage-backed securities (MBSs)* means investment securities collateralized with mortgage loans. MBSs provide for ownership of a fractional undivided interest in a specified pool of mortgages. Each MBS has a stated maturity, expected average life, and coupon rate.

(l) *Negotiable certificates of deposit* means a negotiable large-denomination time deposit with a specific maturity, as evidenced by a certificate. *Yankee certificate of deposit* means a certificate of deposit issued in the United States by the American branch of a foreign bank. *Eurodollar certificate of deposit* means a certificate of deposit denominated in United States dollars and issued by an overseas branch of a United States bank or by a foreign bank outside the United States.

(m) *Net interest income* means the difference between interest income and interest expense.

(n) *Prime commercial paper* means an unsecured promissory note of a corporation with a fixed maturity of no more than 270 days that is rated A–1 or P–1 or an equivalent rating by a nationally recognized credit rating service.

(o) *Real estate mortgage investment conduit (REMIC)* means a nontaxable entity (created under the Tax Reform Act of 1986) formed for the sole purpose of holding a fixed pool of mortgages (both residential and commercial) secured by an interest in real property and issuing multiple classes of interests in the underlying mortgages.

(p) *Repurchase agreement* means a transaction where any Farm Credit Bank, bank for cooperatives, or Agricultural Credit Bank agrees to purchase a security from a counterparty and to subsequently sell the same or identical security back to that counterparty for a specified price at a later date.

(q) *Stripped mortgage-backed securities* means securities created by segregating the cashflows from the underlying mortgages or mortgage securities to create two or more new securities, each with a specified percentage of the underlying security's principal payments, interest payments, or combination of the two. In their purest form, stripped mortgage-backed securities represent mortgage-backed securities that have been converted into interest-only securities, where the investor received 100 percent of the interest flows, and principal-only securities, where the investor receives 100 percent of the principal cashflows.

(r) *Total capital* is defined as in Subpart H—Capital Adequacy, § 615.5201(l) of this chapter.

4a. The FCA proposes to redesignate the following sections in part 615 as set forth in the table below:

REDESIGNATION TABLE

Existing section	New section	Subpart
615.5135(a)	615.5132	E
615.5135(b)	615.5133	E
615.5150	615.5170	F
615.5151	615.5171	F
615.5160	615.5172	F
615.5180	615.5141	E

5. Newly redesignated §§ 615.5132 and 615.5133 are revised to read as follows:

§ 615.5132 Investment purposes.

Farm Credit Banks, banks for cooperatives and Agricultural Credit Banks are authorized to hold eligible investments, listed under § 615.5140, in an amount not to exceed 20 percent of the total outstanding loans of such banks, for the purposes of complying with the liquidity reserve requirement of § 615.5134, managing surplus short-term funds, and for reducing interest rate risk under § 615.5135.

§ 615.5133 Investment management.

The board of directors of each Farm Credit Bank, bank for cooperatives, or Agricultural Credit Bank shall adopt written policies regarding the management of the bank's investments that are consistent with the Farm Credit Act of 1971, Farm Credit Administration regulations, and all other applicable statutes and regulations. The board of directors shall also ensure that the bank's investments are safely and soundly managed in accordance with these written policies, and that appropriate internal controls are in place to preclude investment actions that undermine the solvency and liquidity of the bank. The board of directors shall not delegate its responsibility to supervise and review the investment practices of the bank. The board of directors of each Farm Credit Bank, bank for cooperatives, or Agricultural Credit Bank shall, on an annual basis, review these policies, as well as the objectives and performance of the investment portfolio. At a minimum, the written policy should address:

(a) The purpose and objectives of the bank's investment portfolio;

(b) The liquidity needs of the bank pursuant to the requirements of § 615.5134;

(c) Interest rate risk management pursuant to § 615.5135;

(d) Permissible brokers, dealers, and institutions for investing bank funds and limitations consistent with § 615.5140 of this subpart, and the amount of funds that shall be invested or placed with any broker, dealer or institution;

(e) The size and quality of the investment portfolio;

(f) Risk diversification of the investment portfolio;

(g) Delegation of authority to manage bank investments to specific personnel or committees and a statement about the extent of their authority and responsibilities;

(h) Controls to monitor the performance of the bank's investments and to prevent loss, fraud, embezzlement, and unauthorized investments. Quarterly reports about the performance of all investments in the portfolio shall be made to the board of directors.

6. Sections 615.5134 and 615.5135 are added to read as follows:

§ 615.5134 Liquidity reserve requirement.

(a) Each Farm Credit Bank, bank for cooperatives, and Agricultural Credit Bank shall use the eligible investments under § 615.5140 to maintain liquidity sufficient to fund 50 percent of the bank's bonds, notes, and interest due within the next 90 days divided by 3, plus 50 percent of the bank's discount notes due within the next 30 days.

(b) The liquidity reserve requirement shall be calculated quarterly, as of the last day of the months of March, June, September, and December.

(c) The Farm Credit Administration shall modify or waive the liquidity reserve requirement by a resolution of the Farm Credit Administration Board whenever the Farm Credit Administration, determines in its sole discretion, after consultations with the Federal Farm Credit Banks Funding Corporation that an emergency exits. An emergency shall be deemed to exist whenever a financial, economic, agricultural, or national defense crisis impedes the normal access of the Federal Farm Credit Banks Funding Corporation to the capital markets.

§ 615.5135 Reduction of interest rate risk.

(a) The board of directors of each Farm Credit Bank, bank for cooperatives, and Agricultural Credit Bank shall adopt an interest rate risk management section of an asset/liability

management policy which establishes interest rate risk exposure limits.

(b) Each Farm Credit Bank, bank for cooperatives and Agricultural Credit Bank shall simulate, on quarterly basis, the impact that a parallel instantaneous and sustained 200-basis-point increase and decrease shift in interest rates would have on net interest income and market value of equity during the next 12 months.

(c) Each Farm Credit Bank, bank for cooperatives and Agricultural Credit Bank shall also quarterly simulate the impact that a best case, worst case, and most likely projection of interest rate changes would have on net interest income and market value of equity during the next 12 months.

(d) Farm Credit Banks, banks for cooperatives and Agricultural Credit Banks are authorized to purchase and hold the eligible investments listed in § 615.5140 of this subpart in order to reduce interest rate risk resulting from the bank's normal lending operations. Prior to purchase, each bank shall evaluate in writing how a proposed eligible investment will reduce its interest rate risk. Subsequent to purchase, the bank shall evaluate and document, at least on a quarterly basis, whether the investment has actually met the objective or reducing interest rate risk.

7. Section 615.5140 is amended by revising the section heading and paragraph (a); redesignating paragraph (b) as paragraph (d); and adding new paragraph (b) and (c) to read as follows:

§ 615.5140 Eligible investments and risk diversification.

(a) In order to comply with §§ 615.5132, 615.5134, and 615.5135 of this subpart, each Farm Credit Bank, bank for cooperatives, and Agricultural Credit Bank is authorized to hold the following eligible investments, denominated in United States dollars:

(1) Obligations of the United States and obligations, other than mortgage-backed securities, issued and guaranteed as to both principal and interest by an agency or instrumentality of the United States;

(2) Mortgage-backed securities issued by or guaranteed as to both principal and interest by the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Federal Agricultural Mortgage Corporation not to exceed 30 percent of the bank's investment portfolio, and subject to the following requirements:

(i) The mortgage-backed securities shall either be backed by the full faith and credit of the United States, or be rated not lower than AAA (or equivalent) by a nationally recognized credit rating service;

(ii) The securities shall be backed by either adjustable rate mortgages, that are not convertible into fixed-rate mortgages, with a 12-month repricing mechanism tied to an index, or fixed mortgages with an absolute final maturity of 5 years at time of purchase; and

(iii) Stripped mortgage-backed securities including Interest Only (IO) and Principal Only (PO) classes, and Collateralized Mortgage Obligations (CMO) including Real Estate Mortgage Investment Conduits (REMIC) are not eligible investments for the purpose of this section.

(3) Obligations of the International Bank for Reconstruction and Development (The World Bank);

(4) Bankers Acceptances, not to exceed 30 percent of the bank's total investment portfolio;

(5) Negotiable certificates of deposit in an amount not to exceed 30 percent of the bank's total investment portfolio. Any portion of a domestic or Yankee certificate of deposit that is not insured by either the Federal Deposit Insurance Corporation or the National Credit Union Administration, shall be held in a bank that maintains at least a rating of B, or its equivalent by a nationally recognized credit rating services. Eurodollar certificates of deposit that are not insured by the Federal or national government of the host country shall be held at banks maintaining a rating of B or better, and the country where the account is located shall receive an AAA rating (or equivalent) for political and economic stability from a nationally recognized credit rating service;

(6) Federal funds, as defined in § 615.5131(f), which shall not exceed 30 percent of the bank's total investment portfolio;

(7) Prime commercial paper, as defined by § 615.5131(n) of this subpart, shall not exceed 30 percent of the bank's total investment portfolio. In the event that the prime commercial paper is issued by a corporation located outside the United States, the country where the corporation is incorporated shall maintain a rating for political and economic stability of AAA or its equivalent by a nationally recognized credit rating service.

(8) Corporate debt obligations, not to exceed 15 percent of the bank's investment portfolio, that shall:

(i) Maintain at least a rating of AA, or its equivalent by a nationally recognized credit rating service, and when applicable, the foreign country where the corporate debtor is incorporated shall maintain an AAA rating or its equivalent for political and economic stability.

(ii) Qualify as a marketable investment pursuant to § 615.5131(i);

(iii) Mature within 3 years or less from the time of purchase;

(iv) Not be convertible into equity securities.

(9) Repurchase agreements of eligible investments authorized by this section, which have a term of 1 business day or are by a continuing contract.

(10) Full faith and credit obligations of any State, territory, or possession of the United States, or political subdivision thereof, including any agency, corporation, or instrumentality of any State, territory, possession, or political subdivision thereof, provided that the obligations:

(i) Maintain at least a rating of A, or the equivalent, by a nationally recognized credit rating service;

(ii) Mature within 10 years from the date of purchase; and

(iii) Qualify as marketable investments within the meaning of § 615.5131(i) of this subpart.

(11) Other investments; as authorized by the Farm Credit Administration, that manifest the following characteristics:

(i) A short maturity;

(ii) Qualify as a marketable investment pursuant to § 615.5131(i) of this subpart;

(iii) Maintain a high investment rating by a nationally recognized credit rating service.

(b) Except for eligible investments covered by paragraphs (a) (1) and (2) of this section, each Farm Credit Bank, bank for cooperatives, or Agricultural Credit Bank shall not invest more than:

(1) Twenty (20) percent of its total capital in eligible investments issued by any single institution, issuer, or obligor which is incorporated in, or chartered by, the United States, or any State or territory thereof; or

(2) Ten (10) percent of its total capital for eligible investments issued by any single institution, issuer, or obligor which is incorporated or chartered outside of the United States.

(c) Each Farm Credit Bank, bank for cooperatives, and Agricultural Credit Bank shall perform ongoing evaluations of all eligible investments held in its portfolio. Each bank shall support its evaluation with the most recent credit

rating of each investment by at least one nationally recognized credit rating service.

8. Newly redesignated § 615.5141 is revised to read as follows:

§ 615.5141 Association investment portfolios.

Each Farm Credit Bank shall review annually as of June 30 of December 31 the investment portfolios of every Federal land bank association, production credit association, agricultural credit association, and Federal land credit association in the district. Associations are authorized to hold eligible investments pursuant to § 615.5140 as authorized by the Farm Credit Bank. Each Farm Credit Bank shall assist the associations in managing their investment portfolios to reduce interest rate risk and to invest surplus short-term funds.

9. A new § 615.5142 is added to read as follows:

§ 615.5142 Disposal of ineligible investments.

Any Farm Credit Bank, bank for cooperatives, or Agricultural Credit Bank that holds investments that are not in compliance with § 615.5140 shall dispose of such investments within 6 months of the effective date of the final regulation unless the director of the Office of Examination approves in writing a comprehensive written plan to comply with § 615.5140. The Office of Examination shall consider whether the proposed plan will enable the bank to dispose of impermissible investments within a reasonable period of time, without a substantial loss to the earnings or capital of the bank.

11. The heading for subpart F is revised to read as follows:

Subpart F—Property and Other Investments

12. A new § 615.5173 is added to read as follows:

§ 615.5173 Stock of the Federal Agricultural Mortgage Corporation.

Banks and associations of the Farm Credit System are authorized to purchase and hold Class B common stock of the Federal Agricultural Mortgage Corporation pursuant to section 8.4 of the Farm Credit Act.

Dated: December 11, 1991.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 91-30015 Filed 12-17-91; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulations No. 4]

RIN 0960-AC06

Federal Old-Age, Survivors, and Disability Insurance; Determining Disability and Blindness; Revision of Part A and Part B of the Listing of Impairments; Endocrine, and Multiple Body Systems; Immune System

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rules.

SUMMARY: We are proposing, in the Listing of Impairments in appendix 1 of 20 CFR part 404, subpart P, to establish a new listing section called "Immune System" that will include up-to-date criteria for evaluation of connective tissue diseases, which are now contained in the "Multiple Body Systems" listing, and to establish a listing for the evaluation of human immunodeficiency virus (HIV) infection. We also propose to move the adult listing for obesity from the "Multiple Body Systems" to the "Endocrine System" listing, and to change the name of the "Endocrine System" listing to "Endocrine System and Obesity." The criteria we propose to add describe disorders that are severe enough to prevent a person from performing any gainful activity, or in the case of a child under age 18, disorders which are severe enough to prevent a child from functioning independently, appropriately, and effectively in an age-appropriate manner. The Supplemental Security Income program references the listings.

DATES: To be sure that your comments are considered, we must receive them no later than February 18, 1992.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or delivered to the Office of Regulations, Social Security Administration, 3-B-4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235 between 8 a.m. and 4:30 p.m. on regular business days. Comments may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Martin J. Sussman, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 965-1758.

SUPPLEMENTARY INFORMATION:

Medical criteria for evaluating disability and blindness are found in the Listing of Impairments in appendix 1 of subpart P of Regulations part 404. The Listing of Impairments includes examples of the most commonly occurring medical conditions for persons who file applications for disability benefits. It describes, for each of 13 major body systems, impairments that are considered severe enough to prevent an adult from engaging in substantial gainful activity, or in the case of children under the age of 18, examples of impairments that are severe enough to prevent a child from functioning independently, appropriately, and effectively in an age-appropriate manner. To establish disability under the Social Security Act, the evidence must show that the impairment is expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months. Most of the listed impairments are permanent or are expected to result in death; in some instances, a specific durational requirement is a part of the medical criteria for the impairment (in addition to the 12-month duration requirement that applies to all impairments).

The Listing of Impairments is incorporated into the regulations as appendix 1 to subpart P of part 404 of title 20 of the Code of Federal Regulations. This appendix is divided into two parts, part A and part B. The criteria in part A apply to evaluating impairments of adults but may, in some cases, be appropriate for evaluating impairments in children under age 18. Part B contains medical criteria for the evaluation of impairments in children under age 18 where criteria in Part A do not give appropriate consideration to the particular effects of the disease processes in childhood. Where part A criteria are also repeated in part B, our intent is to eliminate any question about their application to children. In evaluating disability for a child under age 18, part B is used first. If the medical criteria in part B do not apply, then the medical criteria in part A are used. An attempt has been made to maintain in part B, a structural and content relationship with part A counterparts to the extent possible (see §§ 404.1525 and 416.925.)

The Listing of Impairments was revised on December 6, 1985 (50 FR 50068). At that time, as a result of expanded medical advancements in disability evaluation and treatment, and our program experience, we indicated that the listings should be reviewed periodically and updated, and, accordingly, termination dates for the listings ranging from four to eight years were specified. The current "Multiple Body Systems" listings are scheduled to expire on December 6, 1993. We are now proposing to create a new "Immune System" listing in both part A and part B to provide functionally relevant criteria for evaluation of connective tissues diseases, and to add a listing for human immunodeficiency virus (HIV) infection (including acquired immunodeficiency syndrome (AIDS)). We are also proposing to make them effective for five years after the revisions are published as final rules. The listing for obesity will also be revised and moved from the "Multiple Body Systems" listing to the "Endocrine System" listing which will be renamed "Endocrine System and Obesity." We also are proposing to remove the "Multiple Body Systems" listing for adults. We are retaining the "Multiple Body Systems" listing for children, and are proposing to make it effective for five years after the revisions are published as final rules.

The proposed revisions to the connective tissue diseases were developed with the assistance of representatives from professional groups, including the American College of Physicians, the American Rheumatism Association, the Arthritis Foundation, the Lupus Research Institute, the American Society of Internal Medicine, and Federal and State representatives with expertise in the evaluation of connective tissue impairment disability claims. In addition, in developing the proposed Part B criteria for children, the Social Security Administration secured further assistance from medical consultants with expertise in these areas.

The proposed listings for HIV infection were developed with the assistance of various professional organizations, including the Public Health Service's Centers for Disease Control, the Johns Hopkins Hospital, the State of Maryland AIDS Administration, the Department of Veterans Affairs, and Federal representatives with expertise in the evaluation of HIV infection claims.

Human Immunodeficiency Virus (HIV) Infections

The Social Security Administration began receiving disability claims from individuals infected with the AIDS virus shortly after AIDS was first identified in the United States. In 1981, the Centers for Disease Control defined AIDS based on a variety of diseases that encompassed the most severe manifestations observed in infected individuals. Because so little was known in this country about the disease beyond the work of the Centers for Disease Control, the Social Security Administration utilized the Centers for Disease Control's epidemiological definition of AIDS in developing our initial guidelines for determining disability in people with AIDS. These guidelines provided that an individual (1) with a confirmed diagnosis of AIDS, as manifested by one or more of the conditions identified by the Centers for Disease Control, (2) who is not working and (3) meets the other nonmedical requirements for entitlement, would be found to have an impairment of listing-level severity and, therefore, be disabled for Social Security purposes.

However, the Centers for Disease Control and the Social Security Administration view AIDS (and other manifestations of HIV infection) from different perspectives. The CDC defines AIDS for health purposes to enhance their capability for activities such as: Disease reporting and surveillance; epidemiologic studies; prevention and control activities; and public health policy and planning. This definition is intended to include severe illness and those infections with a poorer prognosis but not to be used to determine whether any statutory or legal requirements for disability are met. The Social Security Administration must determine whether the impairment is severe enough to prevent an individual from engaging in any substantial gainful activity for a prescribed period of time. Therefore, the CDC definition of AIDS should not be linked to SSA's determination of disability.

In the initial years of AIDS research (when even the etiology of the disease was not known) we had no alternative but to rely on the Centers for Disease Control's definition of AIDS, one of this country's major sources of information on the infection. With the knowledge we derived from adjudicating disability cases in which AIDS was alleged and the growing body of medical and scientific information, we were able to update and expand our instructions. Since then, we have continued to update and refine our instructions to reflect the escalating array of information available on the manifestations of HIV infection. Recognizing that our basic role differs from that of CDC, we have not been restricted by or tied to their definition of AIDS for evaluating disability claims.

For instance, as early as 1983, clinicians identified a syndrome that for a time was known as AIDS-Related Complex (ARC). The Social security Administration then issued guidelines clarifying that the evaluation of disability was not limited to the Centers for Disease Control's definition of AIDS; that AIDS/ARC claimants, like all disability claimants, must be evaluated on a case-by-case basis and that an individual need not have full-blown AIDS to be found disabled.

Adjudicators were instructed that individuals who have evidence of immune system dysfunction, but do not have a confirmed diagnosis of AIDS, should not automatically be assumed to have an impairment which is not of listing-level severity. Rather, as with any medically determinable impairment, the assessment of severity must take into account all signs, symptoms, and laboratory findings, not only those listed in our criteria. If the listings were still not equalled in severity, adjudicators were instructed to follow the full sequential evaluation process. The adjudicator would proceed to assess the claimant's residual functional capacity and, based on that assessment, determine if the individual retained the capacity to perform past relevant work or, if not, the capacity to do any other work considering age, education, and work experience.

As more information about HIV infection became available and as we increased our adjudicative experience, it became apparent that HIV infection was being manifested by severe impairments that were not encompassed in the Centers for Disease Control's criteria. By 1987, the Social Security Administration issued instructions that provided specific criteria beyond those covered in the Centers for Disease Control's definition for our use in evaluating whether a claimant's impairment(s) is at listing-level severity.

Additionally, we have recently revised and reissued our HIV criteria to reformat the opportunistic infections by type (e.g., viral, fungal, bacterial, protozoan, etc.), thereby making the criteria easier to apply, to include additional criteria to take into account the clinical manifestations and course of the disease in women and children, and to reflect recent data on the correlation of absolute CD4 lymphocyte counts and the percentage of total lymphocytes. We have also realigned and added certain manifestations of HIV infection which

when paired with functional restrictions result in listing-level severity.

The proposed part A listing, like our existing instructions, recognizes that HIV infection can manifest itself differently in women than in men. Therefore, the proposed listing states that it is important when reviewing the claim of a woman with HIV infection that gynecological problems be considered in assessing the degree of functional impairment. The proposed part B listing, like our existing instructions, recognizes that the disease process may also manifest itself differently in younger children (i.e., under age 13) as compared to older children (i.e., age 13 and over).

Thus, the HIV infection listings included in this proposed rule set out our procedures for determining whether an HIV-positive claimant's impairments are of listing-level severity. To enable us to issue timely revisions as the knowledge of the HIV disease process has evolved, the Social Security Administration has published HIV criteria in the past in procedural instructions. In 1987, we published in the **Federal Register** our intent to publish a proposed listing for AIDS/HIV infection. This proposed listing provides the public with the opportunity to comment formally on our HIV criteria.

Regulatory changes cannot be made outside the Administrative Procedure Act process even if they broaden coverage. Timely updates to these regulations will be particularly critical given the rapidly evolving nature of the HIV disease complex. Therefore, we request specific suggestions from the public on alternatives consistent with the Administration Procedure Act to enable us to issue timely updates to the listing for HIV infection.

In the past, there has been some misunderstanding of our disability guidelines for evaluating HIV claims. We would like to clarify for the public that all our disability rules apply to HIV infection cases in the same way as they do with other cases. Just like any other impairment, all of the symptoms (including pain), signs, and laboratory findings, as well as the effects of medication on the ability to function, are evaluated on a case-by-case basis to determine if an HIV-positive adult is able to engage in substantial gainful activity (or in the case of a child, able to engage in age-appropriate activities). In addition, it is important to understand that the full sequential evaluation process is applied when adjudicating claims from these individuals.

Under the sequential evaluation process, if the medical evidence shows that a person meets the listing criteria (or, as determined by a program physician, has other infections or diseases which are equivalent in severity to the listings), is not working and meets the other nonmedical requirements for entitlement, he or she will be determined to be disabled. If the person has manifestations of HIV infection that are not specifically included in or equivalent in severity to the listings criteria, then we again evaluate all of his or her signs, symptoms, and laboratory findings to determine the person's capacity to engage in substantial gainful activity (or, in the case of a child, to perform age-appropriate activities). For adults, we assess their residual functional capacity and, based on that assessment, determine whether the claimant retains the capacity to perform past relevant work, or, if not, whether the claimant retains the capacity to perform any other work considering his or her age, education, and work experience. If not, the adult is disabled for Social Security purposes. For children, we individually assess their ability to function to determine whether there is a substantial reduction in their ability to function independently, appropriately, and effectively in an age-appropriate manner. If so, the child is disabled for Social Security purposes.

These regulations do not address our presumptive disability criteria for HIV infected claimants. The Act authorizes the Secretary to make presumptive disability (and presumptive blindness) decisions which permit up to 6 months of payments for individuals applying for Supplemental Security Income disability benefits before a formal determination is made on whether the individual is disabled. In accordance with 20 CFR 416.933, we make presumptive disability decisions when the available evidence reflects a high degree of probability that the individual will be found disabled and he or she meets the nonmedical eligibility requirements. As a result, presumptive disability provides a mechanism to provide expedited payments to some needy individuals who file for Supplemental Security Income benefits.

In the case of readily observable impairments (e.g., amputation of extremities), we make presumptive disability decisions without medical evidence. Social Security's field office employees, who are not trained disability adjudicators, are authorized to make presumptive disability determinations for these impairments which are listed in 20 CFR 416.934.

For any impairment not included in the list at § 416.934 a presumptive disability decision must be based on medical evidence or other information which, though not sufficient for a formal determination of disability, is sufficient to determine that there is a high degree of probability that the individual is disabled. Presumptive disability decisions in these cases are made by trained disability adjudicators who are employed by the State Disability Determination Services (these agencies make the formal disability determinations). These presumptive disability decisions can be made at any point in processing a Supplemental Security Income claim when the available evidence shows a high probability of allowance.

The above procedures have enabled the Social Security Administration to provide presumptive disability payments to a substantial portion of both AIDS and HIV symptomatic claimants. Despite the progress made thus far, we recognize that further improvements are still possible. As a result, we are today publishing elsewhere in the **Federal Register** a regulatory package, and formulating administrative procedures, to ensure that eligibility for presumptive disability payments is routinely considered for every HIV-infected claimant.

Other Immune System Listings

The basic concept of the proposed revisions to other immune system listings in sections 14.00 and 114.00 is to deemphasize disease labeling or diagnosis, and place more emphasis on the functional aspects of impairments on a person's ability to work or, in the case of children under age 18, on their ability to grow, develop, and mature within acceptable age-appropriate norms.

The proposed listing criteria in section 14.00 include some listing criteria currently included under the "Multiple Body Systems" (10.00). Hansen's disease (leprosy) has been deleted because of its rarity in the Western Hemisphere. Listing 110.09, Immune deficiency disease, currently under the "Multiple Body Systems" will also be incorporated under 114.00, "Immune System."

Endocrine System and Obesity

We are also proposing to revise the adult listing for obesity and move it from the Multiple Body Systems section (10.00) to the Endocrine System section (9.00). The latter is being renamed "Endocrine System and Obesity." Therefore, all listings currently under 10.00, "Multiple Body Systems," will be placed either under 14.00, "Immune System," or 9.00, "Endocrine System and Obesity."

We are asking individuals who are experts to review the Endocrine System criteria. The criteria for evaluating obesity will be reviewed by these experts and any further revisions to the obesity listing will be made after receiving the individuals' recommendations.

Following is a summary of the proposed changes in each of the body system listings being revised, including changes in the prefaces that introduce each section and that explain how the listing criteria are used in connection with the specific body system.

Revisions to Part A of Appendix 1

9.00 Endocrine System and Obesity

We proposed to move the listing for obesity, which is currently Listing 10.10 in the Multiple Body Systems section, to the Endocrine System, which we propose to rename "Endocrine System and Obesity." The listing for obesity would be established as Listing 9.09.

Proposed section 9.00 is an introduction to the listings for endocrine and obesity disorders. This section has been revised to include a discussion of how we approach the evaluation of extreme obesity. The proposed revisions to the introduction and the listing for obesity are based on our experience in evaluating cases of extreme obesity.

9.01 Category of Impairments, Endocrine System and Obesity

We propose to change the heading of 9.01 from "Category of Impairments, Endocrine System" to "Category of Impairments, Endocrine System and Obesity" to reflect the addition of the obesity section to this listing.

9.09 Obesity

We are proposing that the current listing for obesity (10.10) be renumbered 9.09. We are also clarifying the rules based on questions we have received over the years. Hence, we are also proposing that section 9.09A (now 10.10A) will be revised to clarify that the pain, limitation of motion, and evidence or arthritis must be in the same joint or in the spine.

14.00 Immune System

We propose to delete the text and reserve the entry for section 10.00 of part A of the listings, and to establish a new section 14.00, "Immune System." Section 10.00 currently includes impairments that involve multiple body systems: certain connective tissue disorders, Hansen's disease (leprosy), and obesity. We propose to update, expand, and move the criteria for connective tissue disorders to the new section 14.00, "Immune System." We propose to delete Hansen's disease because it is almost nonexistent in the Western Hemisphere. We are also proposing to amend and move obesity to the Endocrine System as Listing 9.09, and to rename that section "Endocrine System and Obesity." Therefore, we propose to reserve section 10.00 without text. (We are retaining section 110.00 of part B, because it contains listings for Down syndrome and other congenital, hereditary, and acquired multiple body system disorders.)

In section 14.00, we propose to expand the criteria for connective tissue disorders to include criteria for polymyositis/dermatomyositis and undifferentiated connective tissue disorder. We also propose to provide criteria for other immune system disorders to include immunoglobulin deficiency syndrome or deficiencies of cell-mediated immunity, and HIV infection.

Sections 14.00A–C describe impairments of the immune system. Section 14.00D introduces the subject of HIV infection and lists some of the information that is important in documenting and evaluating the disease. In this section we explain what is acceptable evidence of HIV infection and when it is needed.

We recognize that the disease can manifest itself differently, and for that reason, we have included a discussion in 14.00D on evaluation of HIV infection in women. We also discuss the need to evaluate the impact of all impairments, as well as the impact of therapy, in the HIV-infected individual.

We also explain that some HIV-infected individuals may have impairments that are less than listing-level severity, but that may still be disabling. Evaluation of these individuals should proceed through the final steps of the sequential evaluation process.

We propose to include all of this information in the introduction to the listing (rather than limiting the discussion to the preamble) to provide specific guidance to adjudicators on these issues pertinent to evaluating individuals with HIV infection.

14.01 Category of Impairments, Immune System

14.02 Systemic Lupus Erythematosus

We propose to move the current Listing 10.04 to section 14.00, renumber it as 14.02, and change the title from "Disseminated lupus erythematosus" to Systemic lupus erythematosus" to conform to the current nomenclature for this disease. We propose to expand and revise the criteria to focus on and delineate severe functional loss. We also propose to remove the requirement that this disorder be established by a positive Lupus Erythematosus (LE) preparation or biopsy or positive Anti-Nuclear Antibody (ANA) test in favor of the currently accepted 1982 criteria of the American Rheumatism Association for classification of this disease cited in proposed 14.00C1. The proposed Listing 14.02A describes disability resulting from failure in a single organ or body system, whereas the proposed Listing 14.02B describes disability resulting from functional loss of lesser severity than in 14.02A in two or more organs or body systems associated with severe constitutional symptoms and signs.

14.03 Systemic Vasculitis

We propose to move the current listing 10.03 to section 14.00, renumber it as 14.03, and change the title from "Polyarteritis or periarteritis nodosa" to "Systemic vasculitis" to correspond with currently accepted medical nomenclature. We also propose to expand this listing to emphasize the spectrum of vasculitic/arteritic syndromes that can lead to work-related functional limitations. These syndromes include classical polyarteritis nodosa, aortic arch arteritis, giant cell arteritis, Wegener's granulomatosis, and vasculitis associated with other connective tissue disorders.

14.04 Systemic Sclerosis and Scleroderma

We propose to move the current Listing 10.05 to section 14.00, renumber it as 14.04, and change the title from "Scleroderma or progressive systemic sclerosis" to "Systemic sclerosis and scleroderma." We propose to delete the term "progressive" from the title because it is redundant. The criteria in proposed Listing 14.04 describe systemic disease of severity that precludes performance of work-related activity for the requisite duration. The proposed criteria provide greater specificity in describing listing-level severity in the extremities and target organs (i.e., lungs, heart, and kidneys).

14.05 Polymyositis or Dermatomyositis

The current listings do not include polymyositis or dermatomyositis. We propose to add this listing to recognize the potential for a disabling work-related functional deficit in some patients with chronic refractory myopathy.

14.06 Undifferentiated Connective Tissue Disease

We propose to add an undifferentiated connective tissue disease listing because some individuals can be disabled by connective tissue disease that cannot be classified with an exact diagnosis. Since work-related functional limitation does not depend upon the medical diagnostic label but rather the limiting effects of the impairment on an individual, this category was included.

14.07 Immunoglobulin Deficiency Syndrome

We propose to add this listing to provide criteria to evaluate immunoglobulin deficiency syndromes and deficiencies of cell-mediated immunity.

14.08 Humun Immunodeficiency Virus (HIV) Infection

We proposed to add a regulatory listing for HIV infection. The purpose of this proposal is to place in regulations our criteria for HIV infection. This will ensure that the public is aware of our criteria and has the opportunity for formal input regarding how these claims are adjudicated at the listings stage of our sequential evaluation process.

Under these proposed listings, we have included a range of opportunistic diseases, cancers, and conditions that are indicative of listing-level severity in an HIV-infected individual. Those diseases which are considered indicative of severe HIV infection without documentation of the HIV are listed first (14.08A). In 14.08B-L, listed diseases are grouped by type (e.g., fungal, bacterial, viral, protozoan) for ease of reference. Diseases/conditions which must be evaluated in conjunction with an assessment of the HIV-infected individual's functional limitations are listed in 14.08M. We have included explanatory material on the functional criteria used in 14.08 in the preface to the HIV infection listing.

Revisions to Part B of Appendix 1

114.00 Immune System

We propose to expand Part B to include immune system disorders with specific criteria added for evaluation of connective tissue disorders patterned after criteria in Part A 14.00B and Listings 14.02–14.06. Modifications and additions appropriate for characterizing severity of functional loss in children have been included as necessary. We propose to move current listing 110.09 to section 114.00, renumber it as 114.07, and change the title from "Immune deficiency disease" to "Congenital immune deficiency disease."

The criteria for congenital immune system disorders have been described in section 114.00B with greater specificity regarding target organ effects and requisite frequency of severe infections.

Proposed section 114.00C introduces the childhood HIV listings and lists some of the information that is important in documenting and evaluating the disease. In this section we explain what is acceptable evidence of HIV infection and when it is needed, including a specific discussion of acceptable evidence of infection in children under 15 months of age.

We recognize that the disease can manifest itself differently in younger children, and for that reason, we have included in 114.00C a discussion of HIV infection in children. We also discuss the need to evaluate the impact of all impairments, as well as the impact of therapy, in the HIV-infected child.

We also explain that some HIV-infected children may have impairments that are less than listings-level severity, but that may still be disabling. Evaluation of these individuals should proceed through the steps of the sequential evaluation process including an individualized functional assessment.

We have included all of this information in the introduction to the listing (rather than limiting the discussion to the preamble) to provide specific guidance to adjudicators on these issues pertinent to evaluating children with HIV infection.

114.08 Human Immunodeficiency Virus (HIV) Infection

We are proposing to add a new childhood listing for HIV infection. A separate listing is necessary for children because children with HIV infection differ from adults in the mode of infection, clinical manifestation, and course of the disease. Younger children may acquire infection from the mother or from transfusion of contaminated blood or blood products (such as coagulation factors). Rarely, children may become infected as a result of sexual abuse. In addition, survival times are shorter for children infected during gestation, delivery, or during the postpartum period compared to older children and adults. Older children (adolescents) may become infected from contaminated blood or blood products or due to behaviors such as intravenous drug use and unprotected sexual relations. The course and spectrum of disease in children aged 13 and older generally are similar to that of adults.

The childhood listing reflects that, although in children as well as adults, CD4 (T4 lymphocyte) counts decrease as disease progresses, infants and young children have much higher CD4 counts than adults. Even with serious opportunistic infection, young children can have CD4 counts which would fall within the normal range for adults.

As in the adult listing, those diseases that are indicative of severe HIV infection without documentation of the HIV virus are listed first (114.08A). In 114.08B–K, listed diseases are by type (e.g., fungal, bacterial, viral, protozoan, etc.) for ease of reference. The listing also includes diseases/conditions and the functional limitations of these diseases/conditions in HIV-infected children age 13 or younger. The functional criteria are specified by age group (birth to attainment of age 1, age 1 to attainment of age 3, and age 3 to attainment of age 13) and are based on the criteria found in the childhood mental listing (112.00). We have also included criteria (114.08M) for evaluation of diseases/conditions in children age 13 through attainment of age 18 which are similar to those in the adult listing. The functional criteria for these diseases/conditions are also based on the childhood mental listing.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because these regulations do not meet any of the threshold criteria for a major rule. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

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

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only States and individuals who are applying for title II or title XVI benefits based on disability. Therefore, a regulatory flexibility analysis is not required.

(Catalog of Federal Domestic Assistance Program No. 93.802, Disability (Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Insurance, Old-Age, Survivors, and Disability insurance, Reporting and recordkeeping requirements, Social security.

Dated: October 1, 1991.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: October 22, 1991.

Louis W. Sullivan,

Secretary of Health and Human Services.

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

For the reasons set out in the preamble, part 404, subpart P, of chapter III of title 20 of the Code of Federal Regulations is amended to read as set forth below.

1. The authority citation for subpart P of part 404 is revised to read as follows:

Authority: Secs. 202, 205(a), (b), and (d) through (h), 216(i), 221 (a) and (i), 222(c), 223, 225, and 1102 of the Social Security Act; 42 U.S.C. 401, 405 (a), (b), and (d) through (h), 416(i), 421 (a) and (i), 422(c), 423, 425, and 1302.

Appendix 1 to Subpart P [Amended]

2. Appendix 1 (Listing of Impairments) to subpart P is amended by adding a new sentence at the end of the fifth paragraph of introductory text to read as follows: The Immune System listings in part A (14.00) and part B (114.00) and the Multiple Body Systems listings in part B (110.00) will no longer be effective on [*insert date 5 years after the publication date of the final rules in the Federal Register*], unless extended by the Secretary or revised and promulgated again.

3. The table of contents for part A of appendix 1 (Listing of Impairments) to subpart P is amended by revising the entry for listing 9.00, reserving the entry for listing 10.00, and adding an entry for listing 14.00 to read as follows:

* * * * *

9.00 Endocrine System and Obesity
10.00 [RESERVED]
11.00 * * *
12.00 * * *
13.00 * * *
14.00 Immune System

4. Part A of appendix 1 (Listing of Impairments) to subpart P is amended by revising the heading for 9.00, Endocrine System, and adding a second paragraph of introductory text, and revising the heading of 9.01, Category of Impairments, Endocrine, to read as follows:

9.00 Endocrine System and Obesity

* * * * *

Long-term massive obesity will usually be associated with disorders of the musculoskeletal, cardiovascular, peripheral vascular, and pulmonary systems, and the occurrence of these disorders is the major cause of disability at the listing level. Extreme obesity results in restrictions imposed by body weight and the additional restrictions imposed by disturbances in other body systems.

9.01 Category of Impairments, Endocrine System and Obesity

* * * * *

5. Part A of appendix 1 (Listing of Impairments) to subpart P is amended by redesignating listing 10.10, Obesity, as listing 9.09, Obesity, and revising the introductory paragraph and paragraph A to read as follows:

9.09 *Obesity.* Weight equal to or greater than the values specified in Table I for males, Table II for females (100 percent above desired level), and one of the following:

A. History of pain and limitation of motion in any weight-bearing joint or spine (on physical examination) associated with findings of medically acceptable imaging techniques of arthritis in the affected joint or spine; or

* * * * *

6. Part A of appendix 1 (Listing of Impairments) to subpart P is amended by removing listing 10.00, Multiple Body Systems, and reserving the entry for listing 10.00.

7. Part A of appendix 1 (Listing of Impairments) to subpart P is amended by adding listing 14.00, Immune System, to read as follows:

14.00 Immune System

A. Listed disorders include impairments involving deficiency of one or more components of the immune system (i.e., antibody-producing B cells; a number of different types of cells associated with cell-mediated immunity including T-lymphocytes, macrophages and monocytes; and components of the complement system).

B. Dysregulation of the immune system may result in the development of a connective tissue disease. Connective tissue diseases include several chronic multisystem disorders which differ in their clinical manifestation, course, and outcome. They generally evolve and persist for months or years, may result in loss of functional abilities, and require long-term, repeated evaluation and management.

Each of these disorders should be differentiated diagnostically by medical history, physical examination, and selected laboratory studies, imaging techniques, and in some instances, tissue biopsy. However, the Social Security Administration will not purchase diagnostic tests or procedures that may involve significant risk, such as biopsies or angiograms. Generally, the medical evidence of record will contain this information.

A clinical record of at least 3 months is necessary for assessment of severity and duration of impairment.

To permit appropriate application of a listing, the specific diagnostic features which should be documented in the clinical record for each of the disorders are summarized for systemic lupus erythematosus (SAL), systemic vasculitis, systemic sclerosis and scleroderma, polymyositis or dermatomyositis, and undifferentiated connective tissue disease.

In addition to the limitations caused by the connective tissue disease per se, the chronic adverse effects of therapy (e.g., corticosteroid-related ischemic necrosis of bone) may result in functional loss.

These disorders may preclude performance of gainful work activities by reason of severe loss of function in a single organ or body system, or lesser degrees of functional loss in two or more organs/body systems associated with severe constitutional symptoms and signs (e.g., severe fatigue, fever, malaise, weight loss).

1. *Systemic lupus erythematosus* (Listing 14.02)—This disease is characterized clinically by constitutional symptoms (e.g., fever, fatigability, anorexia and weight loss), multisystem involvement and, frequently, anemia, leukopenia, or thrombocytopenia. Immunologically, an array of circulating serum auto-antibodies can occur, but are highly variable in pattern. Generally the medical evidence will show that patients with this disease will fulfill The 1982 Revised Criteria for the Classification of Systemic Lupus Erythematosus of the American Rheumatism Association. (Tan, E.M., et al., Arthritis Rheum. 25: 11271–1277, 1982.)

2. *Systemic vasculitis* (Listing 14.03)—This disease occurs acutely in association with adverse drug reactions, certain chronic infections and, occasionally, malignancies. More often it is idiopathic and chronic. There are several clinical patterns, including classical polyarteritis nodosa, aortic arch arthritis, giant cell arthritis, Wegener's granulomatosis, and vasculitis associated with other connective tissue disorders (e.g., rheumatoid arthritis, SLE, Sjogren's syndrome, cryoglobulinemia). Cutaneous vasculitis may or may not be associated with systemic involvement and the patterns of vascular and ischemic involvement are highly variable. The diagnosis is confirmed by angiography or tissue biopsy when the disease is suspected clinically. Most patients who are stated to have this disease will have the results of the confirmatory angiogram or biopsy in their medical records.

3. *Systemic sclerosis and scleroderma* (Listing 14.04)—These disorders constitute a spectrum of disease in which thickening of the skin is the clinical hallmark. Raynaud's phenomena, often severe and progressive, are especially frequent and may be the peripheral manifestation of a generalized vasospastic abnormality in the heart, lungs, and kidneys. The *CREST* syndrome (calcinosis, Raynaud's phenomena, esophageal dysmotility, sclerodactyly, telangiectasia) is a variant which may slowly progress to the generalized process, systemic sclerosis, over years. In addition to skin and blood vessels, the major organ/body system involvement includes the gastrointestinal tract, lungs, heart, kidneys, and muscle. Although arthritis can occur, joint dysfunction results primarily from soft tissue/cutaneous thickening, fibrosis, and contractures.

4. *Polymyositis or dermatomyositis* (Listing 14.05)—This disorder is primarily an inflammatory process in striated muscle which can occur alone or in association with

other connective tissue disorders or malignancy. Weakness and, less frequently, pain and tenderness of the proximal limb-girdle musculature are the cardinal manifestations. Involvement of the cervical muscles, the cricopharyngeals, the intercostals, and diaphragm occurs in those with severe disease. The diagnosis is supported by elevated serum muscle enzymes (creatine phosphokinase (CPK), serum glutamic oxaloacetic transaminase (SGOT), serum glutamic pyruvic transaminase (SGPT), aldolase), characteristic abnormalities on electromyography, and myositis on muscle biopsy.

5. *Undifferentiated connective tissue disorder* (Listing 14.06)—This listing includes syndromes with clinical and immunologic features of several connective tissue disorders, but which do not satisfy the criteria for any of the disorders described; for instance, the individual may have clinical features of systemic lupus and systemic vasculitis and the serologic findings of rheumatoid arthritis. The correct designation of this disorder is important for assessment of prognosis.

C. Allergic disorders (e.g., asthma or atopic dermatitis) are discussed under the appropriate listing of the affected body system.

D. Human immunodeficiency virus (HIV) infection including acquired immunodeficiency syndrome (AIDS) is caused by a specific retrovirus and is characterized by susceptibility to one or more opportunistic diseases, cancers, or other conditions as described in Listing 14.08. Therefore, any HIV-infected individual, including those with a diagnosis of AIDS, can establish an impairment of listing-level severity by meeting any of the criteria in listing 14.08A–M.

In addition, the criteria listed in 14.08 do not describe the full spectrum of diseases or conditions manifested by HIV-infected individuals. When other diseases or conditions are documented, determine whether the other diseases or conditions carry a level of severity equivalent to the HIV listing criteria (or, as appropriate, any other listing criteria).

The medical evidence should include documentation of HIV infection and specific laboratory evidence of an opportunistic disease, cancer, or other condition. The extent of immune depression correlates with the absolute number of percentage of CD4 (T4) lymphocytes. In general, when the CD4 count is 200 per mm^3 or less (14 percent or less), the susceptibility to opportunistic disease is considerably increased.

Laboratory evidence of HIV infection includes:

1. A serum specimen that contains HIV antibodies, detected by a screening test (e.g., ELISA) and confirmed by a more definitive test (e.g., Western blot, immunofluorescence assay), or

2. A serum specimen that contains HIV antigen, or

3. A lymphocyte culture, positive for HIV, confirmed by a specific test for the antigen (not just detection of reverse transcriptase), or

4. Other test(s) believed to be highly specific for detection of HIV (e.g., polymerase chain reaction (PCR)).

If HIV infection is not documented by the above laboratory evidence, a diagnosis of HIV infection can still be accepted if the individual has a disease predictive of a defect in cell-mediated immunity, and there is no known cause of diminished resistance to that disease. In such cases, full details of the history, clinical course, and results of serological testing, microbiologic cultures, or tissue biopsy must be documented. The documentation of HIV infection will rely on clinical history, physical examination, exclusion of other causes for clinical abnormalities and treating source opinion.

If HIV infection is not documented by the above evidence, an opportunistic disease as listed in 14.08A must be present for listing-level severity to be met.

Pneumocystis carinii pneumonia (14.08 B2) is the most common opportunistic disease associated with HIV infection. Pneumocystis carinii pneumonia is definitively diagnosed by histology or cytology. However, a diagnosis of pneumocystis carinii pneumonia may be based on clinical impressions and response to treatment. Medical judgment must be exercised when pneumocystis carinii pneumonia or other opportunistic diseases are diagnosed without microscopic evidence, to establish an equals the listing decision.

HIV encephalopathy (see 14.08G) is characterized by cognitive and/or motor dysfunction that limit function and progress over weeks and months in the absence of a concurrent illness that could explain the findings.

HIV wasting syndrome (see 14.08H) is characterized by involuntary weight loss (more than 10 percent of baseline body weight) and either chronic diarrhea (2 or more loose stools per day for 2 months or more) or chronic weakness and documented fever (greater than 100.4 °F for the majority of 2 months or longer) in the absence of a concurrent illness that could explain the findings.

Most women with end-stage HIV infection exhibit the typical opportunistic infections and other conditions, such as pneumocystis carinii pneumonia, candida esophagitis, wasting syndrome, cryptococcosis, and toxoplasmosis. However, HIV infection may manifest itself differently in women than in men. Adjudicators must carefully scrutinize the medical evidence and be alert to the variety of medical conditions specific to women which may or may not affect their ability to function in the work place. Examples include, but are not limited to:

1. Vulvovaginal candidiasis ("yeast infection," monilia). Although this condition usually heals quickly with appropriate treatment, in women with weak immune systems the disorder may become chronic or recurrent, painful and respond poorly to therapy. See 14.08M3f.

2. Genital herpes. Although the lesions usually occur in limited areas (such as the cervix), as HIV infection progresses the herpes may involve more widespread anatomical areas and may be chronic or recurrent, painful and resistant to therapy. See 14.08E2.

3. Pelvic inflammatory disease. This is a condition characterized by infection of the pelvic structures usually caused by infection with a sexually transmitted pathogen such as gonococcus (gonorrhea), chlamydia, or mycoplasma. Disease may be facilitated by an intrauterine device (IUD). In women infected with HIV, there may be resistance to therapy and recurrent episodes of inflammation and pain.

These gynecologic manifestations are also present in the general population but may be more severe in the immunosuppressed individual. It is important when evaluating the claim of a woman with HIV infection, that gynecologic problems be considered in assessing the severity of their impairment and their functional limitations.

Gynecologic conditions may or may not severely affect one's ability to function. These conditions should be considered, together with all other conditions, to determine if the impairment equals the severity of the listings.

In evaluating HIV infection, the impact of all impairment(s) must be considered. Many individuals with HIV infection manifest mental signs and symptoms such as anxiety, depression, apathy, and cognitive impairment. Medical evidence should include documentation of mental impairment when pertinent and the impairment(s) should be evaluated under the appropriate listing(s).

The impact of therapy must also be considered. The therapeutic regimens and consequent adverse response to therapy may vary; therefore, each case must be evaluated on an individual basis. It is essential to obtain a specific description of drugs given, dosage, frequency of administration, and a description of the complications or any other adverse response to therapy. In many instances the effect is temporary and/or dose-related; however, on occasion, the adverse effect may be permanent or long-term.

For individuals with HIV infection evaluated under Listing 14.08M, listing-level severity will be assessed in terms of the functional limitations imposed by the impairment. The full impact of signs, symptoms, and laboratory findings on the claimant's ability to function in a work setting must be considered. Important factors to be considered in evaluating the functioning of individuals with HIV infection include, but are not limited to: Symptoms, such as fatigue and pain; characteristics of the illness, such as the frequency and duration of manifestations or periods of exacerbation and remission in the disease course; and the functional impact of treatment for the disease, including the side effects of medication.

To meet the standards in Listing 14.08M, the HIV-infected individual must demonstrate the level of restrictions in at least two of the four general areas of functioning set out in paragraph 14.08M4.

Where "marked" is used as a standard for measuring the degree of functional limitations, it means more than moderate, but less than extreme. A marked limitation may arise when several activities or functions are impaired or even when only one is impaired.

so long as the degree of limitation is such as to seriously interfere with the ability to function independently, appropriately, and effectively.

The four general areas of functioning in which the functioning of HIV-infected individuals is to be assessed are: activities of daily living; social functioning; difficulties in completing tasks due to deficiencies in concentration, persistence, or pace; and repeated episodes of deterioration or decompensation in work or work-like settings. These areas of functioning provide a framework for the evaluation of the specific functional limitations of the individual. Functional limitations should always be assessed on a case-by-case basis.

For the first general area of functioning, activities of daily living, marked means that most of the time the individual is unable to perform daily activities independently; Activities of daily living include, but are not limited to, such activities as doing household chores, grooming and hygiene, using a post office, taking public transportation, and paying bills. For example, an HIV-infected person, because of symptoms, such as pain, or the fatigue imposed by the illness or its treatment, or the side effects of medication, may be able to perform some self-care activities but not be able to maintain a household, or take public transportation on a sustained, regular basis or without assistance.

For the second general area of functioning, social functioning (i.e., the individual's capacity to interact appropriately and communicate effectively with others), marked means that most of the time the individual is unable to sustain interaction and communication. For example, an HIV-infected person may be restricted from engaging in social interaction on a sustained basis. These restrictions could also result from HIV- or treatment-induced fatigue or other symptoms or could result from a pattern of exacerbation and remission caused by the illness itself or its treatment.

For the third general area of functioning, marked means that most of the time the individual is unable to sustain concentration, persistence, or pace to permit timely completion of tasks commonly found in work settings. The HIV-infected person may be restricted in this area by the impact of the disease process itself on his or her mental or physical functioning, or both. This could result from extended or intermittent symptoms, such as depression, fatigue, or pain, resulting in a limitation on the ability to concentrate, to persevere at the task, or to perform the task at an acceptable rate of speed. Limitations may also result from the side effects of medication which limit the ability of the person to complete tasks or to sustain activity.

For the fourth general area of functioning, repeated episodes of deterioration or decompensation in work or work-like settings refers to frequent inability to adapt to the work setting or recurrent significant limitations in this ability. This may be caused by manifestations of HIV infection itself, such as its symptoms, or by the frequency and intrusiveness of treatment for the disease. For example, repeated episodes of deterioration could include frequent hospitalizations because of exacerbations of HIV manifestations or medical need to be absent from work imposed on the person because of immunosuppression.

Some individuals infected with HIV are asymptomatic and have no identifiable severe impairment. Other individuals with documented HIV infection may manifest signs and symptoms, such as generalized lymphadenopathy, moderate weight loss, fever, diarrhea, malaise and lethargy, lymphopenia, anemia, thrombocytopenia, or mucosal candidiasis that are less than listing-level severity. Individuals who have an impairment with a level of severity which does not meet or equal the criteria of the listings may or may not have the residual functional capacity to engage in substantial gainful work activity. Evaluation of the impairment of these individuals should proceed through the final steps of the sequential evaluation process (or, as appropriate, the steps in the medical improvement review standard).

14.01 Category of Impairments, Immune System

14.02 *Systemic lupus erythematosus.* Documented as described in 14.00B1 by a longitudinal clinical record of at least 3 months demonstrating active disease despite prescribed therapy during this period with the expectation that the disease will remain active for 12 months, with:

A. One of the following:

1. Joint involvement as described under the criteria in 1.02; or

2. Muscle involvement as described under the criteria in 14.05; or

3. Ocular involvement as described under the criteria in 2.02, 2.03, 2.04, 2.05, or 2.06; or

4. Respiratory involvement as described under the criteria in 3.02; or

5. Cardiovascular involvement as described under the criteria in 4.02, 4.03, 4.04, 4.05, 4.09, 4.11, 4.12, or 4.13; or

6. Digestive involvement as described under the criteria in 5.02, 5.03, 5.04, 5.05, 5.06, 5.07, or 5.08; or

7. Renal involvement as described under the criteria in 6.02 or 6.06; or

8. Skin involvement as described under the criteria in 8.02; or

9. Neurological involvement as described under the criteria in 11.02, 11.03, 11.04, 11.08, or 11.14; or

10. Mental involvement as described under the criteria in 12.02.

Or

B. Lesser involvement of two or more organs or body systems listed in paragraph A with severe, documented, incapacitating constitutional symptoms and signs (e.g., severe fatigue, fever, malaise, weight loss) despite prescribed treatment. At least one of the organs/body systems must be involved to at least a moderate level of severity over the requisite period of observation of 3 or more months with the expectation that the multisystem severe involvement will persist for at least 12 months.

14.03 *Systemic vasculitis.* Documented as described in 14.00B2, including documentation by angiography or tissue biopsy or other commonly accepted diagnostic tests and a longitudinal clinical record of at least 3 months demonstrating active disease despite prescribed therapy during this period with the expectation that the disease will remain active for 12 months. With:

A. Involvement of a single organ or body system as in 14.02A.

OR

B. Lesser involvement of two or more organs/body systems listed in 14.02A with severe documented constitutional symptoms and signs (e.g, severe fatigue, fever, malaise, weight loss). At least one of the organs/body systems must be involved to at least a moderate level of severity over the requisite period of observation of 3 or more months with the expectation that the multisystem involvement will persist for at least 12 months.

14.04 *Systemic sclerosis and scleroderma.* Documented as described in 14.00B3 by a longitudinal clinical record of at least 3 months demonstrating active disease despite prescribed therapy during this period with the expectation that the disease will remain active for 12 months. With:

A. One of the following:

1. Muscle involvement as described under the criteria in 14.05; or

2. Respiratory involvement as described under the criteria in 3.02; or

3. Cardiovascular involvement as described under the criteria in 4.02, 4.03, 4.04, 4.05, 4.09, 4.11, 4.12, or 4.13; or

4. Digestive involvement as described under the criteria in 5.02, 5.03, 5.04, 5.05, 5.06, 5.07, or 5.08; or

5. Renal involvement as described under the criteria in 6.02 or 6.06.

OR

B. Lesser involvement of two or more organs/body systems listed in 14.04A with documented major constitutional symptoms and signs, (e.g., severe fatigue, fever, malaise, weight loss). At least one of the organs/body systems must be involved to at least a moderate level of severity over the requisite 3 or more months of observation with the expectation that the multisystem involvement will persist for at least 12 months.

OR

C. Generalized scleroderma with digital contractures.

OR

D. Severe Raynaud's phenomena with digital ulcerations, ischemia, or gangrene.

14.05 *Polymyositis or dermatomyositis.* Documented as described in 14.00B4 by a longitudinal clinical record of at least 3 months demonstrating active disease, including severe proximal muscle weakness despite prescribed therapy during this period with the expectation that the disease will remain active for 12 months. With:

A. Severe proximal limb-girdle (shoulder and/or pelvic) muscle weakness as described in 11.12B.

OR

B. Less severe limb-girdle muscle weakness than in 14.05A associated with cervical muscle weakness and one of the following to at least a moderate level of severity:

1. Impaired swallowing due to cricopharyngeal weakness, or

2. Impaired respiration due to intercostal and diaphragmatic muscle weakness.

OR

C. If associated with malignant tumor, evaluate under 13.00.

OR

D. If associated with generalized connective tissue disease, evaluate under 14.02, 14.03, 14.04, or 14.06.

14.06 *Undifferentiated connective tissue disorders.* Documented as described in 14.00B5 by a longitudinal clinical record of at least 3 months demonstrating active disease despite prescribed therapy during this period with the expectation that the disease will remain active for 12 months, with criteria as described in 14.02A or 14.02B.

14.07 *Immunoglobulin deficiency syndromes or deficiencies of cell-mediated immunity excepting HIV infection.* Associated with systemic infection occurring 3 or more times within a 5-month period.

14.08 *Human immunodeficiency virus (HIV) infection.*

A. If there is no documentation of HIV infection as described in 14.00D and the person has no other cause of immunodeficiency, one or more of the following diseases should be present:

1. Candidiasis of the esophagus, trachea, bronchi, or lungs (demonstrated by biopsy microscopy of a "wet" preparation or culture); or

2. Cryptococcosis, extrapulmonary (demonstrated by culture, antigen detection in the cerebrospinal fluid (CSF), India-ink preparation of the CSF, or by biopsy); or

3. Cryptosporidiosis with diarrhea persisting over 1 month (documented by intestinal biopsy or fecal microscopy); or

4. Cytomegalovirus disease of an organ other than liver, spleen, or lymph nodes (demonstrated by culture or histology); or

5. Herpes simplex virus infection causing a mucocutaneous ulcer that persists longer than 1 month; or bronchitis, pneumonitis, or esophagitis for any duration (demonstrated by culture, histology or cytology); or

6. Lymphoma of the brain (primary) affecting a patient less than 60 years of age; or

7. Mycobacterium avium complex or M. kansasii disease, disseminated (at a site other than or in addition to lungs, skin, or cervical or hilar lymph nodes) demonstrated by culture); or

8. Pneumocystis carinii pneumonia (documented by lung biopsy, microscopy of a "touch " preparation, bronchial washings, or induced sputum); or

9. Progressive multifocal leukoencephalopathy; or

10. Toxoplasmosis of the brain.

OR

B. Documentation of HIV infection as described in 14.00D and one of the following protozoan or helminthic infections:

1. Intestinal cryptosporidiosis (documented by intestinal biopsy or fecal microscopy) that has caused diarrhea for 1 month or more; or

2. Pneumocystis carinii pneumonia (documented by lung biopsy, microscopy of a "touch" preparation, bronchial washings, or induced sputum); or

3. Toxoplasmosis (documented by histology or microscopy of a "touch" preparation) with involvement of an organ other than the liver, spleen, or lymph nodes; or

4. Isosporiasis (documented by intestinal biopsy or fecal microscopy) that has caused diarrhea for a month or more; or

5. Extra-intestinal strongyloidiasis.

OR

C. Documentation of HIV infection as described in 14.00D and one of the following fungal infections:

1. Candidiasis, disseminated (beyond the skin, urinary tract, intestinal tract, or oral or vulvovaginal mucous membranes) or involving the esophagus, trachea, bronchi, or lungs (and demonstrated by microscopy of a "wet" preparation, or observation on endoscopy of white plaques on an erythematous base); or

2. Cryptococcosis, disseminated (beyond the lungs), or involving the central nervous system and demonstrated by culture, antigen detection in the CSF, India-ink preparation of the CSF, or by biopsy); or

3. Disseminated histoplasmosis (beyond the lungs or lymph nodes and demonstrated by culture or biopsy); or

4. Disseminated coccidioidomycosis (beyond the lungs or lymph nodes and demonstrated by culture or histology).

OR

D. Documentation of HIV infection as described in 14.00D and mycobacterial infection, disseminated (beyond the lungs, lymph nodes, or skin) and demonstrated by culture or by microscopy showing acid fast bacilli of a species not identified by culture.

OR

E. Documentation of HIV infection as described in 14.00D and one of the following viral infections:

1. Cytomegalovirus, causing infection of organs other than the liver, spleen, or lymph nodes and demonstrated by culture or histology; or

2. Herpes simplex virus, causing chronic continuous, (longer than 1 month) mucocutaneous infection or infection of the pulmonary or gastrointestinal tracts or encephalitis or disseminated infection demonstrated by culture, histology, or cytology; or

3. Progressive multifocal leukoencephalopathy.

OR

F. Documentation of HIV infection as described in 14.00D and one of the following bacterial infections:

1. Recurrent non-typhoid salmonella bacteremia; or

2. Nocardiosis (demonstrated by culture).

OR

G. Documentation of HIV infection as described in 14.00D and HIV encephalopathy (see 14.00D).

OR

H. Documentation of HIV infection as described in 14.00D and HIV wasting syndrome (see 14.00D).

OR

I. Documentation of HIV infection as described in 14.00D and one of the following neoplasms:

1. Lymphoma of the brain; or

2. Other Non-Hodgkin's lymphoma of B-cell or unknown phenotype and histology indicating either:

a. Burkitt's or other small noncleaved lymphoma; or

b. Immunoblastic sarcoma.

Or

J. Documentation of HIV infection as described in 14.00D and one of the following neoplasms:

1. Non-Hodgkin's lymphoma or Hodgkin's disease; or

2. Invasive carcinoma of the cervix, FIGO stage II and beyond.

3. Anal squamous cell carcinoma.

Or

K. Documentation of HIV infection as described in 14.00D and cardiomyopathy as described under the criteria in 4.02, 4.04, or 4.05.

Or

L. Documentation of HIV infection as described in 14.00D and nephropathy as described under the criteria in 6.02 or 6.06.

Or

M. Documentation of HIV infection as described in 14.00D with the criteria listed below. (The level of severity is met when the requirements for both 1 and 4, both 2 and 4, or both 3 and 4 are satisfied.)

1. Impaired cellular immunity as manifested by a CD4(T4) lymphocyte count less than or equal to 200 cells/mm ^{3} (or 14 percent or less lymphocytes); or

2. One or more of the following persistent and/or resistant to therapy:

a. Pneumonia; or

b. Pulmonary tuberculosis; or

c. Bacterial or fungal sepsis; or

d. Meningitis; or

e. Septic arthritis; or

f. Endocarditis; or

g. Peripheral neuropathy; or

h. Kaposi's sarcoma;

Or

3. Two or more of the following persisting over a 2-month period:

a. Anemia, (hematocrit (HCT) less than or equal to 30 percent); or

b. Granulocytopenia (absolute neutrophil count less than or equal to 1000/mm ^{3}); or

c. Thrombocytopenia (less than or equal to 40,000/mm ^{3}); or

d. Documented fever (greater than or equal to 100.4 °F or 38 °C); or

e. Weight loss of greater than or equal to 10 percent of baseline; or

f. Mucosal (including vulvovaginal) candidiasis other than listed in 14.08A1 or 14.08C1; or

g. Oral hairy leukoplakia; or

h. Chronic or recurrent Herpes Zoster; or

i. Persistent dermatological conditions such as eczema, psoriasis; or

j. Persistent, unresponsive diarrhea; or

k. Persistent or recurrent radiographically documented sinusitis;

And

4. At least two of the following:

a. Market restriction of activities of daily living; or

b. Marked difficulties in maintaining social functioning; or

c. Marked difficulties in completing tasks in a timely manner due to deficiencies in concentration, persistence, or pace; or

d. Repeated episodes of decompensation, averaging three times a year or once every four months, lasting two or more weeks each, which cause the individual to deteriorate (which may include loss of adaptive functioning).

8. The table of contents for part B of appendix 1 (Listing of Impairments) to subpart P is amended by adding an entry for listing 114.00 to read as follows:

* * * * *

114.00 Immune System

9. In part B of appendix 1 (Listing of Impairments) to subpart P, Listing 110.00 is amended by removing the last sentence of paragraph B.

10. In part B of appendix 1 (Listing of Impairments) to subpart P, Listing 110.09, Immune deficiency disease, is removed.

11. In part B of appendix 1 (Listing of Impairments) to subpart P, a new Listing 114.00 is added to read as follows:

114.00 Immune System

A. Listed disorders includes impairments involving deficiency of one or more components of the immune system (i.e., antibody-producing B cells; a number of different types of cells associated with cell-mediated immunity including T-lymphocytes, macrophages and monocytes; and components of the complement system).

B. Dysregulation of the immune system may result in the development of a connective tissue disease. Connective tissue diseases include several chronic multisystem disorders which differ in their clinical manifestation, course, and outcome. These disorders are described in Part A, 14.00B. Some of the features of these disorders in children may differ from the manifestation in adults. When the clinical manifestation is the same as that seen in adults, principles and concepts in part A, 14.00B apply. The documentation needed to establish the existence of a connective tissue disorder is medical history, physical examination, selected laboratory studies, imaging techniques and, in some instances, tissue biopsy. (The Social Security Administration will not purchase tissue biopsy. Tissue biopsy, however, will usually be available in the clinical record when it is essential for diagnosis and therapy.) As for adults, a clinical record of at least 3 months is necessary for assessment of severity and duration of impairment.

The growth impairment Listing 100.00 should be used when growth is affected by the disorder or its treatment by immunosuppressive drugs.

In Kawasaki disease, also known as mucocutaneous lymph node syndrome, the disease is usually confined to the coronary arteries and impairment should be evaluated under Listing 104.00. Undifferentiated connective tissue disorder should be evaluated under the same criteria as 114.02.

In children the impairment may affect growth development, attainment of age-appropriate skills, and performance of age-appropriate activities. The limitations may be the result of loss of function or failure in a single organ or body system or lesser degrees of functional loss in two or more organs/body systems which in combination with constitutional symptoms and signs (e.g., severe fatigue, fever, malaise, weight loss) results in disabling limitations.

C. Human immunodeficiency virus (HIV) infection including acquired immunodeficiency syndrome (AIDS) is caused by an infection with a specific retrovirus and is characterized by susceptibility to one or more opportunistic diseases, cancers, or other conditions, as designated in Listing 114.08. Therefore, any HIV-infected child, including those with a diagnosis of AIDS, can establish an impairment of listing-level severity by meeting any of the criteria in listing 114.08A–M applicable to his/her age.

In addition, the listed manifestations of HIV infection do not describe the full spectrum of diseases seen in HIV-infected children. When other diseases or conditions are documented, determine whether the other diseases or conditions carry a level of severity equivalent to the HIV listing criteria (or, as appropriate, any other listing criteria).

The medical evidence should include documentation of HIV infection and specific laboratory evidence of an opportunistic disease.

Laboratory evidence of HIV infection includes:

1. A serum specimen that contains HIV antibodies, detected by a screening test (e.g., ELISA) and confirmed by a more definitive test (e.g., Western blot, immunofluorescence assay), or

2. A serum specimen that contains HIV antigen, or

3. A lymphocyte culture, positive for HIV, confirmed by a specific test for the antigen, (not just detection of reverse transcriptase).

4. Other tests believed to be highly specific for detection of HIV (e.g., polymerase chain reaction (PCR)).

Mothers with HIV infection usually transfer HIV antibodies to their newborns and therefore, these infants will have HIV antibodies in their serum. Therefore, this finding does not necessarily in itself establish the presence of HIV infection in the infant. Because the presence of HIV infection in young children can be difficult to confirm, evidence of significantly depressed CD4 counts may also be used to establish that a disease or condition is in fact related to HIV infection. Laboratory evidence of HIV infection for children under 15 months of age includes:

1. A serum specimen that contains HIV antigen, or

2. A blood or CSF culture positive for HIV, confirmed by a specific test for the antigen, or

3. Other tests believed to be highly specific for detection of HIV (e.g., polymerase chain reaction (PCR)), or

4. In children from birth to the attainment of 1 year of age, a CD4 (T4) count of 1500 per mm^3 or less, or a CD4 count less than or equal to 20 percent of total lymphocytes, or

5. In children from age 1 to 15 months of age, a CD4 (T4) count of 750 per mm^3 or less, or a CD4 count less than or equal to 20 percent of total lymphocytes.

If HIV infection is not documented by the above laboratory evidence, a diagnosis of HIV infection can still be accepted if the individual has a disease predictive of a defect in cell-mediated immunity, and there is no known cause of diminished resistance to that disease. In such cases, full details of the history, clinical course, and results of serological testing, microbiologic cultures, or tissue biopsy must be documented. The documentation of HIV infection will rely on clinical history, physical examination, exclusion of other causes for clinical abnormalities and treating source opinion.

If HIV infection is not documented by the above evidence, an opportunistic disease or condition as listed in 114.08A is necessary to meet or equal the HIV infection listing.

Pneumocystis carinii pneumonia (114.08 B2) is one of the most common opportunistic diseases associated with HIV infection. Pneumocystis carinii pneumonia is definitively diagnosed by histology or cytology. However, a diagnosis of pneumocystis carinii pneumonia may be based on clinical impressions and response to treatment. Medical judgment must be exercised when pneumocystis carinii pneumonia or other opportunistic diseases are diagnosed with microscopic evidence, to establish as equals the listing decision.

Younger children with HIV infection differ from adults in the mode of infection, clinical manifestation, and course of disease. Younger children may acquire infection from the mother or from transfusion of contaminated blood or blood products (such as coagulation factors) or, rarely, as a result of sexual abuse. In addition, survival times are shorter for children infected in the first year of life compared to older children and adults. Older children (adolescents) may become infected from contaminated blood or blood products or due to behaviors such as intravenous drug use and unprotected sexual relations. The course and spectrum of disease in children age 13 and older generally is similar to that of adults. Some children, particularly older children, may exhibit HIV encephalopathy as described in 14.08G and should be evaluated under that listing when applicable. Older children also may exhibit HIV wasting syndrome as described in 14.08H and should be evaluated under that listing when applicable.

The mean age of diagnosis of children infected before or shortly after birth is 17 months but a diagnosis may be made much earlier. The majority develop failure to thrive, pneumonia, enlarged livers and spleens. Infants will commonly have candida infection, failure to thrive, pneumocystis carinii pneumonia (PCP); 2-year-olds may present with parotitis, enlarged lymph nodes, recurrent infections, neurologic problems, and developmental abnormalities.

Although in children, as well as adults, T-helper lymphocyte (CD4) counts decrease as disease progresses, infants and young

children have much higher CD4 counts than adults. Children with significant immunosuppression can have CD4 counts which would fall within the normal range for adults.

In evaluating HIV infection, the impact of all impairments must be considered. Children with HIV infection may manifest mental signs and symptoms such as anxiety, depression, apathy, and cognitive impairment. Medical evidence should include documentation of mental impairment when pertinent and the impairment(s) should be evaluated under the appropriate listing(s).

The impact of therapy must also be considered. The therapeutic regimens and consequent adverse response to therapy may vary; therefore, each case must be evaluated on an individual basis. It is essential to obtain a specific description of the drugs given, dosage, frequency of administration, and a description of the complications or any other response to therapy. In many instances the effect is temporary and/or dose-related; however, on occasion, the adverse effect may be permanent or long term.

For children with HIV infection evaluated under Listings 114.08L or M, listing-level severity will be assessed in terms of the functional limitations imposed by the manifestations of the impairment. The full impact of signs, symptoms, and laboratory findings on the child's ability to grow, develop, or engage in age-appropriate activities must be considered. Important factors to be considered in evaluating the functioning of children with HIV infection include, but are not limited to: symptoms, such as fatigue and pain; characteristics of the illness, such as the frequency and duration of manifestations or periods of exacerbation and remission in the disease course; and the functional impact of treatment for the disease, including the side effects of medication.

To meet the standards in Listing 114.08L, for children age 12 or younger, the HIV-infected child must demonstrate the appropriate degree and number of limitations for his or her age in Listing 112.02, paragraph B1 (for children age 1 to attainment of age 3) or paragraph B2 (for children age 3 to attainment of age 13), or in any paragraph of Listing 112.12 (for children from birth to the attainment of age 1). To meet the standards in Listing 114.08M, a child age 13 to the attainment of age 18 must demonstrate marked restriction in at least two of the four general areas of functioning in Listing 112.02, paragraph B2.

It must be remembered that children whose impairments do not meet the criteria of the listings for HIV infection may or may not have impairments that are equivalent in severity to these listings and, if not, may or may not have impairments of comparable severity to those that would disable an adult based on an individualized functional assessment (IFA). When an HIV-infected child has a medically determinable impairment that is not listed and does not meet the criteria of any other listing, we will consider whether the child's impairment or combination of impairments is equivalent in severity to any listed impairment. If the child's impairment or impairments do not equal a listing (medically or functionally), an IFA is crucial to the evaluation of whether the child is disabled.

Some children with documented HIV infection may not manifest the specified conditions that are listed in 114.08L or M, but have other signs and symptoms indicative of HIV infection, which affect their ability to grow, develop, or engage in age-appropriate activities.

114.01 Category of Impairments, Immune System

114.02 Systemic lupus erythematosus. Documented as described in Part A, 14.00B1 and Part B 114.00B by a longitudinal clinical record of at least 3 months demonstrating active disease despite prescribed therapy during this period with the expectation that the disease will remain active for 12 months, with:

A. One of the following:

1. Growth impairment as described under the criteria in 100.02 or 100.03; or

2. Musculoskeletal involvement as described under the criteria in 101.02, 101.03, 101.05, or 101.08; or

3. Ocular involvement as described under the criteria in 102.02; or

4. Respiratory involvement as described under the criteria in 103.01; or

5. Cardiovascular involvement as described under the criteria in 104.02, 104.03, 104.05, 104.07, or 104.08; or

6. Digestive system involvement as described under the criteria in 105.03, 105.05, 105.07, or 105.08; or

7. Renal involvement as described under the criteria in 106.02 or 106.06; or

8. Hematologic involvement as described under the criteria in 107.03 or 107.06; or

9. Endocrine involvement as described under the criteria in 109.02, 109.03, 109.04, 109.06, 109.07, 109.08, 109.09, or 109.12; or

10. Skin involvement as described under the criteria in Part A, Listing 8.02; or

11. Neurological involvement as described under the criteria in 111.02, 111.03, 111.06, 111.07, or 111.09; or

12. Mental involvement as described under the criteria in 112.02, 112.03, or 112.04.

OR

B. Lesser involvement of two or more organs or body systems listed in paragraph A with severe, documented, incapacitating constitutional symptoms and signs (e.g., marked fatigue, fever, malaise, weight loss) despite prescribed treatment. At least one of the organs/body systems must be involved to at least a moderate level of severity over the requisite period of 3 or more months with the expectation that the multisystem severe involvement will persist for 12 months.

114.03 *Systemic vasculitis.* Evaluate according to Part A, 14.03 or, if growth impairment, evaluate under the criteria in 100.00.

114.04 *Systemic sclerosis and scleroderma.*

A. Evaluate according to Part A, 14.04, or, if growth impairment, evaluate under the criteria in 100.00.

OR

B. Linear scleroderma with one of the following:

1. Fixed valgus or varus deformities of both hands or both feet; or

2. Marked destruction or marked atrophy of an extremity; or

3. Facial disfigurement from hypoplasia of the mandible, maxilla, or zygoma resulting in an impairment described under the criteria in 112.02, 112.03, 112.04, 112.05, 112.06, 112.07, 112.08, 112.09, 112.10, 112.11, or 112.12; or

4. Seizure disorder as described under the criteria in 111.02 or 111.03.

114.05 *Polymyositis or dermatomyositis.*

A. Evaluate according to Part A, 14.05.

OR

B. With one of the following:

1. Multiple joint contractures; or

2. Diffuse cutaneous calcification with formation of an exoskeleton; or

3. Systemic vasculitis as described in Part A, 14.03.

114.06 *Undifferentiated connective tissue disorder.* Evaluate according to Part A, 14.06.

114.07 *Congenital immune deficiency disease.*

A. Hypogammaglobulinemia or dysgammaglobulinemia, with:

1. Documented, recurrent severe infections occurring at least 3 times during the 5 months prior to adjudication; or

2. An associated disorder such as growth retardation, chronic lung disease, collagen disorder or tumor. Evaluate according to the appropriate body system listing.

OR

B. Thymic dysplastic syndromes (such as Swiss, diGeorge).

114.08 *Human immunodeficiency virus (HIV) infection.*

A. If there is no documentation of HIV infection as described in 114.00C and the child has no other cause of immunodeficiency, one or more of the following diseases should be present:

1. Candidiasis of the esophagus, trachea, bronchi, or lungs (demonstrated by biopsy microscopy of a "wet" preparation or culture); or

2. Cryptococcosis, extrapulmonary (demonstrated by culture, antigen detection in the CSF, India-ink preparation of the CSF, or by biopsy); or

3. Cryptosporidiosis with diarrhea persisting over 1 month (documented by intestinal biopsy or fecal microscopy; or

4. Cytomegalovirus disease of an organ other than liver, spleen, or lymph nodes in a child over 1 month of age (demonstrated by culture or histology); or

5. Herpes simplex virus infection causing a mucocutaneous ulcer that persists longer than 1 month; or bronchitis, pneumonitis, or esophagitis for any duration affecting a child over 1 month of age (demonstrated by culture, histology or cytology); or

6. Lymphoma of the brain (primary); or

7. Lymphoid interstitial pneumonia and/or pulmonary lymphoid hyperplasia (LIP/PLH complex) affecting a child less than 13 years of age (demonstrated by biopsy); or

8. Mycobacterium avium complex or M. kansasii disease, disseminated (at a site other than or in addition to lungs, skin, or cervical or hilar lymph nodes) (demonstrated by culture); or

9. Pneumocystis carinii pneumonia (documented by lung biopsy, mocroscopy of a

"touch" preparation, bronchial washings, or induced sputum); or

10. Progressive multifocal leukoencephalopathy; or

11. Toxoplasmosis of the brain affecting a child over 1 month of age.

OR

B. Documentation of HIV infection as described in 114.00C and one of the following protozoan or helminthic infections:

1. Intestinal cryptosporidiosis (documented by intestinal biopsy or fecal microscopy) that has caused diarrhea for a month or more; or

2. Pneumocystis carinii pneumonia (documented by lung biopsy, microscopy or a "touch" preparation, bronchial washings, or induced sputum); or

3. Toxoplasmosis (documented by histology or microscopy of a "touch" preparation) with involvement of an organ other than the liver, spleen, or lymph nodes; or

4. Isosporiasis (documented by intestinal biopsy or fecal microscopy) that has caused diarrhea for a month or more; or

5. Extra-intestinal strongyloidiasis.

OR

C. Documentation of HIV infection as described in 114.00C and one of the following fungal infections:

1. Candidiasis, disseminated (beyond the skin, urinary tract, intestinal tract, or oral or vulvovaginal mucous membranes), or involving the esophagus, trachea, bronchi or lungs (and demonstrated by microscopy of a "wet" preparation, or observation on endoscopy of white plaques on an erythematous base); or

2. Cryptococcosis, disseminated (beyond the lungs), or involving the central nervous system (and demonstrated by culture, antigen detection in the CSF, India-ink preparation of the CSF, or by biopsy); or

3. Disseminated histoplasmosis (beyond the lungs or lymphnodes and demonstrated by culture or biopsy); or

4. Disseminated coccidioidomycosis (beyond the lungs or lymph nodes and demonstrated by culture or by histology).

OR

D. Documentation of HIV infection as described in 114.00C and mycobacterial infection, disseminated (beyond the lungs, lymph nodes, or skin and demonstrated by culture or by microscopy showing acid fast bacilli of a species not identified by culture);

OR

E. Documentation of HIV infection as described in 114.00C and one of the following viral infections:

1. Cytomegalovirus, causing infection of organs other than the liver, spleen, or lymph nodes and demonstrated by culture or histology; or

2. Herpes simplex virus, causing chronic, continuous (longer than 1 month), mucocutaneous infection or infection of the pulmonary or gastrointestinal tracts or encephalitis or disseminated infection demonstrated by culture, histology, or cytology; or

3. Progressive multifocal leukoencephalopathy.

OR

F. Documentation of HIV infection as described in 114.00C and bacterial infections of one of the following types:

1. Multiple or recurrent bacterial infections (i.e., two or more within a 2-year period of time) of the following types affecting a child less than 13 years of age: septicemia, pneumonia, meningitis, bone or joint infection, or abscess of an internal organ or body cavity (excluding otitis media or superficial skin or mucosal abscesses) caused by pyogenic bacteria; or

2. Nocardiosis (demonstrated by culture); or

3. Recurrent non-typhoid salmonella bacteremia.

OR

G. Documentation of HIV infection as described in 114.00C lymphoid interstitial pneumonia and/or lymphoid hyperplasia (LIP/PLH complex) affecting a child less than 13 years of age (documented histologically or by a persistent interstitial pattern on chest x ray for 2 months or more).

OR

H. Documentation of HIV infection as described in 114.00C and one of the following neoplasms:

1. Lymphoma of the brain; or

2. Other non-Hodgkin's lymphoma of B-cell or unknown phenotype and histology indicating either:

a. Burkitt's or other small noncleaved lymphoma; or

b. Immunoblastic sarcoma.

OR

I. Documentation of HIV infection as described in 114.00C and non-Hodgkin's lymphoma or Hodgkin's disease.

OR

J. Documentation of HIV infection as described in 114.00C and progressive neurologic disease resulting in one or more of the following:

1. Loss of previously acquired or marked delay in achieving developmental milestones or intellectual ability; or

2. Impaired brain growth (acquired microcephaly and/or brain atrophy on scan); or

3. Progressive symmetric motor deficits as manifested by two or more of paresis, abnormal tone, pathologic reflexes, ataxia, or gait disturbance.

OR

K. Documentation of HIV infection as described in 114.00C and failure to thrive or a falling off from the age-appropriate range of the projected growth curve. Evaluate under 100.02

OR

L. Documentation of HIV infection as described in 114.00C in children age 12 or younger with the criteria listed below. (The level of severity is met when the requirements for both 1 and 3 are satisfied, or both 2 and 3 are satisfied.)

1. One or more of the following persistent and/or resistant to therapy:

a. Pneumonia; or

b. Pulmonary tuberculosis; or

c. Bacterial or fungal sepsis; or

d. Meningitis; or

e. Septic arthritis; or

f. Endocarditis; or

g. Peripheral neuropathy; or

h. Kaposi's sarcoma;

OR

2. Two or more of the following persisting for at least 2 months:

a. Fever (greater than or equal to 100.4° F or 38° C); or

b. Hepatomegaly; or

c. Splenomegal; or

d. Generalized lymphadenopathy; or

e. Parotitis; or

f. Diarrhea (defined as 3 more loose stools daily or at least two recurrent episodes associated with dehydration); or

g. Persistent dermatological conditions such as eczema, psoriasis, or

h. Weight loss greater than 10 percent; or

i. Persistent or recurrent radiographically documented sinusitis; or

AND

3. For children from birth to attainment of age 1 at least one of the criteria in paragraphs A–E of 112.12; or

For children age 1 to attainment of age 3 at least one of the appropriate age-group criteria in paragraph B1 of 112.02; or

For children age 3 to attainment of age 13, at least two of the appropriate age-group criteria in paragraph B2 of 112.02.

OR

M. Documentation of HIV infection as described in 114.00C in children age 13 or older with the criteria listed below. (The level of severity is met when the requirements for both 1 and 4, both 2 and 4, or both 3 and 4 are satisfied.)

1. Impaired cellular immunity as manifested by a CD4 (T4) lymphocyte count less than or equal to 200 cells/mm ^{3} (or 14 percent or less lymphocytes); or

2. One or more of the following persistent and/or resistant to therapy:

a. Pneumonia; or

b. Pulmonary tuberculosis; or

c. Bacterial or fungal sepsis; or

d. Meningitis; or

e. Septic arthritis; or

f. Endocarditis; or

g. Peripheral neuropathy;

h. Kaposi's sarcoma;

OR

3. Two or more of the following persisting over a 2-month period:

a. Anemia, (Hematocrit (HCT) less than or equal to 30 percent); or

b. Granulocytopenia (absolute neutrophil count less than or equal to 1000/mm ^{3}; or

c. Thrombocytopenia (less than or equal to 40,000/mm^3);or

d. Documented fever (greater than or equal to 100.4°F or 38°C); or

e. Weight loss of greater than or equal to 10 percent of baseline; or

f. Mucosal (including vulvovaginal) candidiasis other than listed in 114.08A1 or 114.08C1; or

g. Oral hairy leukoplakia; or

h. Chronic or recurrent Herpes Zoster; or

i. Persistent dermatological conditions such as eczema, psoriasis; or

j. Persistent, unresponsive diarrhea; or

k. Persistent or recurrent radiographically documented sinusitis;

AND

4. At least two of the appropriate age-group criteria in paragraph B2 of 112.02.

[FR Doc. 91-30034 Filed 12-17-91; 8:45 am]
BILLING CODE 4190-29-M

20 CFR Part 416

[Regulations No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled; Presumptive Disability and Presumptive Blindness

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rules.

SUMMARY: We are proposing to revise § 416.933 of our regulations, which describes how we make findings of presumptive disability or presumptive blindness. The revisions propose to incorporate into the regulations procedures that are now in our operating instructions. These are expanded procedures we have been using to make findings of presumptive disability for people who allege infection with the human immunodeficiency virus (HIV). Our prior rules permitted Social Security Field Offices to make findings of presumptive disability for HIV infection only upon confirmation by a licensed physician that an individual had a diagnosis of acquired immunodeficiency syndrome (AIDS). The proposed revisions will include individuals with HIV infection whose disease manifestations are of listing-level severity. We are also proposing editorial changes to clarify the language of the current rule.

DATES: To be sure that your comments are considered, we must receive them no later than February 18, 1992.

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

FOR FURTHER INFORMATION CONTACT: Harry J. Short, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (301) 965-1753.

SUPPLEMENTARY INFORMATION: Under section 1631(a)(4)(B) of the Social Security Act (the Act) and implementing regulations, we may pay a person supplemental security income (SSI) benefits on the basis of presumptive disability or blindness before making a formal finding of disability or blindness. Findings of presumptive disability or blindness may be made when the available evidence reflects a high degree of probability that the individual will be found disabled or blind when complete evidence is obtained, and he or she meets the nonmedical eligibility requirements. Currently, presumptive disability or blindness payments may be made for no more than 6 months. (Prior to May 1, 1991, the effective date of section 5038 of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101-508, presumptive payments could be made for no more than 3 months.)

Under the provisions of § 416.933, findings of presumptive disability or presumptive blindness may be made at our Social Security Field Offices or at the State agencies that make disability determinations for us. The employees at our field offices are not trained disability adjudicators; therefore, they are authorized to make findings of presumptive disability or blindness only for certain readily observable impairments (for example, amputation of two limbs), which are specified in § 416.934. Because these impairments are readily observable, presumptive disability or blindness findings under these specific impairment categories may be made without obtaining medical evidence.

Disability adjudicators at the State agencies are specialists in the evaluation of disability and, therefore, are not confined to the impairments specified in § 416.934 when making presumptive disability or blindness findings; they may make findings of presumptive disability or presumptive blindness in any case in which the evidence is sufficient to establish a high degree of probability that the individual will be found disabled.

The list of readily observable impairment categories in § 416.934 previously included a category for AIDS. However, in a separate section of this **Federal Register**, we are publishing a final rule removing § 416.934(k), the provision for finding presumptive disability based on AIDS. Although AIDS was included on the list of readily observable impairments in § 416.934 that do not require confirming medical evidence, the regulation explicitly required confirmation by a licensed physician and was, therefore, different from the other impairment categories. The preamble to the final rule explains in detail our reasons for removing the section. In brief, we are removing it because our current operating procedures are broader in scope than former § 416.934(k), and they allow us to identify individuals who should be found presumptively disabled because of HIV infection at the earliest possible stage in the application process.

These proposed rules would restore to the regulations a provision for establishing presumptive disability for people who have AIDS, but would expand the provision to reflect our current operating instructions. Our current instructions provide that Social Security Field Offices may make findings of presumptive disability for any person who is infected with the HIV—not only those who are diagnosed as having AIDS—based on medical evidence establishing that the person demonstrates disease manifestations of listing-level severity. Thus, the proposed revisions also clarify our policy that in these cases we require medical evidence before we can make a finding of presumptive disability.

We are already using the new operating instructions because we believe that they are an improvement over our former instructions. We are proceeding with regulatory action, however, because we believe that it is vital for the public to be aware of and be able to comment upon these procedures. In the meantime, our new operating instructions provide a means for finding presumptive disability for more people earlier in the process, and, we believe, will also help to expedite the formal determinations of disability in many claims. The operating instructions are designed to be consistent with these proposed rules and are sufficiently flexible that they can be made consistent with any future listing for HIV infection and any future medical research on the illness. Thus, it is our hope that the new procedures will help us ensure that eligibility for presumptive disability payments is routinely and expeditiously considered for every HIV-infected claimant, both now and in the future.

Under the new procedures, the Social Security office mails a check-block form to the claimant's physician for completion and return to the Social Security office. The form lists manifestations of HIV infection that we currently consider sufficient to establish listing-level severity, including criteria for some of the most rare manifestations of the illness and for considering the functional impact of the illness on individuals who do not demonstrate

listing-level severity based on the medical findings alone. Of course, if the Social Security office is unable to make a finding of presumptive disability, the State agency may still make such a finding at any time that the evidence is sufficient to establish a high degree of probability that the individual will be found disabled.

After a presumptive disability finding is made, the State agency completes the development of the evidence and decides the claim using the full sequential evaluation process for determining if the requirements for establishing disability are met. We believe that the check-block form obtained by the Social Security office will also help to expedite the formal determination process at the State agency for individuals who have HIV infection. It will help the State agency pinpoint the kind of evidence it will need to develop for its formal disability determination. In addition, we believe that the check-block design of the form will not be perceived by medical practitioners as onerous or as an excessive intrusion into their time, while at the same time it will quickly provide us with information upon which we can accurately make findings of presumptive disability. The use of the check-block form will not preclude full evaluation of the case as provided in our regulations. All relevant evidence will be considered in making the formal disability determination.

In the following section, we describe the specific revisions we are proposing.

Explanation of Proposed Revisions

Section 416.933 How We Make a Finding of Presumptive Disability or Presumptive Blindness.

In the second sentence of § 416.933, we propose to delete the word "severe" from the phrase "readily observable severe impairments." The word "severe" is a technical term in our disability rules that does not have the same meaning as we intend in the context of this sentence.

We propose to add a new third sentence which explains that findings of presumptive disability or blindness based on readily observable impairments may be made at both the Social Security office and the State agency. This is merely a clarification of the intent of the rule.

In the fourth sentences of the proposed rule, which corresponds to the third sentence in the current rule, we propose to delete the words "disability evaluators" and to replace them with the word "us." We then propose to add four new sentence to the end of the paragraph, which would provide that findings of presumptive disability or blindness based on medical evidence will generally be made only by State agencies, but that there is one exception: Social Security Field Offices may make findings of presumptive disability based on medical evidence in cases of individuals who have HIV infection when the medical evidence confirms that the disease manifestations are of listing-level severity. The revision in the fourth sentence and the new language are intended to reflect our current operating procedures for determining presumptive disability in people with HIV infection. Under our current procedures, Social Security Field Offices may make findings of presumptive disability in these cases, but the findings must be based on contact with a physician, as we have already explained above. The last of the proposed new sentences (the eighth sentence in the proposed rule) also reaffirms our policy that the State agency may make a finding of presumptive disability or blindness for any type of impairment and at any stage of the development process at which the medical or other evidence justifies such a finding.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because these proposed revisions do not meet any of the threshold criteria for a major rule. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

This proposed rule contains information collection requirements. As required by section 2(a) of the Paperwork Reduction Act of 1980, 44 U.S.C. 3504(h), we will submit a copy to the Office of Management and Budget (OMB) for its review. Other organizations and individuals desiring to submit comments on these information collection requirements should direct them to the agency official whose name appears in this preamble and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, room 3208, Washington, DC 20503, Attention: Desk Officer for HHS.

Public reporting burden for this collection of information is estimated to average 10 minutes per response. This includes the time it will take to read the instructions, gather the necessary facts, and fill out the forms, if any. If you have any comments or suggestions on this estimate, or on any other aspect of this proposed rule, write to the Social Security Administration, ATTN: Reports Clearance Officer, 1–A–21 Operations Building, Baltimore, MD 21235, and to the Office of Management and Budget, Paperwork Reduction Project (0960–0000), Washington, DC 20503.

Regulatory Flexibility Act

We certify that these proposed regulations, if promulgated, would not have a significant economic impact on a substantial number of small entities because they affect only individuals and States.

(Catalog of Federal Domestic Assistance Program No. 93.807, Supplemental Security Income Program)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Disability benefits, Medicaid, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: October 1, 1991.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: October 22, 1991.

Louis W. Sullivan,

Secretary of Health and Human Services.

Part 416 of chapter III of title 20 of the Code of Federal Regulations is amended to read as follows:

PART 416—[AMENDED]

1. The authority citation for subpart I of part 416 continues to read as follows:

Authority: Secs. 1102, 1614(a), 1619, 1631(a) and (d)(1), and 1633 of the Social Security Act; 42 U.S.C. 1302, 1382c(a), 1382h, 1383(a)and (d)(1), and 1383b.

2. Section 416.933 is revised to read as follows:

§ 416.933 How we make a finding of presumptive disability or presumptive blindness.

We may make a finding of presumptive disability or presumptive blindness if the evidence available at the time of the presumptive disability or presumptive blindness decision reflects a high degree of probability that you are disabled or blind. In the case of readily observable impairments (e.g., amputation of extremities, total blindness), we will find that you are disabled or blind for purposes of this section without medical or other evidence. We may make findings of presumptive disability or blindness for these readily observable impairments in either the Social Security office or the State agency. In all other cases, a finding of disability or blindness must

be based on mdical evidence or other information which, though not sufficient for a formal determination of disability or blindness, is sufficient for us to find that there is a high degree of probability that you are disabled or blind. Findings of presumptive disability or blindness based on medical evidence will generally be made only by the State agency. However, claims involving infection with the human immunodeficiency virus (HIV) are an exception of this rule. If you are infected with the HIV, the Social Security office may make a finding of presumptive disability if medical evidence shows that your disease manifestations are of listing-level severity. In any case, the State agency may make a finding of presumptive disability if the medical evidence or other information reflects a high degree of probability that you are disabled.

[FR Doc. 91–30035 Filed 12–17–91; 8:45 am]
BILLING CODE 4190–29–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 700, 785, and 827

Availability of Petition to Initiate Rulemaking; Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Definitions; Requirements for Permits for Special Categories of Mining; Coal Preparation Plants; Performance Standards.

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

ACTION: Notice of availability of petition to initiated rulemaking and request for comment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the Department of the Interior (DOI) seeks comments concerning the rule changes suggested in a petition, submitted pursuant to the Surface Mining Control and Reclamation Act (SMCRA or the ACT), the amend OSM's regulations governing off-site coal preparation plants. The petition was included in the comments received from the Joint NCA/AMC Committee on Surface Mining Regulations on a proposed rule to amend portions of the permanent program regulations governing coal preparation plants published in the **Federal Register** on September 25, 1991 (56 FR 48714). The petition suggests that OSM amend its rules by revising the definition of "surface coal mining operations" at 30 CFR 700.5 so that the phrase "at or near the mine site" encompasses coal processing and preparation activities and, consistent with the revised definition, to also amend the rules at 30 CFR 785.21(a) and 827.1 by inserting the phrase "at or near the mine site" in those provisions where appropriate. OSM is requesting comments on the merits of the petition and the rule changes suggested in the petition. Such comments will assist the Director of OSM in making the decision whether to grant or deny the petition.

DATES: OSM will accept written comments on the petition until 5 p.m. Eastern time on January 17, 1992.

ADDRESSES: Mail comments to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 5131–L, 1951 Constitution Avenue, NW., Washington, DC 20240; or hand-deliver the comments to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 5131, 1100 L Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Suzanne Hudak, Office of Surface Mining Reclamation and Enforcement, Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: (202) 208–2700.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background and Substance of Petition
III. Procedural Matters

I. Public Comment Procedures

Written Comments

Written comments on suggested changes should be specific, should be confined to issues pertinent to the proposed revision, and should explain the reason for the comment. Where practicable, commenters should submit three copies of their comments. Comments received after the close of the comment period see **DATES**) or delivered to an address other than those listed (see **ADDRESSES**) may not necessarily be considered or included in the Administrative Record on the petition.

Availability of Copies

Additional copies of the petition, copies of 30 CFR Parts 700, 785, and 827, and copies of the proposed rule dated September 25, 1991 (56 FR 48714), are available for inspection and may be obtained at the location listed under **ADDRESSES.**

Public Hearing

OSM will not hold a public hearing on the proposed revisions, but OSM personnel will be available to meet with the public during business hours, 9 a.m. to 5 p.m., during the comment period. In order to arrange such a meeting, call or write to the person identified under **FOR FURTHER INFORMATION CONTACT.**

II. Background and Substance of Petition

OSM received a letter on November 22, 1991, from Stuart A. Sanderson, Senior Counsel, and Harold P. Quinn, Jr., Vice President and Counsel, representing the Joint NCA/AMC Committee on Surface Mining Regulations, Coal Building, 1130 17th St., NW., Washington, DC, as a petition for rulemaking. The petitioners requested that the agency propose for comment a rulemaking to revise the definition of "surface coal mining operations" at 30 CFR 700.5 so that the phrase "at or near the mine site" would encompass coal processing and preparation activities and, consistent with the revised definition, to also amend the rules at 30 CFR 785.21(a) and 827.1 by inserting the phrase "at or near the mine site" in those provisions where appropriate. The petition was included in the comments received from the Joint NCA/AMC Committee on a proposed rule to amend portions of OSM's permanent program regulations governing coal preparation plants published in the **Federal Register** on September 25, 1991 (56 FR 48714). The text of the petition appears at the end of this notice.

Under section 201(g) of SMCRA, any person may petition the Director of OSM to initiate a proceeding for the issuance, amendment, or repeal of any of the regulations implementing SMCRA. Under the applicable regulations for rulemaking petitions, 30 CFR 700.12, this notice seeks public comment on the merits of the petition and on the rule changes suggested in the petition.

At the close of the comment period, a decision will be made whether to grant or deny the petition. Under 30 CFR 700.12, the Director shall issue a written decision either granting or denying the petition within 90 days of the date of its receipt. Soon thereafter, notice of that decision will be published in the **Federal Register.** If the petition is granted, rulemaking proceedings will be initiated in which public comment will again be sought before a final rulemaking notice appears. If the petition is denied, no further rulemaking action will occur pursuant to the petition.

III. Procedural Matters

Publication of this notice of the receipt of the petition for rulemaking is a preliminary step in the rulemaking process. If a decision is made to grant the petition, a formal rulemaking

process will be initiated. Thus, no regulatory flexibility analysis is needed at this stage, nor is a regulatory impact analysis necessary under Executive Order 12291.

Publication of this notice does not constitute a major Federal action having a significant effect on the human environment for which an environmental impact statement under the National Environmental Policy Act, 44 U.S.C. 4322(a)(C), is needed.

List of Subjects

30 CFR Part 700

Administrative practice and procedure, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 785

Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 827

Coal, Environmental protection, Surface mining.

Dated: December 11, 1991.

Harry M. Snyder,

Director.

Appendix

The text of the petition dated November 13, 1991 (received November 25, 1991), from the Joint NCA/AMC Committee, is as follows:

I. Introduction

Pursuant to the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1211(g), its implementing regulations, 30 CFR 700.12, and the Administrative Procedure Act, 5 U.S.C. 553(e), the National Coal Association and American Mining Congress petition the Director of the Office of Surface Mining (OSM) for certain amendments to 30 CFR 700.5, 785.21, and 827.1 relating to the regulation of coal preparation and processing activities. The proposed amendments will bring greater certainty to the regulatory program.

II. Proposed Amendments and Modifications

Petitioners request the following amendments and modifications to the regulations relating to the definition of surface coal mining operations and the scope of regulations of coal processing and preparation activities:

1. In 30 CFR 700.5, revise the definition of "surface coal mining operations, so that it reads in pertinent part as follows: in situ distillation, or retorting, leaching or other chemical or physical processing; and the cleaning, concentrating, or other processing or preparation, loading of coal for interstate commerce at or near the mine site.

2. Revise the first sentence in 30 CFR 785.21 to read as follows:

(a) This section applies to any person who operates or intends to operate a coal preparation plant in connection with a coal mine and is located at or near the mine site but outside the permit area for that specific mine.

3. Revise 30 CFR 827.1 to read as follows:

This part sets forth requirements for coal preparation plants operated in connection with a coal mine and is located at or near the mine site but outside the permit area for that specific mine.

III. Statement of Facts and Law in Support of Amendments and Modification of Existing Regulations on Coal Processing and Preparation Activities

A. Summary

The amendments and modifications requested by petitioners embody what the United States Court of Appeals for the District of Columbia Circuit expressly endorsed as the "clearly better" interpretation of the definition of surface coal mining operations. See *National Wildlife Federation* v. *Hodel*, 839 F.2d 694, 744 (D.C. Cir. 1988). To this end, the amendments would bring greater regulatory certainty by establishing a more easily discernible test for the scope of regulation by requiring the regulation of coal processing and preparation activities when they are conducted (1) in connection with; and (2) at or near the mine site. SMCRA § 701(28)(A). In essence, these amendments would reestablish the two-prong jurisdictional test adopted initially by the Secretary in Western Engineering, Inc., 86 I.D. 336 (1979). The adoption of the Secretary's former interpretation of the Act, and one endorsed by the Court of Appeals as "clearly better", falls well within the Secretary's discretion under section 701(28) "because the Act permits, but does not require, the Secretary to regulate off-site preparation plants." *National Wildlife Federation* v. *Lujan*, 928 F.2d 453, 462 (D.C. Cir. 1991).

B. The Statute

Section 701(28) of SMCRA defines "surface coal mining operations" in terms of (A) certain activities and (B) certain areas. The activities

> include excavation for the purpose of obtaining coal including such common methods as * * *, and the cleaning, concentrating, or other preparation, loading of coal for interstate commerce at or near the mine site * * *

No dispute exists that the phrase 'at or near the mine site" modifies the "loading of coal." The question remains whether that phrase also modifies "the cleaning, concentrating, or other processing or preparation."

Like the United States Court of Appeals in *NWF* v. *Hodel*, we think the clearly better reading recognizes that "cleaning", "concentrating", "other processing or preparation", and "loading" are a family of post-extraction activities set off from the earlier family of extractive activities by the word "and" which precedes their enumeration; and, that the phrase "at or near the mine site" modifies the entire family of post-extraction coal processing and preparation activities. A textual interpretation which parses the phrase "loading of coal for interstate commerce at or near the mine site" from the preceding post-extraction activities leave these activities floating nonsensically without an object. As the court of appeals noted, "cleaning for example must refer to something, and it seems most natural that it is 'cleaning . . . of coal for interstate commerce at or near the mine site.' " *NWF* v. *Hodel*, 839 F.2d at 744 n. 78.

The legislative history bolsters this "most natural" reading. The Senate Report clarifies that "surface coal mining operations" includes coal processing and preparation only when it occurs at or near the mine site:

> Activities included are excavation to obtain coal by contour, * * * and the *cleaning, or other processing or preparation and loading* for interstate commerce *of coal at or near the mine site.*

[S. Rep. No. 128, 95th Cong., 1st Sess. 98 (1977) (emphasis added)].

This passage is particularly significant because it is the only discussion of this part of the definition of "surface coal mining operations" that appears anywhere in the committee reports on SMCRA.

This "clearly better" and "most natural" reading of the definitions of "surface coal mining operations" originated with the Secretary at the inception of SMCRA implementation. In a long line of cases spanning both the interim and permanent program, the Secretary held that his regulatory jurisdiction does not extend to off-site coal processing and preparation facilities not located "at or near" the mine site. See e.g. Western Engineering, Inc, 86 I.D. 336 (1979); Drummond Coal

Co., 96 I.D. 196 (1980); Wolverine Coal Co., 87 I.D. 554 (1980); Roberts Brothers Coal Co., 87 I.D. 439 (1980); Falcon Coal Co., 2 IBSMA 406 (1980); The Hoke Co., 2 IBSMA (1981); Thoroughfare Coal Co., 88 I.D. 745 (1981); See also Ann Lorentz Coal Co., 91 I.D. 108 (1984) (coal crushing and sizing facility must be at or near the mine site). Thus, the requisite geographical proximity connoted by the "at or near" language in section 701(28)(A) has long been associated with the determination of the Secretary's regulatory jurisdiction under SMCRA.

C. Functional Analysis

A functional analysis of SMCRA provides further confirmation that regulatory jurisdiction under the Act does not properly extend to coal processing and preparation facilities which are not "as or near" the mine site. Coal preparation plants are fundamentally unlike mines, and instead constitute permanent or longstanding industrial facilities serving a function to facilitate the stream of coal commerce. This function separate from the mining itself becomes even more apparent when considering off-site preparation facilities which engage in commerce with several mines. As OSM notes, "there is nothing in the Act or its history that implies that SMCRA was meant to apply nationwide to all industrial facilities that process coal * * *" 53 FR 47386 (November 22, 1988).

Indeed, both the Act's overarching purpose that mining constitute a temporary land use, and the two principal components to achieve this purpose—permitting and performance standards—simply have no sensical application to long-term industrial facilities like off-site preparation plants conducted independent of a particular mine. First, unlike mining operations which are a temporary use of the land accompanied by reclamation contemporaneous with the mining, independent processing plants constitute long-term industrial facilities which serve a mining region. Second, even a casual textual review of the permitting and performance standards discloses their general inapplicability to this type of facility.

In terms of post-mining land use, the Act's provisions have no reasonable application when applied to an independent off-site coal preparation plant. The regulatory scheme under SMCRA contemplates the contemporaneous reclamation of areas with the eventual attainment of a post-mining land use once all mining and reclamation activities have terminated within the permitted areas. Generally, for a coal mine, the life of the mine and subsequent reclamation activities are centered around the coal reserves to be mined. In sharp contrast stands the independent coal preparation plant whose life extends beyond that of any particular mine, but instead turns upon the coal mining industry within the area it serves. Thus, an independent preparation plant may cease activities for any extended period, but also remain a viable facility for coal mines in the future. Moreover, some of these facilities located in certain transportation corridors may also have utility beyond coal mining, for instance the hauling and transportation of other mineral products and timber.

The application of SMCRA's permitting, bonding, and reclamation provisions do not account for the long-term useful life of such facilities, and instead dictate removal and reclamation of the facility upon the cessation of preparation activities for any extended period to time. See e.g. 30 CFR 785.21(b) (reclamation plan which specifies operation, maintenance, and removal); and, § 827.12(1) (cross-refencing rules for backfilling and grading; contemporaneous reclamation; post-mining land use). As a practical matter, it is not altogether clear what post-mining land use the areas upon which such facilities are located can functionally or economically serve other than the present industrial use. This being the case, what purpose is served by the application of SMCRA's regulatory scheme. Moreover, to the extent the regulatory scheme compels the removal of the facility or change in land use, this will often conflict with the desire of the landowner over which the operator of the coal preparation plant has no control.

The incongruous nature of SMCRA's application to independent preparation plants is further supported by a textual review of the statutory provisions themselves. At least half of the performance standards in section 515(b) which purportedly apply to "all surface coal mine operations" have no application because they either (1) use the terms "coal mining" or "mine-site"; or (2), have no practical application of off-site coal preparation plants not operated as part of the mine site. See *e.g.*, SMCRA sections 515(b)(1), (2), (3), (4), (5), (6), (7), (8), (9), (12), (15), (16), (19), (22), (25). See also section 515(c), (d), and (e).

Similarly, the permit and reclamation plan requirements which implement the performance standards on a site-specific basis also show an obvious incongruity if applied to independent off-site coal preparation plants. For example, under section 507(b), each application for a surface coal mining operation shall contain:

- Every legal owner of the property to be mined, section 507(b)(1);
- The type and description of the types of method of coal mining section 507(b)(7);
- The anticipated or actual starting and termination dates of each phase of the mining operation, section 507(b)(8);
- A statement of those documents upon which the applicant bases his legal right to enter and commence surface mining operations, section 507(b)(9);
- A determination of the probable hydrologic consequences of the mining and reclamation operations, both on and off the mine site, section 507(b)(11);
- Cross sections, maps showing test borings or core samplings, nature and depth of the various strata of overburden; nature and thickness of any coal or rider seam above the coal seam to be mined; all mineral croplines and the strike and dip of the coal to be mined, section 507(b)(14); and
- Results of test borings or core samplings; analysis of the coal seam to be mined, section 507(b)(15).

Of course, each applicant for a permit must submit a reclamation plan under section 508, and many of these requirements by their own terms apply only to actual coal mining, or have no practical application of off-site independent coal preparation plants;

- Identification of lands subject to mining and the estimated life and the size, sequence, and timing of the subareas for which it is anticipated that individual permits for mining will be sought, section 508(b)(1);
- Uses, capability, and productivity of land prior to mining, section 507(b)(2);
- The use of which is proposed to be made of the land following reclamation; utility and capacity of the reclaimed land, section 507(b)(3);
- Engineering techniques to be used in mining and reclamation; description of major equipment; statement of how permittee plans to comply with each of the requirements set out in section 515, section 507(b)(5);
- Consideration given to maximize the utilization and conservation of the solid fuel resource being recovered so that reaffecting the land in the future can be minimized, section 507(b)(6);
- Detailed estimated timetable for the accomplishment of each major step in the reclamation plan, section 507(b)(7);
- Consideration which has been given to making the "surface mining and reclamation operations consistent with surface owner plans, section 507(b)(8);
- All lands, interest in lands, or options in such interests held by applicant on lands contiguous to the permit, section 507(b)(11);
- Results of test borings, section 507(b)(12); and,
- Measures to be taken during the "mining and reclamation process" to assure protection of surface and ground water from

"adverse effects of the mining and reclamation process," section 508(b)(13).

The textual review of the permitting and performance requirements amply demonstrates the functional incongruity and inapplicability of the Act's standards for "surface coal mining operations" to off-site preparation plants. The only standards that could make sense to apply independently are already covered by a more focused environmental statutes for water quality under the Federal Water Pollution Control Act, 33 U.S.C. 1151 (See e.g., 40 CFR 434.20—EPA water pollution standards for coal preparation plans); and, air quality under the Clean Air Act, 42 U.S.C. 1857 *et seq.*

The logic of the regulatory scheme intended by Congress seems rather clear:

1. The mining of coal by various methods is regulated under the Act, and it includes excavation methods such as contour, strip, auger, mountaintop removal, box-cut, open pit area mining; the use of explosives for such excavation; and other recovery technologies such as in-situ distillation, retorting, leaching, or other chemical or physical processing.

2. Post-extractive activities (*i.e.* cleaning, concentrating, or other processing, preparation, or loading) for the benefiction, handling and loading of coal for market are regulated under SMCRA when they occur as part of the mine site already regulated because of the extraction activities, and it is efficient and appropriate to include them incrementally within the permitting scheme for the mine.

3. When such post-extraction activities do not occur as part of the regulated mine site, the independent application of the SMCRA requirements is ill-suited for these types of industrial activities and should be left to the more focused and appropriate state and federal environmental regulatory mechanisms.

Little logic underlies a regulatory approach which follows from the disassociation of the Act's "at or near the mine site" language from the immediately preceding list of post-extractive activities. No statutory purpose appears to justify regulating the loading of coal for interstate commerce only if it occurs at or near the mine site, while regulating coal cleaning or other preparation for market wherever it occurs.

D. Regulatory Certainty

The issue of the proper scope of regulatory jurisdiction over coal preparation plants located away from the mine site can be characterized as nothing less than chaotic and uncertain. The painful history associated with this issue has been documented in OSM's 1988 final rule on "Coal Preparation Plants Not Located Within the Permit Area of a Mine", 53 Fed. Reg. 47384 (November 22, 1988), and the Secretary's Memorandums of Points and Authorities filed in *NWF* v. *Hodel*, Civ. No. 87–1814 (D.D.C.) and *NWF* v. *Lujan*, Civ. No. 89–0136 (D.D.C.). The highlights of this circuitous regulatory history can be summarized as follows:

- During the initial program the Secretary construed the Act to cover coal preparation plants only if they were operated (1) in connection with a mine, *and* (2) located at or near the mine site. See *Western Engineering, Inc.*, supra, and its progeny.
- The permanent program rules changed this interpretation of the Act by removing the proximity language "at or near" from the consideration of the regulation of certain coal preparation plants. 44 FR 15317 (March 13, 1979).
- The definition of coal preparation plants included only those that engage in the separation of coal from its impurities. 30 CFR 701.5 (1980). While some ambiguity lingered, OSM has later claimed that its jurisdiction could extend to crushing, sizing, and screening of coal when it was considered a "support facility". However, even in the 1979 rules, support facilities were regulated only when "close" to the mine. 44 FR 15095. Thus, even under the permanent program rules, a whole class of coal facilities were only regulated when in "geographical proximity" to the mine the facility was operated in connection with.
- A 1980 proposal suggested for the first time that facilities which did not separate coal from its impurities may be regulated even though they were not located "at or near" the mine site. This proposal also sought to clarify that the phrase "at or near" applied only to the loading of coal. 45 FR 42333 (June 24, 1980). This proposal was never adopted.
- In 1983, OSM promulgated definitions for "coal preparation or coal processing" which retained the distinction of the separation of coal from its impurities. Thus, crushing, screening, and sizing activities were only subject to regulation if conducted in connection with a mine *and* at or near the mine site. 48 FR 20392 (May 5, 1983). See also Ann Lorentz Coal Co. 91 I.D. 108 (1984). These rules also continued the use of a "geographical proximity" consideration to determine the jurisdiction over support facilities under section 701(28)(B).
- The federal district court struck down the definition of coal preparation and processing; affirmed the interpretation of section 701(28)(A) that the phrase "at or near the mine site" applies only to loading of coal; and struck down the consideration of geographical proximity to determine the jurisdiction over support facilities under section 701(28)(B). In Re Permanent Surface Mining Regulation Litigation, 21 ERC 1193 (D.D.C. July 6, 1984).
- The Department adopted an interim final rule which applied the district court 1984 decision prospectively with respect to crushing, sizing, and screening facilities. 50 FR 28180 (July 10, 1985). While a challenge to that rule was pending, the United States Court of Appeals for the District of Columbia Circuit issued its decision reversing the district court's holding on the use of geographical proximity as a consideration in determining the Act's coverage of support facilities, *including* coal preparation plants. The appeals court ruled that the Secretary could reasonably construe section 701(28)(B) as extending regulatory coverage to coal preparation plants, under his rule which embodied a geographical proximity consideration, but expressly declined to rule on the proper interpretation of the "at or near" language in section 701(28)(A). *NWF* v. *Hodel*, 839 F. 2d at 744 (We tend to agree with Industry that reading the "at or near" language as modifying processing is the clearly better interpretation of subsection (A). In any event, it is not a question we need to decide . . .).
- In an attempt to reconcile the court of appeals decision, OSM promulgated rules in 1988 to bring its interpretation in conformance with the only basis the appeals court has upheld the regulation of off-site preparation plants. 53 FR 47384 (Nov. 22, 1988). In the agency's own words:

Because the court [of appeals] affirmed the Secretary's authority to regulate off-site coal processing under section 701(28)(B) of SMCRA, it is appropriate for OSMRE to consider the court's approval of the use of a proximity factor in determining the reach of section 701(28)(B). Hence, OSMRE believes that geographic proximity, as well as the functional relationship between mines and coal preparation plants, are proper factors to be considered by regulatory authorities when identifying off-site preparation plants which operate in connection with a coal mine and therefore are subject to SMCRA. 53 FR at 47386.

- Despite the discretionary nature of the Secretary's authority under section 701(28) as noted in the 1988 *NWF* v. *Hodel* decision, the district court somehow overlooked or misread both the regulatory history and the court of appeals decision on the issue, and remanded the rulemaking for the agency to "clarify that proximity may not be the *decisive* factor in deciding to regulate an off-site processing plant." *NWF* v. *Lujan*, 31 ERC 2034, 2050 (D.C.C. August 30, 1990). The underlying rationale for the court's decision is flawed in at least two fundamental respects: First, the court stated that the court of appeals had upheld the district court's earlier ruling that the Secretary must regulate off-site preparation plants; and, (2) that the court of appeals holding on use of proximity considerations pertained only to support facilities other than preparation plants. An objective reading of the *NWF* v. *Hodel* decision discloses that, in fact, only the opposite conclusions can be gleaned from that decision.
- The most recent proposed rulemaking brings the agency back full circle with the proposed deletion of proximity as a factor. Certainly, no one would have expected the agency to respond to the limited holding of

the district court with a complete elimination of geographical proximity as a consideration in the regulation of off-site preparation plants. This agency response is even more bewildering in view of the recent court of appeals decision which reiterates that its "precedent establishes that section 710(28) **gives the Secretary the *discretion* to regulate** off-site preparation facilities," inasmuch as "the Act permits, but does not require, the Secretary to regulate off-site coal preparation plants." *NWF* v. *Lujan*, 928 F. 2d 453, 462 (D.C. Cir. 1991) (emphasis in original).

To recap the regulatory history, geographical proximity has always been an element in the determination of SMCRA's jurisdiction over off-site preparation plants. First, under the precedent established during the initial program under Western Engineering, Inc. and its progeny; and, later during the permanent program as established by the only binding precedent of the court of appeals in *NWF* v. *Hodel* and *NWF* v. *Lujan*. The current proposal would completely dismiss this history and precedent and embark upon an unchartered regulatory course which regulates coal processing wherever it occurs under a functional test that becomes even more ill-defined in the absence of the proximity factor the court of appeals found necessary to guide a reasonable causation analysis.

In the absence of the limiting principle of geographical proximity, every coal preparation facility which "could be considered 'but for' result of a surface coal mining operation would be subject to SMCRA regulation." *NWF* v. *Hodel* 839 F.2d at 745. Certainly the principles announced in the 1988 rulemaking regarding the "economic relationship with a mine" or "any other type of integration that exists between a facility of a mine" 53 FR at 47386, now appear open-ended in the absence of the limiting principle of geographical proximity. Moreover, these types of principles alone hardly convey the regulatory certainty one requires to plan and perform under SMCRA's requirements for reclamation and post-mining land use. Under these principles alone, the regulatory status of an independent coal preparation facility will change continuously throughout its life depending upon its "economic relationship" with a mine or mines. In other words, under a "functional test" which ignores geographical proximity, a preparation plant which formerly met such a test would, in all probability, no longer meet the economic integration or functional relationship it had before because of changes in circumstances, such as proportion of coal output received from a mine; ownership changes among the mines and/or preparation plants; changes in markets or contracts for coal purchasing or preparation services among different customers. Greater regulatory certainty can only be found in a functional jurisdictional analysis which includes the considerations of the geographical proximity of the coal preparation plant to the specific mine the plant shares the functional relationship or economic integration. In other words, the coal preparation plant is operated both "in connection with" and "at or near the mine site".

To accomplish this objective for providing greater regulatory certainty and conform the regulatory program with the precedents for the initial and permanent regulatory programs, OSM must initiate rulemaking to adopt the "clearly better" and "most natural" reading of Section 701(28)(A) so that the language "at or near the mine site" modifies "cleaning, concentrating, or other processing or preparation, loading of coal for interstate commerce."

Respectfully Submitted,

Harold P. Quinn, Jr.,

Vice President and Counsel, National Coal Association, 1130 17th Street, NW., Washington, DC 20036.

Stuart A. Sanderson,

Senior Counsel, American Mining Congress, 1920 N Street, NW., Washington, DC 20036.

[FR Doc. 91-30181 Filed 12-17-91; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 162

[CGD 85-096]

RIN 2115-AC03

Navigation on Certain Waterways Tributary to the Gulf of Mexico

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: On September 26, 1991, the Coast Guard published a notice of proposed rulemaking (NPRM) that concerns navigation on certain waterways tributary to the Gulf of Mexico (56 FR 48773). The Coast Guard is extending the comment period provided in that notice, to run an added 90 days. The Coast Guard expects that this added time will increase public involvement in the rulemaking.

DATES: The Comment period for the proposed rulemaking is extended to, and comments must be received on or before, March 26, 1992.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA-2, 3406) [CGD 85-096], U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477. Comments will become part of the public docket for this rulemaking and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Mr. Harry C. Robertson, Short Range Aids to Navigation Division (202) 267-0405.

SUPPLEMENTARY INFORMATION: The Coast Guard is extending the comment period for the NPRM that concerns navigation on certain waterways tributary to the Gulf of Mexico. The Coast Guard has received several requests for an extension. There are several local organizations, such as the Lower Mississippi River Waterway Safety Advisory Committee and the Towing Safety Advisory Council, that have meetings scheduled over the winter. Members of some of these organizations would like the opportunity to discuss the NPRM in full session before sending their comments to the docket. Therefore, in recognition of the need for meaningful dialogue and information to assist in completing this rulemaking, the Coast Guard is extending the comment period by 90 days.

To date, the Coast Guard has received few substantive comments. It strongly encourages comments on all aspects of this rulemaking. (In particular, it welcomes any suggestions that may help with the Environmental Assessment.) It strongly encourages all that may be affected by its allowing double-wide tows on the Gulf Intracoastal Waterway as a matter of course to send comments. The spectrum of interests is potentially very broad and includes—as well as maritime towing interests and their insurers—individuals, States, and environmental organizations, among others.

Dated: December 12, 1991.

A. Cattalini,

Acting Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 91-30163 Filed 12-17-91; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[CC Docket No. 91-346, FCC 91-383]

Intelligent Networks

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; notice of inquiry.

SUMMARY: The Commission initiates an inquiry to open public debate on the interrelationship of Open Network Architecture (ONA) with emerging network design. This action will enable the Commission to explore ways in which future local exchange networks can be developed that are as open, responsive, and procompetitive as possible, consistent with other public interest goals, such as ensuring network reliability and integrity and avoiding the imposition of uneconomic costs. The Commission also denies a petition for investigation filed by the Coalition of Open Network Parties (CONAP), except to the extent provided in the Notice of Inquiry.

DATES: Comments must be filed by February 18, 1992. Reply comments are due by March 23, 1992.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Marian R. Gordon, Policy and Program Planning, Common Carrier Bureau, (202) 632-4047.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Inquiry (FCC 91-383), adopted November 21, 1991, and released December 6, 1991. The full text of this Commission item is available for inspection and copying during normal business hours in the FCC's Docket Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1114 21st Street, NW., Washington, DC 20036.

Summary of Notice of Inquiry

1. The Notice of Inquiry, adopted November 21, 1991, seeks comment on the ways in which future local exchange networks can be developed that are as open, responsive, and procompetitive as possible, consistent with the Commission's other public interest goals, such as ensuring network reliability and integrity and avoiding the imposition of uneconomic costs. The Notice also seeks comment on the appropriate role of regulation in this process.

2. The Notice denies a petition filed by the Coalition of Open Network Architecture Parties (CONAP), except to the extent provided for in the Notice. CONAP petitioned the Commission to investigate, pursuant to section 218 of the Communications Act, the Bell Operating Companies' (BOCs') switching deployment plans in order to assure that the network of the future will be "modular and transparent."

3. The Notice does not restrict the scope of this proceeding, at this stage, to the BOCs. Instead, in the interest of a complete record, the Commission will consider network development issues with respect to all Tier 1 local exchange carriers.

4. The Notice seeks comment on the meaning of modularity in terms of specific network design and the benefits it could confer. Specifically, it seeks comment on: (1) The functions that a modular network could perform; (2) the nature of the various building blocks or modules that make up the system architecture; (3) the manner in which network users could access the system; (4) the approximate costs of developing the system modules; and (5) how network users could monitor and test the system in real time. To the extent feasible, the Notice also seeks comment on possible services that cannot now be obtained, or obtained efficiently, with current network architecture.

5. The Notice seeks comment on whether the potential benefits of increased access by network users in a modular architecture outweigh any costs to the reliability and integrity of the network.

6. The Notice seeks comment on whether Advanced Intelligent Network (AIN), a network architecture that the BOCs are currently evaluating for possible deployment in the 1990's or any other future architecture, should be implemented in a way that provides network users with significantly greater access to the network than currently allowed.

Ordering Clause

7. Pursuant to section 1, 4 (i) and (j), 201-205, 218, and 403 of the Communications Act as amended, 47 U.S.C. 151, 154 (i) and (j), 201-205, 218, and 403, the Commission initiates this inquiry.

8. *It Is Further Ordered That* the Petition for Investigation filed by CONAP is *Denied* Except as provided herein.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-30154 Filed 12-17-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-347]

Processing Procedures for Commercial FM Broadcast Applications

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposed to liberalize its rules governing the acceptance and amendment of applications of construct new commercial FM broadcast stations and requests public comment on this proposal. The intended effect of this proposal is to provide commercial FM applicants (who currently have a very limited opportunity to amend defective applications) with a greater opportunity to correct inadvertent errors. Consideration of this rule change is prompted by recent changes in the quality and quantity of commercial FM applications received, and by a decreased need for acceptance criteria to service as a deterrent to speculation.

DATES: Comments must be filed on or before February 3, 1992 and reply comments must be filed on or before March 2, 1992. Comments to the Initial Regulatory Flexibility Analysis must have a separate and distinct heading designating them as such.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Irene Bleiweiss, Audio Services Division, Mass Media Bureau (202) 632-6485.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's notice of proposed rule making, MM Docket No. 91-347, adopted on November 21, 1991 and released December 12, 1991. The full text of the notice of proposed rule making is available for inspection and copying during normal business hours in the FCC Media Bureau, Audio Services Division (room 302) 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's copy contractor, Downtown Copy Center, 114 21st Street, NW., Washington, DC 20037, (202) 452-1422.

Summary of Notice of Proposed Rule Making

1. The Commission initiates this proceeding, on its own motion, to reexamine the rules concerning the acceptance and amendment of applications to construct commercial FM radio stations. Since 1985, the Commission's staff has processed these applications using strict approach known as the "hard look." Under this approach, applicants have only an extremely limited opportunity to correct defects in their applications. The notice of proposed rule making acknowledges recent changes in the quality and quantity of commercial FM applications, and determines that somewhat more lenient corrective amendment standards may now be possible without unduly increasing the burden on the Commission's processing staff. The Commission seeks comment on this tentative conclusion and on several possible alternative processing systems.

2. Under each of the alternatives discussed in the Notice, the Commission would continue to apply current "hard look" tender and acceptability criteria to commercial FM applications. However, in cases where tender and/or acceptability information is missing or defective, applicants would have a new limited opportunity to correct the defect(s). Among the procedures considered to effectuate this change are the processing approach currently used on the TV service, the existing approach in the AM service, and two hybrids of the TV and AM approaches tailored to the higher volume of FM applications received. The Commission proposes to adopt a hybrid approach giving commercial FM applicants one opportunity to correct tender and acceptability defects. Applicants would be required to use this one opportunity to correct all tender and acceptability defects including any that, for whatever reasons, the Commission may not have identified. Applicants not correcting all tender and acceptability defects within this limited opportunity would be dismissed with no further opportunity for corrective amendment. The Commission proposes to apply this approach to all commercial FM applications received after the effective date of any final rules adopted, with no retroactive effect. The Notice also discusses and seeks comment on the effect of the proposal on modification applications and waiver requests, the establishment of minimum filing requirements, and policies concerning uncorrectable defects.

Initial Regulatory Flexibility Analysis

Pursuant to the requirements of the Regulatory Flexibility Act of 1980, the Commission finds as follows:

Reason for Action

The Commission is initiating this rule making proceeding to consider whether to make its rules more liberal with respect to the acceptance and amendment of defective applications to construct commercial FM facilities. Consideration of this rule change is prompted by recent changes in the quality and quantity of these applications.

Objectives

The Commission seeks public comments on its tentative conclusion that the strict "hard look" processing procedures are no longer necessary and on proposals to institute a processing approach that is more forgiving of errors in commercial FM applications.

Legal Basis

The proposed action is authorized under sections 4(i), 4(j), 301, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 301, and 303(r).

Reporting, Recordkeeping and Other Compliance Requirements

No new requirements.

Federal Rules Which Overlap, Duplicate, or Conflict With This Rule

None.

Description, Potential Impact, and Number of Small Entities Involved

The Commission believes that adoption of the proposals set forth in this Notice would benefit small entities interested in acquiring new FM commercial broadcast licenses and small entities already licensed for commercial FM facilities who wish to modify their current authorizations. The proposal would allow such applicants a limited opportunity to amend defective applications to correct inadvertent errors. Currently, these same errors would be unamendable and would result in dismissal of the application. The proposal would result in a small increase in processing time, pending the amendment of defective applications.

Any Significant Alternatives Minimizing the Impact on Small Entities and Consistent With the Stated Objectives

The Notice solicits comments on a variety of alternatives.

List of Subjects in 47 CFR Part 73

FM broadcast stations, Radio broadcasting, Amendment and acceptance of applications.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-30155 Filed 12-17-91; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 56, No. 243
Wednesday, December 18, 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

Rural Electrification Administration

Brunswick Electric Membership Corp.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Finding of No Significant Impact related to a proposed headquarters and operations facility in Brunswick County, North Carolina.

SUMMARY: Notice is hereby given that the Rural Electrification Administration has prepared an Environmental Assessment and made a Finding of No Significant Impact with respect to construction of a new headquarters and operations facility in Brunswick County, North Carolina. The finding is made pursuant to the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations (40 CFR parts 1500–1508) and the Rural Electrification Administration Environmental Policies and Procedures, 7 CFR part 1794. Brunswick Electric Membership Corporation has requested financing assistance and project approval from the Rural Electrification Administration to construct the project.

FOR FURTHER INFORMATION CONTACT: Robert M. Quiegel, Environmental Protection Specialist, Environmental Services Branch, Electric Staff Division, Room 1246, South Agriculture Building, Rural Electrification Administration, Washington, DC 20250, telephone (202) 720–0468.

SUPPLEMENTARY INFORMATION: Brunswick Electric Membership Corporation plans to locate the proposed headquarters and operations facility along U.S. Highway 17 approximately 2 miles southwest of Supply, North Carolina. The facility to be constructed consists of the following:

A 30,000 square foot headquarters office,
A 12,500 square foot operations building,
A 24,000 square foot warehouse,
A 4,000 square foot garage/maintenance building,
A fuel service island with pumps for diesel fuel and gasoline,
Two above-ground fuel storage tanks with a maximum capacity of 6,000 gallons each (one diesel and one gasoline),
A 250 foot, self-supporting, lattice type radio tower,
A pole storage yard and,
Parking spaces for approximately 100 cars and 30 trucks.

Alternatives considered to constructing the project as proposed were no action and remodeling the Brunswick Electric Membership Corporation's existing headquarters facility.

REA has determined that the proposed project is needed because Brunswick Electric Membership Corporation's existing headquarters facility does not have sufficient space to accommodate employees, customers, service equipment, material storage and maintenance operations.

Copies of the Environmental Assessment and Finding of No Significant Impact are available for review at, or can be obtained from, the Rural Electrification Administration at the address provided herein or from Brunswick Electric Membership Corporation, P.O. Box 826, Shallotte, North Carolina 28459.

Dated: December 10, 1991.

George E. Pratt,

Deputy Administrator—Program Operations, Rural Electrification Administration.

[FR Doc. 91–30141 filed 12–17–91; 8:45 am]

BILLING CODE 3410–15–M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.
Title: Survey of Income and Program Participation – 1992 Panel Wave 2.
Form Number(s): SIPP–12200, SIPP–12205.
Agency Approval Number: 0607–0723.
Type of Request: Revision of a currently approved collection.
Burden: 42,000.
Number of Respondents: 42,000.
Avg Hours Per Response: 1/2 hour.
Needs and Uses: The Survey of Income and Program Participation (SIPP) is designed as a continuing series of national panels of interviewed households which are introduced annually with each panel having a duration of about 2 1/2 years in the survey. The survey is molded around a central "core" of labor force and income questions that will remain fixed throughout the life of a panel. The core is periodically supplemented with questions designed to answer specific needs. These supplemental questions are included with the core and are referred to as "topical modules." The topical modules for the 1992 Panel Wave 2 collectively are called the "Personal History" topical module. The individual components are (1) Work Disability History, (2) Education and Training History, (3) Marital History, (4) Migration History, (5) Fertility History, and (6) Household Relationships. Wave 2 interviews will be conducted from June–September 1992.

Affected Public: Individuals or households.
Frequency: Once during the panel.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Maria Gonzalez, 395–7313.

Agency: Bureau of the Census.
Title: Survey of Income and Program Participation – 1991 Panel Wave 5.
Form Number(s): SIPP–11500, SIPP–11503, SIPP–11505.
Agency Approval Number: 0607–0702.
Type of Request: Revision of a currently approved collection.
Burden: 44,100.
Number of Respondents: 29,400.
Avg Hours Per Response: 1/2 hour.
Needs and Uses: The Survey of Income and Program Participation (SIPP) is designed as a continuing series of national panels of interviewed households which are introduced annually with each panel having a duration of about 2 1/2 years in the survey. The survey is molded around a central "core" of labor force and income questions that will remain fixed throughout the life of a panel. The core is periodically supplemented with questions designed to answer specific needs. These supplemental questions are included with the core and are referred to as "topical modules." The topical modules for the 1991 Panel Wave 5, collectively called the "Annual Round–up," are identical to the topical

modules for the 1990 Panel Wave 8. The individual components are (1) Annual Income and Retirement Accounts, (2) Taxes, and (3) School Enrollment and Financing. Wave 5 interviews will be conducted from June–September 1992.

Affected Public: Individuals or households.

Frequency: Twice during the panel.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, 395–7313.

Copies of the above information collection proposals can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: December 12, 1991

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 91–30204 Filed 12–17–91; 8:45 am]

BILLING CODE 3510–07–F

International Trade Administration

[A–614–801]

Postponement of Final Antidumping Duty Determination and Rescheduling of Public Hearing: Fresh Kiwifruit From New Zealand

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice.

EFFECTIVE DATE: December 18, 1991.

FOR FURTHER INFORMATION CONTACT: Erik Warga, 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) 377–8922.

POSTPONEMENT OF FINAL DETERMINATION: On November 27, 1991, the New Zealand Kiwifruit Marketing Board, the respondent in this proceeding, accounting for all exports of kiwifruit from New Zealand to the United States, requested that the Department postpone the final determination until not later than 135 days after the date of publication of the preliminary determination, in accordance with section 735(a)(2) of the Tariff Act of 1930, as amended (the Act). Pursuant to 19 CFR 353.20(b), if exporters who account for a significant proportion of exports of the merchandise under investigation request an extension subsequent to an affirmative preliminary determination, we are required, absent compelling reasons to the contrary, to grant the request. Accordingly, we are postponing our final determination as to whether sales of fresh kiwifruit from New Zealand have been made at less than fair value until not later than April 10, 1992.

Public Comment.

We are rescheduling the public hearing announced in the Preliminary Determination of Sales at Less Than Fair Value: Fresh Kiwifruit From New Zealand 56 FR 60092, (November 27, 1991) to March 10, 1992, at 10: a.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours prior to the scheduled time. In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must now be submitted to the Assistant Secretary no later than March 3, 1992, and rebuttal briefs not later than March 6, 1992. Oral presentations will be limited to issues raised in the briefs in accordance with 19 CFR 353.38(b)

This notice is published pursuant to section 735(d) of the Act and 19 CFR 353.20(b)(2).

Dated: December 11, 1991.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 91–30205 Filed 12–17–91; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Depleted and Endangered and Threatened Species: Petitions To Designate Northern Offshore Spotted Dolphins and Depleted Under the Marine Mammal Protection Act and as Threatened Under the Endangered Species Act

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

ACTION: Notice of receipt of petitions.

DATES: Comments and information must be received by January 17, 1992.

ADDRESSES: Comments should be addressed to Dr. Nancy Foster, Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Michael Payne (301–427–2322) or Dr. Aleta A. Hohn (301–427–2289), Office of Protected Resources, NMFS.

SUPPLEMENTARY INFORMATION:

Background

The Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361–1407) contains provisions for interested parties to petition for a species or stock to be listed as "depleted" (16 U.S.C. 1383b and 5 U.S.C. 553(e)). Section 4 of the Endangered Species Act (ESA) (16 U.S.C. 1531–1543) and 50 CFR part 424 contain provisions allowing interested parties to petition for a species or stock to be listed as threatened or endangered. If a petition presents substantial information, a review is conducted to determine if a species should be designated as depleted (MMPA) or listed as endangered or threatened (ESA). Determinations are made based on the best available scientific data.

Petitions Received

On October 29, 1991, Environmental Solutions International and Greenpeace U.S.A. petitioned NMFS to list the northern offshore spotted dolphin (*Stenella attenuata*) as a "depleted" species or stock under the MMPA. On October 31, 1991, the Center for Marine Conservation petitioned NMFS to list the northern offshore spotted dolphin as a "threatened" species under the Endangered Species Act.

Presentation of Substantial Information

NMFS has determined that each of these petitions presents substantial information indicating that the petitioned action may be warranted. A copy of the information submitted with the petitions is available upon request from the above **ADDRESSES.**

Information Solicited

NMFS believes there is sufficient information for consideration of listing of the northern offshore spotted dolphin as depleted under the MMPA. NMFS will evaluate the merits of listing northern offshore spotted dolphins as threatened or endangered under the ESA. NMFS is soliciting information and comments concerning the petitions to ensure that the review is complete and is based on the best available information. We request that the information and comments be accompanied by (1) supporting documentation such as biological references or reprints of pertinent

publications and (2) the person's name, address and association, institution, or business that the person represents.

Dated: December 6, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 91-30113 Filed 12-17-91; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Soliciting Public Comment on Bilateral Negotiations During 1992

December 12, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Announcement.

SUPPLEMENTARY INFORMATION:

The U.S. Government anticipates holding negotiations during 1992 concerning expiring bilateral agreements covering certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and apparel from Argentina (March 31, 1992), Brazil (March 31, 1992), Costa Rica (May 31, 1992), Dominican Republic (May 31, 1992), El Salvador (December 31, 1992), Fiji (December 31, 1992), Guatemala (December 31, 1992), Indonesia (June 30, 1992), Jamaica (December 31, 1992), Malaysia (December 31, 1992), Mauritius (September 30, 1992), Nigeria (December 31, 1992), Soviet Union (December 31, 1992), Sri Lanka (June 30, 1992), Uruguay (June 30, 1992) and Yugoslavia (December 31, 1992). (The dates noted in parenthesis are the expiration dates of the agreements.)

Anyone who wishes to comment or provide data or information regarding these agreements, or to comment on domestic production or availability of textiles and apparel affected by these agreements, is invited to submit such comments or information in 10 copies to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC, 20230; ATTN: Helen L. LeGrande.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC. Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreements or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.91-30144 Filed 12-17-91; 8:45 am]

BILLING CODE 3510-DR-F

Amendment and Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

December 12, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending and adjusting limits.

EFFECTIVE DATE: December 19, 1991.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6498. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The United States Government agreed to increase the designated consultation levels for Categories 219, 317, 350, 659 and 666. In addition, the current limits for certain categories are being adjusted, variously, for swing, carryover and recrediting of carryforward previously applied.

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 53322, published on December 28, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 12, 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 24, 1990, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1991 and extends through December 31, 1991.

Effective on December 19, 1991, you are directed to amend further the directive dated December 24, 1990, to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Pakistan:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
226/313	80,429,159 square meters.
335	45,900 dozen.
336	183,845 dozen.
340	196,715 dozen.
342	99,038 dozen.
347/348	442,608 dozen.
352	280,511 dozen.
359-C [2]	529,640 kilograms.
361	2,203,933 numbers.
613/614	9,271,402 square meters.
615	14,187,864 square meters.
636	82,163 dozen.
641	108,350 dozen.
647/648	507,636 dozen.
Sublevels in Group II	
317	5,518,440 square meters.
350	27,500 dozen.
Levels in Group III	
219	4,500,000 square meters.
659	144,600 kilograms.
666	1,400,000 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1990.

[2] Category 359-C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

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. 91-30143 Filed 12-17-91; 8:45 am]

BILLING CODE 3510-DR-F

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade Proposed Option Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures option contract.

SUMMARY: The Chicago Board of Trade (CBT or Exchange) has applied for designation as a contract market in options on homeowners futures. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before January 17, 1992.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the CBT homeowners insurance option contract.

FOR FURTHER INFORMATION CONTACT: Please contact Steve Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone 202-254-7303.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions of the proposed contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the CBT in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the terms and conditions of the proposed contract, or with respect to other materials submitted by the CBT in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on December 12, 1991.

Gerald Gay,

Director.

[FR Doc. 91-30157 Filed 12-17-91; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Special Operations Policy Advisory Group; Meeting

The Special Operations Policy Advisory Group (SOPAG) will meet on 16 January 1992 in the Pentagon, Arlington, Virginia to discuss sensitive, classified topics.

The mission of the SOPAG is to advise the Office of the Secretary of Defense on key policy issues related to the development and maintenance of effective Special Operations and Low-Intensity Conflict forces.

In accordance with section 10(d) of Public Law 92-463, the "Federal Advisory Committee Act," and section 552b(c)(1) of title 5, United States Code, this meeting will be closed to the public.

Dated: December 11, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-30158 Filed 12-17-91; 8:45 am]

BILLING CODE 3810-01-M

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, January 7, 1992; Tuesday, January 14, 1992; Tuesday, January 21, 1992; and Tuesday, January 28, 1992, at 10 a.m. in Room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Public Law 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Public Law 92-463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency" (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552bx.c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy/Equal Opportunity) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, DC 20301.

Dated: December 13, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-30159 Filed 12-17-91; 8:45 am]

BILLING CODE 3810-01-M

Defense Logistics Agency

Privacy Act of 1974; Computer Matching Program Between the Railroad Retirement Board and the Defense Manpower Data Center of the Department of Defense

AGENCY: Defense Manpower Data Center, Defense Logistics Agency, Department of Defense.

ACTION: Notice of a computer matching program between the Railroad Retirement Board (RRB) and the Defense Manpower Data Center (DMDC) of the Department of Defense (DoD) for public comment.

SUMMARY: DMDC, as the matching agency under the Privacy Act of 1974, as amended, (5 U.S.C. 552a), is hereby giving constructive notice in lieu of direct notice to the record subjects of a computer matching program between RRB and DMDC that their records are being matched by computer. The record subjects are delinquent debtors of the RRB who are current or former Federal employees receiving Federal salary or benefit payments and indebted and delinquent in their payment of debts owed to the United States Government under certain programs administered by RRB so as to permit RRB to pursue and collect the debt by voluntary repayment or by administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982.

DATES: This proposed action will become effective January 17, 1992, and the computer matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget or Congress objects thereto. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, 400 Army Navy Drive, room 205, Arlington VA 22202–2884. Telephone (703) 614–3027.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), RRB and DMDC have concluded an agreement to conduct a computer matching program between the agencies. The purpose of the match is to assist RRB in identifying and locating those delinquent debtors employed in another Federal agency, including retirees receiving a Federal benefit. RRB will use this information to initiate independent collection of these debts under the Debt Collection Act of 1982 when voluntary payment is not forthcoming or by administrative or salary offset procedures until the obligation is paid in full. These collection efforts will include requests by RRB of the employing agency to apply administrative and/or salary offset procedures until such time as the obligation is paid in full. The parties to this agreement have determined that a computer matching program is the most efficient, effective and expeditious method for accomplishing this task with the least amount of intrusion of personal privacy of the individuals concerned. It was therefore concluded and agreed upon that computer matching would be the best and least obtrusive manner and choice for accomplishing this requirement.

A copy of the computer matching agreement between RRB and DMDC is available upon request to the public. Requests should be submitted to the address caption above or to the Railroad Retirement Board, 844 Rush Street, room 500, Chicago, IL 60611.

Set forth below is a notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on Computer Matching published in the **Federal Register** at 54 FR 25818 on June 19, 1989.

The matching agreement as required by 5 U.S.C. 552a(r) and an advance copy of this notice was submitted on December 6, 1991, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4b of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records about Individuals," Dated December 12, 1985 (50 FR 52738, December 24, 1985). This matching program is subject to review by OMB and Congress and shall not become effective until that review period has elapsed.

Dated: December 13, 1991.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Computer Matching Program Between the Railroad Retirement Board and the Defense Manpower Data Center of the Department of Defense for Debt Collection

A. *Participating agencies:* Participants in this computer matching program are the Railroad Retirement Board (RRB) and the Defense Manpower Data Center (DMDC) of the Department of Defense (DoD). RRB is the source agency, i.e., the agency disclosing the records for the purpose of the match. DMDC is the specific recipient of matching agency, i.e., the agency that actually performs the computer matching.

B. *Purpose of the match:* The propose of the match is to identity and locate delinquent debtors who are current or former Federal employees receiving any Federal salary or benefit payments and indebted and delinquent in their repayment of debts owned to the United States Government under certain programs administered by RRB so as to permit RRB to pursue and collect the debt by voluntary repayments or by administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982.

C. *Authority conducting the match:* The legal authority for conducting the matching program is contained in the Debt Collection Act of 1982 (Pub. L. 97–365), 31 U.S.C. chapter 37, subchapter I (General) and subchapter II (Claims of the United States Government), 31 U.S.C. 3711 Collection and Compromise, 31 U.S.C. 3716–3718 Administrative Offset, 5 U.S.C. 5514 Installment Deduction for Indebtedness (Salary Offset); 10 U.S.C. 136, Assistant Secretaries of Defense, Appointment Powers and Duties Section 206 of Executive order 11222; 4 CFR chapter II, Federal Claims Collection Standards (General Accounting Office–Department of Justice); 5 CFR 550.1101–550.1108 Collection by Offset from Indebted Government Employees (OPM); 20 CFR part 361 Recovery of Debts Owed the United States Government by Employees (RRB); and 20 CFR part 367 Recovery of Debts Owed to the Railroad Retirement Board from other Government Agencies (RRB).

D. *Records to be matched:* The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows:

1. This match will involve the RRB record system identified as RRB–42, "Uncollectible Benefit Overpayment Accounts", last published in the **Federal Register** at 49 FR 7900 on March 3, 1984, and amended at 56 FR 47502 on September 19, 1991. The RRB file contains information on approximately 5000 debtors.

2. The DoD will use the system of records identified as S322.11 DLA–LZ, "Federal Creditor Agency Debt Collection Data Base", last published in the **Federal Register** at 52 FR 37495 on October 7, 1987. The DMDC file contains

information on approximately ten million active duty, retired, and Reserve military members, current and former Federal civilian employees.

3. Both record systems contain appropriate routine use disclosure provisions required by the Privacy Act permitting the disclosure of the affected personal information between the RRB and the DoD. The routine uses are compatible with the purposes for which the information was collected and maintained. Moreover, there will be a disclosure accounting maintained by DMDC for any disclosures from the S322.11 DLA–LZ record system.

E. *Description of computer matching program:* RRB, as the source agency, will provide DMDC with a magnetic tape of individuals who are indebted to the RRB. The tape will contain data elements on individual debtors. DMDC, as the recipient agency, will perform a computer match using all nine digits of the SSN of the RRB file against a DMDC computer data base. Matching records, "hits" based on the SSN, will produce the member's name, service or agency, category of employee, salary or benefit amounts, and current work or home address. Matching records will be returned to RRB. RRB will be responsible for verifying the information and for resolving any discrepancies or inconsistencies on an individual basis. RRB will be responsible for making the final determinations as to positive identification, amount of indebtedness, and recovery efforts as a result of the match. If the debtor is employed by another Federal agency, a request for salary or administrative offset is issued to the employing agency.

F. *Individual notice and opportunity to contest:* It will be the responsibility of RRB to verify and determine whether the data from the DMDC match are consistent with the data from the RRB debtor file, and to resolve any discrepancies or inconsistencies as to positive identification. RRB will screen the initial data to verify that the matched individual is in fact a delinquent debtor not in a repay status. RRB will do this by manually comparing the hit file with the RRB debtor files to verify debtor identity; conducting independent inquiries when necessary to resolve questionable identities; and reviewing records of the suspected debtor's account to confirm that the debt is still in a non-pay status without resolution. Any discrepancies or inconsistencies furnished by DMDC, or developed as the result of the match, such as amount of indebtedness or salaries of hits will be independently investigated and verified by RRB prior to any final adverse action being taken against the individual by RRB. There will be no adverse action taken based on raw hits. Raw hit data will be manually reviewed to ensure the individuals identified are eligible for salary offset.

The debtor is given an opportunity to enter into a voluntary agreement to repay the debt under terms agreeable to RRB. The debtor is given an opportunity to inspect and copy records related to the debt and for review of the decision related to the debt. Requests for copies of the records relating to the debt shall be made no later than 10 days from the receipt by the debtor of the notice of indebtedness.

The debtor is entitled to a 30 day written notification informing the debtor of the circumstances under which the debt occurred, the amount owed, the intent to collect by deduction from pay if the amount owed is not paid in full, and an explanation of other rights of the debtor under the law.

The debtor is also entitled to an opportunity for a hearing concerning the existence or the amount of the debt, or when a repayment schedule is established other than by written agreement concerning the terms of the repayment schedule. The debtor shall be advised that a challenge to either the existence of the debt, the amount of the debt, or the repayment schedule, must be made within 30 days of receipt by the debtor of the notice of indebtedness or within 45 days after receipt of the records relating to the debt, if such records are requested by the debtor.

G. *Inclusive dates of the matching program:* This computer matching program is subject to review by the Office of Management and Budget and Congress. If no objections are raised by either and the mandatory 30 days public notice period for comment has expired for this **Federal Register** notice with no significant adverse public comments in receipt resulting in a contrary determination, then this computer matching program becomes effective and the respective agencies may begin the exchange of data 30 days after the date of this published notice at a mutually agreeable time and may be repeated no more than once a year. Under no circumstances shall the matching program be implemented before this 30 day public notice period for comment has elapsed as this time period cannot be waived. By agreement between RRB and DMDC, the matching program will be in effect and continue for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

H. *Address for receipt of Public comments or inquiries:* Director, Defense Privacy Office, 400 Army Navy Drive, room 205, Arlington, VA 22202–2884. Telephone (703) 614–3027.

[FR Doc. 91–30160 Filed 12–17–91; 8:45 am]
BILLING CODE 3810–01

Department of the Army

AMCCOM Advance Planning Briefing for Industry

AGENCY: U.S. Army Armament, Munitions, and Chemical Command, (AMCCOM), DoD.

ACTION: Notice of AMCCOM Advance Planning Briefing for Industry (APBI).

SUMMARY: Effective immediately, as a result of Army Materiel Command direction and in accordance with FAR 5.4 and DFARS 205.4, the Advance Planning Briefing for Industry (APBI) system has been established at AMCCOM. This system, which is designed to assure maximum industry access to advance planning information on a fair and equal basis and within the context of procurement integrity, provides 5-year projected requirements for AMCCOM ammunition, weapons, and chemical items, as well as 1-year projected requirements for AMCCOM spare parts. In addition the system contains a listing of upcoming conferences which industry may attend, and various publications which are available for informational purposes.

EFFECTIVE DATE: December 18, 1991.

FOR FURTHER INFORMATION CONTACT: Garry Eichorn, HQ, AMCCOM, ATTN: AMSMC–PPA/APBI, Rock Island, IL 61299–6000, (309) 782–8378/8409 or DSN 793–8378/8409.

SUPPLEMENTARY INFORMATION:

Access to the APBI system may be accomplished through a 1200 Baud modem to phone number (309) 782–7648, which will establish a connection to 1 of 5 APBI access lines. Depress the "enter" key until the "login:" prompt appears on the screen, enter "apbi" in lower case letters, depress the "enter" key again, and a series of survey questions will appear. Answer the survey questions, entering data by depressing the "enter" key. After all the survey questions have been answered, the opening screen to the system will appear. Simply follow the menu instructions for access to the information desired. In addition, two direct terminals have been placed in the reception area located on the 2nd floor.

southeast corner of building 350 at the Rock Island Arsenal. Follow the instructions noted above, beginning with the "login" prompt and access will be established.

The information in the system is the most accurate available as of the date notated within the system by each specific category. Please note that updates will be performed periodically and without prior notice. The use of the information within the system is at the customer's own risk. The APBI system is for informational purposes only; the data contained therein does not represent a current solicitation by the Government. The Government is not, and will not, be liable for any actions taken by contractors based on the information provided in the system.

The program is designed to limit individual inquiries to 30 minutes each. Upon expiration of the 30 minute timeframe, customers will be aborted from the system. Should additional time be desired, separate inquiry must be made.

Kenneth L. Denton,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 91-30326 Filed 12-17-91; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Planning and Steering Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory CommitteeAct (5 U.S.C. app. 2), notice is hereby given that the Planning and Steering Advisory Committee will meet January 6, 1992 from 0900 to 1530, at the Center for Naval Analyses, 4401 Ford Avenue, Alexandria, Virginia. This session will be closed to the public.

The purposes of this meeting is to discuss topics relevant to SSBN security. The entire agenda will consist of classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that all sessions of the meeting shall be closed to the public because they concern matters listed in 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: LT J. E. Williams (OP-213E), Pentagon, room 4D534, Washington, DC 20350, Telephone Number: (703) 697-8887.

Dated: December 10, 1991.

Wayne T. Baucino,

Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 91-30180 Filed 12-17-91; 8:45 am]

BILLING CODE 3810-AE-F

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ES92-19-000, et al.]

Citizens Utilities Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Citizens Utilities Co.

[Docket No. ES92-19-000]

December 9, 1991.

Take notice that on December 2, 1991, Citizens Utilities Company filed an application with the Federal Energy Regulatory Commission under section 204 of the Federal Power Act requesting authority to issue not more than $250 million of promissory notes on or before January 16, 1994, with a final maturity date no later than January 16, 1995.

Comment date: December 31, 1991, in accordance with Standard Paragraph E at the end of this notice.

2. Century Power Corp.

[Docket No. FA88-8-004]

December 10, 1991.

Take notice that on December 4, 1991, Century Power Corporation (Century) tendered for filing a Notice of Cancellation of FERC Rate Schedule No. 3, and Supplement Nos. 1, 2 and 3. Century requests an effective date of December 26, 1986.

Comment date: December 24, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. Acme Power Co.

[Docket No. QF92-28-000]

December 9, 1991.

On December 3, 1991, Acme Power Company (Applicant), of 165 Acme Road, Acme/Ranchester, Wyoming 82839, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Acme, Wyoming, and will include two combustion turbine generators, a heat recovery steam generator, five steam turbine generators, three flash desulphurization gasification units and associated power generating equipment. The electric power production capacity of the facility will be 80 MW. The primary fuel will be waste coal. Construction of the facility will begin on or before July, 1993.

Comment date: 30 days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

4. Pacific Gas and Electric Co.

[Docket No. ER92-147-000]

December 10, 1991.

Take notice that on December 9, 1991, Pacific Gas and Electric Company (PG&E) tendered for filing an amendment to the agreement dated October 4, 1991 between PG&E and Puget Sound Power & Light Company (Puget) for the seasonal exchange of capacity and associated energy ("the Exchange Agreement"). The Exchange Agreement was initially filed on November 1, 1991 in this docket and interventions or protests were due by November 22, 1991. None were filed. The amendment to the Exchange Agreement revises the provision dealing with the regulatory and contractual consequences of termination of that agreement. Copies of this filing have been served upon Puget, Bonneville Power Administration and the California Public Utilities Commission.

Comment date: December 20, 1991, in accordance with Standard Paragraph E at the end of this notice.

5. Public Service Company of New Hampshire

[Docket Nos. ER91-143-006 and EL91-15-006]

December 10, 1991.

Take notice that on November 20, 1991, Public Service Company of New Hampshire tendered for filing its refund report in compliance with the Commission's order issued October 21, 1991 in the above dockets.

Comment date: December 24, 1991, in accordance with Standard Paragraph E at the end of this notice.

6. Cleveland Electric Illuminating Co.

[Docket No. ER92-208-000]

December 10, 1991.

Take notice that on November 26, 1991, Cleveland Electric Illuminating Company tendered for filing copies of CAPCO Basic Operating Agreement as amended October 1, 1991 to replace without interruption the CAPCO Basic Operating Agreement dated as of September 1, 1980.

Comment date: December 24, 1991, in accordance with Standard Paragraph E at the end of this notice.

7. Southern Co. Services, Inc.

[Docket No. ER92-187-000]

December 10, 1991.

Take notice that on November 15, 1991, Southern Company, Services, Inc. (SCS), acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (Southern Companies) tendered for filing Amendment No. 1 to the Transition Energy Agreement between Jacksonville Electric Authority, Southern Companies and SCS dated October 15, 1991, and Amendment No. 1 to the Transition Energy Agreement between Florida Power & Light Company, Southern Companies and SCS dated October 16, 1991. SCS also filed, on behalf of Georgia Power Company, Amendment No. 1 to the Plant Robert W. Scherer Unit Number Four Transmission Service Agreement between Jacksonville Electric Authority, Georgia Power Company and SCS dated October 15, 1991. The amendments revise the billing and payment provisions of the referenced agreements to conform to existing practice under other agreements among the parties. Southern Companies request that the Amendments be allowed to become effective on February 1, 1992.

Comment date: December 23, 1991 in accordance with Standard Paragraph E at the end of this notice.

8. Tampa Electric Co.

[Docket No. ER92-213-000]

December 10, 1991.

Take notice that on December 2, 1991, Tampa Electric Company (Tampa Electric) tendered for filing a Letter of Commitment providing for negotiated sales of available power by Tampa Electric to the Utility Board of the City of Key West, Florida (Key West). Tampa Electric states that the Letter of Commitment is submitted as a supplement to Service Schedule J (Negotiated Interchange Service) under the existing agreement for interchange service between Tampa Electric and Key West.

Tampa Electric proposes an effective date of December 4, 1991, for the Letter of Commitment, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Key West and the Florida Public Service Commission.

Comment date: December 24, 1991, in accordance with Standard Paragraph E end of this notice.

9. Brush Cogeneration Partners

[Docket No. QF89-7-001]

December 11, 1991.

On December 10, 1991, Brush Cogeneration Partners tendered for filing an amendment to its filing in this docket.

The amendment provides additional information pertaining primarily to the technical data and the ownership structure of the cogeneration facility.

Comment date: December 20, 1991, in accordance with Standard Paragraph E at the end of this notice.

10. Southern Co. Service, Inc.

[Docket No. ER92-153-000]

December 11, 1991.

Take notice that on December 9, 1991, Southern Company Service, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company, tendered for filing supplemental information in connection with Amendment No. 2 dated October 31, 1991 to The Southern Company System Intercompany Interchange Contract and Allocation Methodology and Periodic Rate Computation Manual ("Manual").

Southern Companies are proposing to revise the Intercompany Interchange Contract and the Manual to simplify the procedure for determining capacity purchases from and sales to the pool, as well as the methodologies used to determine the capability of various types of generating units. Southern Companies request that the amendment be allowed to become effective on January 1, 1992. The supplemental filing contains additional information regarding the revisions incorporated in Amendment No. 2.

Comment date: December 24, 1991, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary

[FR Doc. 91-30183 Filed 12-17-91, 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1333-001]

Pacific Gas and Electric Co. California; Availability of Environmental Assessment

December 11, 1991.[1]

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for new license for the existing Tule River Project, located on the Tule River and its tributaries in Tulare County, California, near the town of Porterville, and has prepared an Environmental Assessment (EA) for the project. In the EA, the Commission's staff has analyzed the existing and potential future environmental impacts of the project and has concluded that approval of the project would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary

[FR Doc. 91-30121 Filed 12-17-91, 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-01587T Wyoming-24]

State of Wyoming; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formations

December 12, 1991.

Take notice that on November 25, 1991, as supplemented on December 9, 1991, the Wyoming Oil and Gas Conservation Commission (Wyoming) submitted the above-referenced notice of determination pursuant to

[1] Supercedes the Commission s Notice of Availability of Environmental Assessment dated November 25, 1991.

§ 271.703(c)(3) of the Commission's regulations, that the Muddy Sand and Dakota Sand Formations within a portion of the Mary Draw Field, Campbell and Converse Counties, Wyoming, qualify as tight formations under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The notice covers all of section 26, Township 41 North, Range 72 West, Campbell and Converse Counties, Wyoming.

The notice of determination also contains Wyoming's findings that the referenced portion of the Muddy Sand and Dakota Sand Formations meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 91–30182 Filed 12–17–91; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 10769–001 Ohio]

Alpyn Creek Development Corp.; Surrender of Preliminary Permit

December 11, 1991.

Take notice that Alpyn Creek Development Corporation, permittee for the Big Ice Creek Energy Storage Project located within the town of Ironton, Lawrence County, Ohio, has requested that its preliminary permit be terminated. The preliminary permit was issued on August 14, 1989, and would have expired on July 31, 1992.

The permittee filed the request on November 21, 1991, and the preliminary permit for Project No. 10769 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 91–30122 Filed 12–17–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. SA92–1–000]

Coastal States Gas Transmission; Petition for Staff Adjustment Under NGPA Section 502(c)

December 11, 1991.

Take notice that on December 4, 1991, Coastal States Gas Transmission Company (Coastal) filed with the Commission, pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA) and part 385 (subpart K) of the Commission's regulations, a petition for adjustment to permit Coastal to use its tariff on file with the Railroad Commission of Texas (Texas Commission) for services performed pursuant to section 311 of the NGPA. Coastal asserts that since it does not render city-gate service, the Commission should authorize an adjustment under section 502(c) of the NGPA to prevent special hardship and inequity that would otherwise result if Coastal were required to submit a § 284.123(b)(2) filing.

In support of its petition, Coastal says that it is an intrastate pipeline which operates natural gas pipeline facilities located in various counties in the State of Texas and is engaged in the transportation of gas subject to the jurisdiction of the Texas Railroad Commission. Coastal's transportation rates are subject to regulation by the Texas Commission and have been filed with the Texas Commission. Specifically, Coastal here seeks an adjustment to allow it to use an existing tariff currently on file with the Texas Commission as the fair and equitable rate for transportation services to be performed under section 311 of the NGPA on certain of its pipeline facilities located in Clay and Wichita Counties, Texas.

Any person desiring to be heard or protest this petition should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 2, 1992. All protests filed will be considered, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene in accordance with the Commission's rules. Copies of this petition are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–30123 Filed 12–17–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–189–000]

Midwestern Gas Transmission Co.; Informal Settlement Conference

December 11, 1991.

Take notice that an informal settlement conference will be convened in this proceeding on December 19, 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 this proceeding.

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).

For additional information, contact Arnold H. Meltz (202) 208–0737 or Marc G. Denkinger at (202) 208–2215.

Lois D. Cashell,

Secretary.

[FR Doc. 91–30124 Filed 12–17–91; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2596–002]

Rochester Gas & Electric Corp.; Filing of Application

December 11, 1991.

Take notice that on December 4, 1991, the Rochester Gas and Electric Corporation filed an application to relicense the Mt. Morris Hydroelectric Project No. 2596–002.

The Mt. Morris Project is located on the Genesee River, in Livingston County, New York. The project consists of a 21-foot-high dam, a 4.5-acre reservoir, and a powerhouse with an installed capacity of 3.881 MW. The licensee proposes to rehabilitate the existing turbine/generating units and replace the turbine runners increasing the capacity from 1.687 MW. The current operating license expires December 31, 1991.

If any resource agency, Indian tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merits, a request for the study, together with justification for such request in accordance with § 4.32 of the Commission's regulations, must

be filed no later than 60 days after the date of filing.

Lois D. Cashell,

Secretary

[FR Doc. 91-30125 Filed 12-17-91, 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-224-000, RP89-203-000, RP90-139-000, and RP91-69-000]

Southern Natural Gas Co.; Informal Settlement Conference

December 11, 1991.

Take notice that an informal settlement conference will be convened in this proceeding on December 17, 1991, at 11 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 above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 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).

For additional information, contact Betsy R. Carr at (202) 208-1240 or James A. Pederson at (202) 208-2158.

Lois D. Cashell,

Secretary.

[FR Doc. 91-30126 Filed 12-17-91, 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2357-003]

Wisconsin Electric Power Co.; Filing of Application

December 11, 1991.

Take notice that on October 21, 1991, the Wisconsin Electric Power Company filed an application to relicense the White Rapids Hydroelectric Project No. 2357-003.

The White Rapids Project is located on the Menominee River, in Menominee County, Michigan and Marinette, Wisconsin. The project consists of a 27-foot-high dam, a 435-acre reservoir, and a powerhouse with an installed capacity of 8.0 MW. The licensee proposes no changes in operation or new construction for the project. The current operating license expires December 31, 1991.

If any resource agency, Indian tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merits, a request for the study, together with justification for such request in accordance with § 4.32 of the Commission's regulations, must be filed no later than 60 days after the date of filing.

Lois D. Cashell,

Secretary

[FR Doc. 91-30127 Filed 12-17-91, 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

Special Research Grant Program Notice 92-2: Pre-Service Teacher Enhancement Program; Inviting Grant Applications

AGENCY: Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Energy Research (ER) of the Department of Energy (DOE) announces its interest in receiving, from four-year accredited institutions of higher education, special research grant applications that will support innovative pre-service approaches to encouraging science and mathematics majors to become precollege teachers. Examples of pre-service approaches include but are not limited to: programs which emphasize transfer of research experiences to the classroom; intern programs and in-school activities which provide the potential teacher with quality experiences working under the guidance of a master teacher through college/university-school system collaboration; conferences to explore effective mechanisms to encourage science and math majors, including women, underrepresented minorities and the handicapped, to pursue careers as precollege teachers; programs to encourage high school students to pursue science and mathematics majors with the goal of entering the precollege teaching profession; programs which encourage students majoring in science and mathematics to become elementary school teachers or specialists; and college/university programs which include content specific pedagogy, utilization of faculty who exhibit best teaching strategy and current experience in the precollege classroom, and collaboration between the science/mathematics and education departments.

This program anticipates awarding funds only from FY 1992 appropriations. It is estimated that $400,000 will be available to fund 10-15 new projects with the maximum award being $40,000.

DATES: To permit timely consideration for award in Fiscal Year 1992, formal applications submitted in response to this notice should be received no later than 4:30 p.m., February 12, 1992. No electronic submissions of formal applications will be accepted.

ADDRESSES: Completed formal applications referencing Program Notice 92-2 should be forwarded to: U.S. Department of Energy, Division of Acquisition and Assistance Management, ER-64, Office of Energy Research, Washington, DC 20585. Federal Express address is: U.S. Department of Energy, Division of Acquisition and Assistance Management, ER-64, Office of Energy Research, 19901 Germantown Road, Germantown, MD 20874.

FOR FURTHER INFORMATION CONTACT: Cindy Musick, Program Manager, Office of University and Science Education Programs, ER-80, Office of Energy Research, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586-0987.

SUPPLEMENTARY INFORMATION: The DOE is strongly committed to increasing the number of students interested in science, mathematics and technology careers, including an increase in the number of students majoring in science, mathematics and technology who will become precollege teachers. In accordance with 10 CFR 600.7(b)(1), eligibility for awards under this notice is limited to four-year accredited institutions of higher education because students participating in this program must be prepared to teach at the pre-college level upon graduation by attaining certification through an accredited teacher education program. Collaborative efforts are encouraged and may include, but are not limited to: A significant involvement and commitment of the participating local school system(s); enterprises which utilize the scientific and technical expertise of research facilities including the DOE national laboratories and other research contractors, particularly for research experiences; and the broader educational community, including science museums/science centers. Other elements which may strengthen applications include, but are not limited to, the utilization of master mathematics/science teachers; the commitment of the institution of higher education to support this project by providing financial support through the provision of scholarships, forgivable loans or other incentives; academic credit for research or in-school experiences for the participating students; and effective on-campus programs. All applications are required to have an evaluation component which

demonstrates the effectiveness of the program.

Information about the development and submission of applications, eligibility, limitations, evaluations and selection processes, and other policies and procedures are contained in the ER Special Research Grant Application Kit and Guide. The application kit and guide and copies of 10 CFR part 605 are available from the U.S. Department of Energy, Office of Energy Research, Office of University and Science Education Programs, ER–80, Washington, DC 20585. Telephone requests may be made by calling (202) 586–8949. The Catalog of Federal Domestic Assistance Number for this program is 81.049.

Subject to the availability of appropriated funds, DOE expects to make several grants in FY 1992 to meet the objectives of this program. It is anticipated that $400,000 will be the total funds available in FY 1992. The size of each grant will be limited to a maximum of $40,000.

This notice requests further that the "Detailed Description of Research Work Proposed" component of a complete grant application as established by 10 CFR part 605 should not exceed 15 double-spaced, typed pages. This description of work should include the conceptual design and how that design relates to the program objectives; the target audience(s) the project will serve and efforts planned to serve that audience; the mechanisms to be used to organize and manage the project, including the rules and responsibilities, financial and otherwise, of any partnerships; the monitoring and evaluation plan, including how those plans can be used for possible project modification; the planned outcomes and how these outcomes will be assessed and reported; and the anticipated significance of the project and how it will be confirmed.

D.D. Mayhew,

Deputy Director for Management, Office of Energy Research.

[FR Doc. 91–30196 Filed 12–17–91, 8:45 am]

BILLING CODE 6450–01–M

Special Research Grant Program Notice 92–6: Generator and Large Motor Applications of Superconductivity

AGENCY: Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Program Analysis, Office of Energy Research of the Department of Energy, hereby announces its interest in receiving applications for a Special Research Grant that seek support for conducting a research needs assessment in the area of superconductivity as it relates to electric power generators and large motor applications. The purpose of this activity is to identify and disseminate priority research needs for achieving high efficiency utilization of state of the art development in superconductivity with superior economic, environmental, and performance potential. This project should not focus on topics such as those requiring liquid helium for operation.

Applicants must include a description of the planned methodology that will be used in assessing long term (up to 20 years) research directions, opportunities, priorities, and degrees of difficulty in accomplishing identified research opportunities.

Applicants must enlist the aid of experts from academia and industry to identify, describe, and assess on a worldwide basis, the most promising new (i.e. beyond state of the art) developments, applications, and opportunities in science and technology to facilitate the future utilization of superconductivity for power generators and large motor applications.

APPLICATION INFORMATION: Information about submission of applications, eligibility, limitations, evaluation, selection processes, and other policies and procedures may be found in the Application and Guide for the Special Research Grant Program. The application kit and guide and copies of 10 CFR part 605 are available from Paul Maupin, Office of Program Analysis, Office of Energy Research, U.S. Department of Energy, ER–33, Washington, DC 20585. Instructions for preparation of an application are included in the application kit. Telephone requests may be made by calling (301) 903–4355 or FTS 233–4355. The Catalog of Federal Domestic Assistance number for this program is 81.049.

DATES: Formal applications submitted in response to this notice should be received by March 1, 1992.

ADDRESSES: Formal applications sent by U.S. Mail should be addressed to: U.S. Department of Energy, Office of Energy Research, Division of Acquisition and Assistance Management, ER–64, Washington DC 20585, Attn: Program Notice 92–6. The following address must be used when submitting applications by U.S. Postal Service Express, any commercial mail delivery service, or when handcarried by the applicant: U.S. Department of Energy, Office of Energy Research, Division of Acquisition and Assistance Management, ER–64/GTN, 19901 Germantown Road, Germantown, MD 20874.

SUPPLEMENTARY INFORMATION: In the United States, efforts to harness superconductivity in high power applications have been made for over 30 years. Due to economies of scale and costs the most likely first impact made by this technology in the energy field will be in the area of power generation and large motor applications. A significant effort to apply superconductivity to large scale components was already underway prior to the rapid development of the higher temperature superconductors. Despite considerable technical success with prototypes of generators and motors, the technology is not strongly pursued in this country.

In contrast, superconducting power generators are currently under development in Japan, Germany, France, and Russia albeit, utilizing the lower temperature superconductors. In Japan alone, a major financial commitment has been made for achieving the national goal of dominating superconducting generator technology (Super GM project). The reason for this commitment is obvious because, although current generators are relatively efficient, an increase in their efficiency can result in reduced fuel consumption and pollutant emissions. Application to other areas such as large motors would amplify the benefits.

To bring the U.S. up to parity with the competition requires a coordinated, multidisciplinary effort from the developmental state to the systems scale. The application of higher temperature superconductors to generators and large motors requires a detailed technical strategy. A careful review and identification of the technical obstacles to be addressed by U.S. science and engineering is of paramount importance to provide an efficient technical plan.

To address the objectives discussed above, the Office of Program Analysis of the Office of Energy Research has coordinated with the DOE Office of Conservation and Renewable Energy and is planning to award a grant for a research needs assessment for generator and large motor applications of superconductivity. The Office of Program Analysis plans to publicly disseminate the results and findings of this research needs assessment in a report. Specific information concerning requirements for the application follow.

The principal investigator of the assessment must be an individual who is competent and accomplished in

appropriate scientific and technical areas. Competence and accomplishments shall be described in the application which shall address industrial or academic experience, research publications, contributions while serving as an expert, consultant services, honors and awards, and education including advanced degrees and other academic qualifications. The principal investigator also shall be an individual with demonstrated ability to conduct research needs assessments for the utilization of superconductivity in generator and motor applications and manage individual experts and groups of experts in the timely and successful identification, analysis, distillation and documentation of scientific and technical information. These demonstrated abilities shall be documented in the application.

The applicant, in order to address adequately and competently the full scope of this endeavor and at sufficient technical depths in all major topical areas, must enlist the aid of other scientific/technical experts. The application shall provide tentative identification of all proposed experts and their present affiliation. All experts, both foreign and domestic, are to be individuals who are competent and accomplished in a scientific or technical discipline directly related to the research assessment. Technical competence and accomplishments of each expert shall be described in the application and should include the individual's experience, research publications, consultant services, contributions while serving as an expert with other groups, honors and awards, professional experience, and education including advanced degrees and other academic qualifications. The expected contribution of each expert to the assessment's objectives should be identified. The overall technical expertise of the group of experts, when combined with the technical expertise of the principal investigator, should be shown to be adequate to cover the various scientific and technical disciplines involved in the assessment.

These experts will assist the principal investigator in accomplishment of the assessment's objectives, especially in writing major sections of the required final report. They are also expected to conduct technical discussions with other experts, specialists, researchers, and research program managers in the scientific and technical areas; conduct site visits, as a panel, to laboratories and other facilities where research and development directly related to the subject area is conducted and managed; and review and evaluate recent and relevant research including scientific and technical literature.

The initial composition of a group of experts, other consultants, and any subsequent changes must be approved by the Program Manager and Contracting Officer.

Applications also should include the following: a schedule of the assessment's major activities including the tentative content of meetings of various teams of the experts, a description of anticipated site visits to publicly and privately funded facilities, a description of all conferences to be attended as a part of assessment activities, and a description of the methodology for obtaining a peer review of the assessment results.

The applicant is expected to supply the personnel, facilities, and materials necessary to accomplish the objectives of the assessment as described in this notice.

APPLICATION REVIEW AND AWARD INFORMATION: Applications will be reviewed in accordance with the Energy Research Merit Review System, published in the **Federal Register**, March 11, 1991 (56 FR 10244). Subject to the availability of appropriated FY 1992 funds, one grant award at approximately $300,000 is planned. The grant award will be for a 1-year period.

D.D. Mayhew,

Deputy Director for Management, Office of Energy Research.

[FR Doc. 91-30195 Filed 12-17-91, 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-11084-2]

Solicitation for Environmental Education Grants; Correction

AGENCY: Environmetnal Protection Agency.

ACTION: Notice; correction.

SUMMARY: EPA is correcting errors in the Solicitation Notice for Environmental Education Grants that appeared in the **Federal Register** on December 10, 1991 (56 FR 64513).

FOR FURTHER INFORMATION CONTACT: Mr. George Walker, at (202) 260-4484.

SUPPLEMENTARY INFORMATION: EPA has solicited for applications for grants authorized under section 6 of the National Environmental Education Act (Pub. L. 101-619). The Solicitation Notice contained errors which are discussed briefly below and are corrected by this notice.

Michael E. O'Reilly,

Acting Director, Office of Environmental Education.

The following corrections are made in the Solicitation Notice for Environmental Education Grants published in the **Federal Register** on December 10, 1991 (56 FR 64513).

1. Page 64514, first column of the notice, which states, "Applications must be received by EPA within 60 days of the date that this solicitation notice is published in the **Federal Register**, is revised to read "Applications must be received by EPA within 90 days of the date that this notice is published in the **Federal Register**."

2. Page 64514, first column, is changed from "A kit may be obtained by * * * calling (703) 847-3036 between 1 p.m. and 5 p.m." to "A kit may be obtained by * * * calling (703) 847-3036 between 9 a.m. and 5 p.m.".

3. On page 64513, third column, answer to Question XI which reads "Activities cannot start before funds are awarded. Start dates are currently targeted for May 1, 1992" should be changed to read "Activities cannot start before funds are awarded. Start dates are currently targeted for June 1992".

[FR Doc. 91-30186 Filed 12-17-91, 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51780; FRL 4008-9]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of 25 such PMNs and provides a summary of each.

DATES: Close of review periods:

P 92-266, 92-267, 92-268, 92-269, 92-270, 92-271, 92-272, 92-273, 92-274, 92-275, 92-276, February 29, 1992.

P 92-277, 92-278, March 1, 1992.

P 92-279, March 3, 1992.

P 92-280, 92-281, March 1, 1992.

P 92–283, 92–284, 92–285, 92–286, 92–287, 92–288, March 2, 1992.

P 92–289, 92–290, 92–291, March 3, 1992.

Written comments by:

P 92–266, 92–267, 92–268, 92–269, 92–270, 92–271, 92–272, 92–273, 92–274, 92–275, 92–276, January 30, 1992.

P 92–277, 92–278, January 31, 1992.

P 92–279, February 2, 1992.

P 92–280, 92–281, January 31, 1992.

P 92–283, 92–284, 92–285, 92–286, 92–287, 92–288, February 1, 1992.

P 92–289, 92–290, 92–291, February 2, 1992.

ADDRESSES: Written comments, identified by the document control number "(OPTS–51780)" and the specific PMN number should be sent to: Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., rm. L–100, Washington, DC, 20460, (202) 260–3532.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, rm. E–545, 401 M St., SW., Washington, DC 20460 (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office NE–G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

P 92–266

Manufacturer. Confidential.

Chemical. (S) Fatty acid C_{12-20} and C_{10-20}.

Use/Production. (S) Ingredient in lubricant and formulation. Prod. range: 50,000–100,000 kg/yr.

P 92–267

Manufacturer. Confidential.

Chemical. (G) Halogenated alkyl nitrile.

Use/Production. (G) Heavy metal precipitant. Prod. range: Confidential.

Toxicity Data. Static acute toxicity: time LC50 96h95 mg/l species (rainbow trout).

P 92–268

Manufacturer. Confidential.

Chemical. (G) Polymeric sulfide.

Use/Production. (G) Heavy metal precipitant. Prod. range: Confidential.

Toxicity Data. Static acute toxicity: time LC50 96h95 mg/l species (rainbow trout).

P 92–269

Manufacturer. Confidential.

Chemical. (G) Polymeric sulfide.

Use/Production. (G) Heavy metal precipitant. Prod. range: Confidential.

Toxicity Data. Static acute toxicity: time LC50 96h95 mg/l species (rainbow trout).

P 92–270

Manufacturer. Confidential.

Chemical. (G) Polymeric sulfide.

Use/Production. (G) Heavy metal precipitant. Prod. range: Confidential.

Toxicity Data. Static acute toxicity: time LC50 96h95 mg/l species (rainbow trout).

P 92–271

Manufacturer. Confidential.

Chemical. (G) Halogenated alkyl nitrile.

Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

P 92–272

Manufacturer. Confidential.

Chemical. (G) Polyaryl ester.

Use/Production. (G) Lubricant addition. Prod. range: Confidential.

P 92–273

Manufacturer. Confidential.

Chemical. (G) Styrene/hydroxy acrylic polymer, ammonium salt.

Use/Production. (G) Open, nondispersive. Prod. range: confidential.

P 92–274

Manufacturer. Confidential.

Chemical. (G) Tertiary amine salt.

Use/Production. (G) Catalyst for contained use. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 8.44 g/kg species (rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (rabbit). Skin irritation: negligible species (rabbit).

P 92–275

Manufacturer. Bedoukian Research, Inc.

Chemical. (G) Alkyldiene propionate.

Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 92–276

Manufacturer. Confidential.

Chemical. (G) Aminosilicone.

Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 16 ml/kg species (rat). Eye irritation: moderate species (rabbit). Skin irritation: moderate species (rabbit).

P 92–277

Manufacturer. Confidential.

Chemical. (G) Polyurethane epoxy resin.

Use/Production. (G) Adhere. Prod. range: Confidential.

P 92–278

Importer. Confidential.

Chemical. (S) Benzoic acid, 4-amino-,ethyl ester, polymer with oxirane.

Use/Import. (S) UV Absorber. Import range: Confidential.

Toxicity Data. Static acute toxicity: time LC50 96h500 mg/l species (golden orfe). Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit). Mutagenicity: negative. Skin sensitization: negative species (guinea pig).

P 92–279

Manufacturer. E.I. Du Pont De Nemours & Co., Inc.

Chemical. (G) Styrenated hydroxy functional acrylic.

Use/Production. (G) Highly dispersive. Prod. range: Confidential.

P 92–280

Manufacturer. Rohm & Haas Company.

Chemical. (G) Acrylic copolymers A, A1 and A2.

Use/Production. (G) Open nondispersive. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5.0 g/kg species (rat). Acute dermal toxicity: LD50 > 2.0 g/kg species (rabbit). Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit).

P 92–281

Manufacturer. Rohm & Haas Company.

Chemical. (G) Acrylic copolymers A, A1 and A2.

Use/Production. (G) Open nondispersive. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5.0 g/kg species (rat). Acute dermal toxicity: LD50 > 2.0 g/kg species (rabbit). Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit).

P 92–283

Importer. Charkit Chemical Corporation.

Chemical. (G) Substituted spiro oxzine.

Use/Import. (G) Dye. Import range: 10–15 kg/yr.

P 92–284

Manufacturer. Confidential.

Chemical. (G) Urethane acrylic latex.

Use/Production. (G) Component of coating. Prod. range: 3,000–10,000 kg/yr.

P 92–285

Manufacturer. Confidential.

Chemical. (G) Urethane acrylic latex.

Use/Production. (G) Component of coating. Prod. range: 3,000–10,000 kg/yr.

P 92–286

Manufacturer. Confidential.

Chemical. (G) Urethane acrylic latex.

Use/Production. (G) Component of coating. Prod. range: 3,000–10,000 kg/yr.

P 92–287

Importer. Nagase America Corporation.

Chemical. (S) 6-((3-Ethoxypropyl)ethylamino)-3'-methyl-2'(phenylamino)-spiro(isobenzofuran-1(3*H*),9'-(9*H*)xanthen)-3-one.

Use/Import. (S) Color former for pressure sensitive paper. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (rabbit). Eye irritation: none species (rabbit). Mutagenicity: negative. Skin irritation: negligible species (rabbit). Skin sensitization: positive species (guinea pig).

P 92–288

Importer. Rohm and Haas Company.

Chemical. (G) Thiolated divinyl benzene/styrene copolymer hydrogenion form.

Use/Import. (G) Contained use. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species (rat). Acute dermal toxicity: LD50 > 5 g/kg species (rabbit). Eye irritation: practically none species (rabbit). Skin irritation: minimal species (rabbit).

P 92–289

Importer. Dow Chemical Corporation.

Chemical. (G) Alkoxysilyl group-terminated polydialkylsiloxane.

Use/Import. (S) Silicone adhesive/sealant. Import range: Confidential.

P 92–290

Manufacturer. Confidential.

Chemical. (G) Poly(alkenyl)succinimido-polyamine fatty acids salts.

Use/Production. (G) Fuel additive. Prod. range: Confidential.

P 92–291

Manufacturer. Confidential.

Chemical. (G) Poly (alkenyl) succinimido, stearate sal.

Use/Production. (G) Fuel additive. Prod. range: Confidential.

Dated: December 12, 1991.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 91–30184 Filed 12–17–91, 8:45 am]

BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

[Docket No. 91–58]

Bank Line Limited v. Jet Set Marine, Inc.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Bank Line Limited ("Complainant") against Jet Set Marine, Inc. ("Respondent") was served December 12, 1991. Complainant alleges that Respondent engaged in violations of section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. app. 1709(a)(1), by failing to remit the ocean freight, charges and fees due and payable for a shipment of one container, said to contain a speed boat, engines and accessories, between New York and Port Louis, Mauritius.

This proceeding has been assigned to Administrative Law Judge Norman D. Kline ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by December 14, 1992, and the final decision of the Commission shall issued by April 13, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 91–30136 Filed 12–17–91; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Independence Bancorporation, Inc.; Formation of; Acquisition by; or Merger of Bank Holding Companies; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 91-29567) published at page 64633 of the issue for Wednesday, December 11, 1991.

Under the Federal Reserve Bank of Chicago, the entry for Independence Bancorporation, Inc. is amended to read as follows:

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Independence Bancshares, Inc., Independence, Iowa; to merge with First State Bancorporation, Fredrickburg, Iowa, and thereby indirectly acquire Northeast Iowa National Bank, Sumner, Iowa.

Comments on this application must be received by December 24, 1991.

Board of Governors of the Federal Reserve System, December 12, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–30176 Filed 12–17–91, 8:45 am]

BILLING CODE 6210–01–F

Summit Bancorp, Inc., et al.; Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing,

identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 8, 1992.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Summit Bancorp, Inc., Akron, Ohio; to acquire Summit Interim Savings Bank, Tallmadge, Ohio pursuant to § 225.25(b)(9) of the Board's Regulation Y, which will be used to acquire the Montrose Branch, Akron, Ohio, and the Tallmadge Branch, Tallmadge, Ohio, of Union Federal Savings Bank, Indianapolis, Indiana. Applicant's subsidiary bank will acquire all of the interim thrift's assets and assume deposit liabilities pursuant to the Oakar Amendment.

Board of Governors of the Federal Reserve System, December 12, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–30177 Filed 12–17–91; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

National Institute on Drug Abuse; Meetings

Pursuant to Public Law 92–463, notice is hereby given of a meeting on an advisory committee of the National Institute on Drug Abuse for January 1992.

The National Advisory Council on Drug Abuse will be performing review of applications for Federal assistance; therefore, portions of this meeting will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552b(c)(6) and 5 U.S.C. app. 2 10(d).

A summary of the meeting and a roster of committee members may be obtained from: Ms. Camilla L. Holland, NIDA Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration, Parklawn Building, room 10–42, 5600 Fishers Lane, Rockville, MD 20857 (Telephone: 301/443–2755).

Substantive program information may be obtained from the contact whose name, room number, and telephone number is listed below.

Committee Name: National Advisory Council on Drug Abuse.

Meeting Date: January 15–16, 1992.

Place: National Institutes of Health, Building 31 C, Conference Room #6, 9000 Wisconsin Avenue, Bethesda, MD 20892.

Open: January 15, 9 a.m.–1 p.m., January 16, 9 a.m.–3 p.m.

Closed: January 15, 1 p.m.–5 p.m.

Contact: Ms. Sheila Harley Gardner, Room 10A–10, Parklawn Building, Telephone (301) 443–3229.

Dated: December 11, 1991.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 91–30149 Filed 12–17–91; 8:45 am]

BILLING CODE 4160–20–M

Food and Drug Administration

[Docket No. 91D–0123]

Draft Guideline for Submitting Supporting Chemistry Documentation in Radiopharmaceutical Drug Applications; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guideline for the submission of supporting chemistry documentation radiopharmaceutical drug applications. FDA is making the draft guideline available for public comment before developing a final guideline. The draft guideline is intended to furnish drug manufacturers with guidance in submitting to FDA adequate chemistry documentation in marketing applications for radiopharmaceutical drugs.

DATES: Comments by March 18, 1992.

ADDRESSES: Submit written requests for single copies of the draft guideline to the Executive Secretariat Staff (HFD–8), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the draft guideline to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of the draft guideline and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Rebecca H. Wood, Center for Drug Evaluation and Research (HFD–102), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4207.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guideline for submitting chemistry documentation in radiopharmaceutical drug applications. This draft guideline is intended to assist drug firms in preparing the chemistry section of marketing applications for radiopharmaceutical drugs under 21 CFR 314.50(d)(1).

A "radioactive drug" or "radiopharmaceutical drug" is any substance defined as a drug in section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(g)(1)) that exhibits spontaneous disintegration of unstable nuclei with the emission of nuclear particles or photons and includes any nonradioactive reagent kit or nuclide generator that is intended to be used in the preparation of any such substance. "Radioactive drugs" do not include drugs such as carbon-containing compounds or potassium-containing salts that contain trace quantities of naturally occurring radionuclides.

Radiopharmaceutical drugs are not only unique in their property of radioactivity but in other ways as well. Most radiopharmaceuticals are used as diagnostic agents and contain minute quantities, on a weight basis, of the radioactive drug substance. In addition to chemical impurities, radiopharmaceuticals may contain radioactive impurities, i.e., radionuclidic and radiochemical impurities. Such impurities may have a detrimental effect on both the utility and reliability of the drug as a diagnostic agent, and possibly on the radiation dose to the patient.

Many of the methods used in the preparation of radioactive drugs, e.g., cyclotrons, generators, and the radiolabeling of "kits," are unique to radiopharmaceuticals. Special analytical methods and equipment are needed to measure the total radioactivity of a radiopharmaceutical and the radionuclidic and radiochemical purity and impurities. Special training is required and special precautions must be used in the handling of radioactive drugs. In addition, labeling requirements for radioactive drugs are unique in many respects.

This draft guideline is intended to meet an expressed need by both the radiopharmaceutical industry and the nuclear medicine community for detailed guidance on preparing the

chemistry section of new drug applications (NDA's) for radiopharmaceuticals. The guideline describes acceptable approaches to the documentation in the NDA of the drug product and drug substance for radiopharmaceuticals. This guideline should be read in conjunction with FDA's other chemistry guidelines pertaining to marketing applications.

FDA is making this draft guideline available for public comment before issuing a final guideline. If, following the receipt of comments, the agency concludes that the draft guideline, as revised, reflects acceptable criteria for use in submitting supporting chemistry documentation in radiopharmaceutical drug applications, the guideline will be made final, and FDA will announce its availability in the **Federal Register**.

The guideline may be useful to drug manufacturers in developing the chemistry documentation section in marketing applications for radiopharmaceutical drugs. A person may follow the guideline or may choose to use alternate procedures even through they are not provided for in the guideline. If a person chooses to use alternate procedures, that person may wish to discuss the matter further with the agency to prevent expenditure of money and effort on activities that may later be determined to be unacceptable by FDA. This guideline does not bind the agency, and it does not create or confer any rights privileges, or benefits for or on any person.

Interested persons may, on or before March 18, 1992, submit written comments on the draft guideline to the Docket Management Branch (address above). FDA will consider these comments in determining whether further amendments to, or revisions of, the guideline are warranted. Two copies of any comments should be submitted, except that individuals may submit one copy.

Dated: November 19, 1991.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 91-30150 Filed 12-17-91; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Hearing: Reconsideration of Disapproval of Iowa State Plan Amendment (SPA)

AGENCY: Health Care Financing Administration, HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on February 4, 1992, at 10 a.m.; room 215; New Federal Office Building; 601 East 12th Street; Kansas City, Missouri to reconsider our decision to disapprove Iowa SPA 90-76.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk by January 2, 1992.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, HCFA Hearing Staff, suite 110, Security Office Park, 7000 Security Blvd., Baltimore, Maryland 21207, Telephone: (410) 597-3013.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Iowa State plan amendment (SPA) number 90-76.

Section 1116 of the Social Security Act (the Act) and 42 CFR, part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. The Health Care Financing Administration (HCFA) is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

Iowa submitted Medicaid SPA 90-76 on December 26, 1990, seeking protection under the Deficit Reduction Act (DEFRA) moratorium for a more liberal resource policy which permits aged, blind, and disabled individuals to be eligible for Medicaid while disposing of excess resources, effective November 1985.

The issues in this matter are: (1) Whether Iowa's proposal qualified for protection under the DEFRA moratorium for a more liberal resource policy which permits aged, blind, and disabled individuals to be eligible for Medicaid while disposing of excess resources, effective November 1985; and, (2) whether the Iowa State plan could be expanded to include additional groups other than those mandated under the DEFRA moratorium.

The Secretary is prohibited from taking certain adverse actions against States for using more liberal income and resource methods than those of the cash assistance programs (Aid to Families with Dependent Children and Supplemental Security Income [SSI] for determinations of eligibility for the medically needy and limited categorically needy groups [section 2373(c) of the DEFRA of 1984]). The moratorium covers the period of October 1, 1981 through February 17, 1989. The adverse actions which the Secretary is prohibited from taking do not include disapproving SPAs. Thus, plan material for which a State seeks DEFRA moratorium protection is disapproved as being in violation of the requirements of title XIX which were in effect during the moratorium period. However, moratorium protection against adverse action by the Secretary is granted for the moratorium period.

Prior to the enactment of the DEFRA moratorium, States were not permitted to use resource methodologies which were more liberal than those of the cash assistance programs. (See section 1902(a)(10) of the Act [prior to July 1, 1988].)

In SPA 90-76, Iowa sought protection for a "bona fide effort to sell" policy. This is a policy under which individuals who have excess resources can still be eligible for Medicaid, provided they are making a good-faith effort to sell the excess resources. The SSI program has a similar policy, but under SSI it applies only to a limited number of individuals who meet the requirements for conditional eligibility. Iowa, via SPA 90-76, would apply its policy to individuals who do not meet those requirements. Thus, Iowa's policy is more liberal than SSI's, and so qualified for protection under the DEFRA moratorium.

We looked first to see if the SPA could be approved as part of the State plan with an effective date of November 1985. The proposed SPA could not be approved for retroactive inclusion in the State plan during the moratorium period. That is, section 1902(r)(2) of the Act, which would allow policies in the State plan which are more liberal than under the cash assistance programs, was made effective back to 1982. However, under the regulations at 42 CFR 430.20 and under the corresponding limits contained in the Department's appropriations authority, HCFA cannot retroactively approve a SPA expanding eligibility, coverage, or reimbursement any earlier than the beginning of the quarter in which it was submitted. Therefore, the earliest date that the proposed policy could have been

included in the State plan was October 1, 1990. The State's policy was disapproved as part of the State plan during the retroactive period at issue.

We next determined whether the SPA could receive protection under the moratorium since we could not approve it as part of the State plan. Protection under the DEFRA moratorium is limited by the statute to specific eligibility groups. Specifically, the DEFRA moratorium applies only to certain optional categorically needy groups (sections 1902(a)(10)(A)(ii) (IV), (V), or (VI) of the Act), or the medically needy (section 1902(a)(10)(C)(i)(III) of the Act). Iowa did not limit its request for protection to these groups, however. Instead, the State requested DEFRA moratorium protection for all aged, blind, and disabled individuals. Because extension of protection to groups other than those specified above would be contrary to the requirements of the statute, we could not grant protection for groups other than those specified.

Although SPA 90–76 was disapproved, protection under the DEFRA moratorium was granted for those eligibility groups specified above. DEFRA moratorium protection could not be granted for the State's policy as applied to groups other than those specified.

The notice to Iowa announcing and administrative hearing to reconsider the disapproval of its SPA reads as follows:

Mr. Charles H. Palmer,
Director, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319–0114

Dear Mr. Palmer: I am responding to your request for reconsideration of the decision to disapprove Iowa State Plan Amendment (SPA) 90–76.

Iowa submitted SPA 90–76 on December 28, 1990, seeking protection under the Deficit Reduction Act (DEFRA) moratorium for a more liberal resource policy which permits aged, blind, and disabled individuals to be eligible for Medicaid while disposing of excess resources, effective November 1985.

The issues in this matter are: (1) Whether Iowa's proposal qualified for protection under the DEFRA moratorium for a more liberal resource policy which permits aged, blind, and disabled individuals to be eligible for Medicaid while disposing of excess resources effective November 1985; and, (2) whether the Iowa State plan could be expanded to include additional groups other than those mandated under the DEFRA moratorium.

I am scheduling a hearing on your request for reconsideration to be held on February 4, 1992, at 10 a.m.; room 215; 601 East 12th Street; Kansas City, Missouri. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR, part 430.

I am designating Mr. Stanley Krostar as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communications which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (410) 597–3013.

Sincerely,

Gail R. Wilensky,
Administrator.

(Section 1116 of the Social Security Act (42 U.S.C. 1316); 42 CFR 430.18).

(Catalog of Federal Domestic Assistance Program No. 13. 714, Medicaid Assistance Program).

Dated: December 12, 1991.

Gail R. Wilensky,
Administrator, Health Care Financing Administration.

[FR Doc. 91–30161 Filed 12–17–91; 8:45 am]
BILLING CODE 4120–03–M

Public Health Service

Health Resources and Services Administration; Statements of Organization, Functions and Delegations of Authority

Part H, chapter HB (Health Resources and Services Administration) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (47 FR 38409–24), August 31, 1982, as amended most recently at 56 FR 47965, September 23, 1991) is amended to reflect the transfer of materiel management functions from the Division of Grants and Procurement Management (HBA46), to the Division of Program Support (HBA42), within the Office of Operations and Management, Office of the Administrator, Health Resources and Services Administration.

Under HB–10, Organization and Functions, delete in its entirety the functional statements for the Division of Program Support (HBA42) and the Division of Grants and Procurement Management (HBA46) and substitute the following:

Division of Program Support (HBA42). For the Office of the Administrator, the Executive Officer: (1) Plans, directs and coordinates administrative management activities; (2) provides administrative management services including personnel, financial, materiel management, and general administrative services; (3) develops and recommends management policies, procedures, systems and practices; (4) provides liaison with the Office of Assistant Secretary for Health on financial, personnel, organization, supply, and other management concerns of the Office of the Administrator; (5) acts for the Associate Administrator for Operations and Management concerning space, parking, and communications management for the headquarters and represents him/her in matters relating to the management of the Parklawn Building complex; and (6) advises on and coordinates administration-wide policies and procedures required to implement General Services Administration and departmental regulations governing materiel management, including transportation, motor vehicle, and utilization and disposal of property.

Division of Grants and Procurement Management (HBA46). (1) Provides leadership in the planning, development, and implementation of policies and procedures for grants, contracts, and other assistance mechanisms; (2) exercises the sole responsibility within HRSA for the award and management of contracts; (3) provides advice and consultation of interpretation and application of Public Health Service and Department of Health and Human Services policies and procedures governing contracts and grants management; (4) develops and issues policy and procedural materials for the Administration's contracts and grants programs; (5) establishes standards and guides for and evaluates contracts and grants management operations throughout the Administration; (6) coordinates the Administration's positions and actions with respect to the audit of grants and contracts, and also coordinates responses to General Accounting Office audit reports and monitors the implementation of General Accounting Office recommendations; (7) provides professional accounting advice relative to the management of grants and contracts; and (8) maintains liaison directly or through the Regional Health Administrators, with grantee and contractor institutions and organizations and with the Office of the Assistant Secretary for Health and other components of the Department.

This reorganization is effective upon date of signature.

Dated: December 2, 1991.

Robert G. Harmon,
Administrator.

[FR Doc. 91–30147 Filed 12–17–91; 8:45 am]
BILLING CODE 4160–15–M

Health Resources and Services Administration; Statement of Organization, Functions and Delegations of Authority

Part H, chapter HB (Health Resources and Services Administration) of the

Statement of Organization, Functions and Delegations of Authority of the Department off Health and Human Services (47 FR 38409–24, August 31, 1982, as amended most recently at 56 FR 50131–32, October 3, 1991) is amended to reflect the abolishment of the Office of Financing Services in the Bureau of Health Care Delivery and Assistance.

Under HB–10, Organization and Functions, amend the functional statements for the Bureau of Health Care Delivery and Assistance (HBC) by deleting the functional statement for the Office of Financing Services (HBC16) in its entirety.

This deletion is effective upon date of signature.

Dated: December 9, 1991.

Robert G. Harmon,

Administrator.

[FR Doc. 91–30148 Filed 12–17–91; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D–91–974; FR 3215–D–01]

Delegation of Authority Under the Fair Housing Act

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority.

SUMMARY: In this notice the Secretary is delegating to the Executive Officer for Administrative Operations and Management, Office of the Secretary, the Secretary's authority under 24 CFR 104.930 (a) and (d) to remand, for further proceedings, an initial decision of an administrative law judge.

EFFECTIVE DATE: December 9, 1991.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Markison, Assistant General Counsel for Administrative Law, Office of the General Counsel, room 10252, Department of Housing and Urban Development, Washington, DC 20410. Telephone: (202) 708–3137 (this is not a toll-free number). The toll-free TDD number for hearing impaired persons is 1–800–543–8294.

SUPPLEMENTARY INFORMATION: Subsection 812(h) of the Fair Housing Act ("the Act"), 42 U.S.C. 3612(h), gives the Secretary of HUD 30 days to review any finding, conclusion, or order issued by an administrative law judge under subsection (g) of section 812 of the Act. The regulations implementing this authority, found at 24 CFR 104.930 (a) and (d), provide that, in connection with such review, the Secretary may affirm, modify or set aside, in whole or in part, the initial decision of the administrative law judge or remand that decision to the administrative law judge for further proceedings.

In this delegation of authority, the Secretary is delegating to the Executive Officer for Administrative Operations and Management, Office of the Secretary, the authority to remand an initial decision of an administrative law judge for further proceedings.

Accordingly, the Secretary delegates the following authority:

Section A—Authority Delegated

To the Executive Officer for Administrative Operations and Management, Office of the Secretary, the authority, under 24 CFR 104.930 (a) and (d), to remand an initial decision of an administrative law judge for further proceedings.

Section B—Authority Excepted

The authority granted in Section A of this delegation may not be redelegated.

Authority: 42 U.S.C. 3601–19; 42 U.S.C. 3535(d).

Dated: December 9, 1991.

Jack Kemp,

Secretary.

[FR Doc. 91–30192 Filed 12–17–91; 8:45 am]

BILLING CODE 4210–32–M

Office of Administration

[Docket No. N–91–3367]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Jennifer Main, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 11, 1991.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Report on Tenants Accounts Receivable.

Office: Public and Indian Housing.

Description of the Need for the Information and its Proposed Use: Under Section 6(c)(4) of the United States Housing Act of 1937, this information is used to assure sound management practices by the Public Housing Agencies (PHAs). The PHAs prepare and submit the form to the HUD Field Offices and HUD uses it to monitor the effectiveness of rent collection procedures employed by PHAs.

Form Number: HUD–52295.

Respondents: State or Local Governments and Non-Profit Institutions.

Frequency of Submission: Semi-annually and Recordkeeping.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information collection	3,200		2		.25		1,600
Recordkeeping	3,200		1		.05		160

Total Estimated Burden Hours: 1,760.
Status: Reinstatement.
Contact: John T. Comerford, HUD, (202) 708–1872 Jennifer Main, OMB, (202) 395–6880.

Dated: December 11, 1991.

[FR Doc. 91–30193 Filed 12–17–91; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–040–01–4340–02]

Meetings for the Gila Box Advisory Committee

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with 43 CFR part 1780, that two meetings of the Gila Box Riparian National Conservation Area (NCA) Advisory Committee will be held.

DATES: Thursday, January 9, 1992, 9:30 a.m.–4:30 p.m., and Thursday, January 23, 1992, 9:30 a.m.–4:30 p.m.

ADDRESSES: BLM Safford District Office, 425 E. 4th St., Safford, Arizona 85546.

SUPPLEMENTARY INFORMATION: The NCA Advisory Committee was established by the Arizona Desert Wilderness Act of 1990 to provide input to the Safford District on management of the Gila Box Riparian National Conservation Area (NCA). The Advisory Committee will assist with preparation of the Gila Box Interdisciplinary Activity Plan by identifying issues and concerns, and by assisting with development of the plan using the Limits of Acceptable Change (LAC) planning process.

The January 9 meeting will be used to refine opportunity classes within the National Conservation Area using the LAC process. During the second meeting on January 23, indicators and standards for each opportunity class will be developed.

Both meetings are open to the public. Interested persons may make oral statements to the Committee or may file written statements for consideration by the Committee. Anyone wishing to make an oral statement must contact the BLM Gila Area Manager at least two working days prior to the meeting.

Summary minutes of the meeting will be maintained in the Safford District Office and will be available for public inspection (during regular business hours) within 30 days after each meeting.

FOR FURTHER INFORMATION CONTACT: Meg Jensen, Gila Resource Manager, or Jonathan Collins, Outdoor Recreation Planner, 425 E. 4th St., Safford, Arizona 85546. Telephone (602) 428–4040.

Dated: December 10, 1991.

Ray A. Brady,
District Manager.

[FR Doc. 91–30174 Filed 12–17–91; 8:45 am]

BILLING CODE 4310–32–M

[WY–920–41–5700; WYW121278]

Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of Public Law 97–451, 96 Stat. 2462–2466, and Regulations 43 CFR 3106.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW121278 for lands in Converse County, Wyoming, was timely filed and was accomplished by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16 2/3 percent respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this Federal Register notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW121278 effective September 1, 1991, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,
Supervisory Land Law Examiner.

[FR Doc. 91–30169 Filed 12–17–91; 8:45 am]

BILLING CODE 4310–22–M

[CA–050–09–4212–14; CACA 26636, CACA 7337 WR]

Partial Termination of Small Tract Classification No. 506, Opening of Lands; Trinity County; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice partially terminates Small Tract Classification No. 506 dated January 4, 1957, which classified public land for disposition pursuant to the Small Tract Act of 1938. A portion of the land classified for small tract under classification No. 506 has been found suitable for direct sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713) as published in the Federal Register as a notice of realty action on August 15, 1991 (Vol. 56, No. 158).

EFFECTIVE DATE: January 17, 1992.

FOR FURTHER INFORMATION CONTACT: Patricia Cook, Realty Specialist, Redding Resource Area, 355 Hemsted Drive, Redding, California 96002.

1. The Bureau of Land Management Order of Classification Small Tract No. 506 is hereby terminated insofar as it affects the following described land:

Mount Diablo Meridian

T. 33 N., R. 9 W.,
Sec. 5, lots 52, 53, 56 through 61, S½NE¼, SE¼, and E½SE¼SW¼.
Sec. 8, lot 1.
The area described contains approximately 521.53 acres in Trinity County.

2. At 10 a.m. on January 17, 1992, the land described in paragraph 1 will be open to the operation of the public land laws generally, and to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, and classifications, and the requirements of applicable law.

Mark T. Morse,
Area Manager.

[FR Doc. 91–30170 Filed 12–17–91; 8:45 am]

BILLING CODE 4310–40–M

[NV-930-92-4212-14; N-55291]

Realty Action; Non-Competitive Sale of Public Lands in Clark County, NV

The following described public land in the City of North Las Vegas, Clark County, Nevada has been determined to be suitable for sale utilizing non-competitive procedures, at not less than the fair market value. Authority for the sale is section 203 of Public Law 94–579, the Federal Land Policy and Management Act of 1976 (FLPMA).

Mount Diablo Meridian, Nevada

T. 19 S., R. 61 E.,
Sec. 13, N½, NE¼SW¼, SE¼;
Sec. 14, N½;
Sec. 15;
Sec. 16;
Sec. 17;
Sec. 18, lots 5 to 20, inclusive;
Sec. 19, lots 5 to 18, inclusive;
Sec. 20;
Sec. 21, N½;
Sec. 23, N½NE¼, SW¼NE¼, E½NW¼;
Sec. 24, N½, NE¼SW¼, N½SE¼, SW¼SE¼.
T. 19 S., R. 62 E.,
Sec. 18, lots 1 to 4, inclusive, E½, E½W½;
Sec. 19, lots 1 to 4, inclusive, E½, E½W½;
Sec. 20.

Aggregating 7,534.27 acres (gross).

This parcel of land, situated in Clark County, is being offered as a direct sale to the City of North Las Vegas and is not required for any federal purposes. The sale is consistent with the Bureau's planning system. The sale of this parcel would be in the public interest.

In the event of a sale, conveyance of the available mineral interests will occur simultaneously with the sale of the land. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 non-returnable filing fee for conveyance of the available mineral interests.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. Oil, gas, sodium, and potassium.

and will be subject to:

1. An easement for streets, roads and public utilities in accordance with the transportation plan for Clark County/ the City of North Las Vegas.

2. Those rights for railroad purposes which have been granted to the Los Angeles and Salt Lake Railroad Company by Permit No. CC–0360 under the Act of March 3, 1875, 18 Stat. 482, 43 U.S.C. 934–939.

3. Those rights for road purposes which have been granted to the Corps of Engineers by Permit No. Nev–045137 under the Act of January 13, 1916, 44 LD 513.

4. Those rights for power line purposes which have been granted to Nevada Power Company by Permit No. NEV–061985 under the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761) and Nev–067348 under the Act of February 15, 1901 (31 Stat. 790; 43 U.S.C. 959).

5. Those rights for material site and road purposes which have been granted to the Nevada Department of Transportation by Permit No. N–32236 under the Act of August 27, 1958, 72 Stat. 916, 23 U.S.C. 317(A).

6. Those rights for power line purposes which have been granted to Nevada Power Company by Permit No. N–39815, N–42592 and N–49722 under the Act of October 21, 1976, 90 Stat. 2776, 43 U.S.C. 1761.

Publication of this notice in the **Federal Register** shall establish January 1, 1992 as the date the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws. This segregation will terminate upon issuance of a patent or 270 days from the date of segregation, whichever occurs first.

Dated: December 12, 1991.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 91–30146 Filed 12–17–91; 8:45 am]

BILLING CODE 4310–HC–M

National Park Service

Availability of Plan of Operations and Environmental Assessment for Proposed Seismic Survey; LeMarco Operating, Inc., Padre Island National Seashore Kleberg County, TX

Notice is hereby given in accordance with § 9.52(b) of title 36 of the Code of Federal Regulations that the National Park Service has received from LeMarco Operating, Inc., a Plan of Operations for a Proposed Seismic Survey within Padre Island National Seashore, Kleberg County, Texas.

The Plan of Operations and Environmental Assessment are available for public review and comment, for a period of 30 days from the publication date of this notice, in the Office of the Superintendent, Padre Island National Seashore, 9405 South Padre Island Drive, Corpus Christi, Texas; and the Southwest Regional Office, National Park Service, 1220 South St. Francis Drive, Room 211, Santa Fe, New Mexico. Copies are available from the Southwest Regional Office, Post Office Box 728, Santa Fe, New Mexico 87504–0728, and will be sent upon request.

Dated: December 12, 1991.

Joseph J. Sovick,

Acting Associate Regional Director, Resources Management, Southwest Region.

[FR Doc. 91–30153 Filed 12–17–91; 8:45 am]

BILLING CODE 4310–70–M

Interim Bison Management Plan, Environmental Assessment; Yellowstone National Park, WY

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of availability of Environmental Assessment.

SUMMARY: In accordance with the National Environmental Policy Act and National Park Service (NPS) regulations, an Environmental Assessment (EA) has been prepared to analyze the environmental impacts of proposed short-term, interim management actions for the control of bison exiting Yellowstone National Park. The interim plan and EA will be in effect until the final Bison Management Plan and Environmental Impact Statement (EIS), described below, is completed. Long-term planning for bison management is the subject of an EIS process that was announced in the **Federal Register** on July 2, 1990. The short-term management actions to be evaluated will deal with the extent and involvement of the NPS in the control of bison. Control of bison is necessary to prevent the spread of the bison-carried brucella organism to domestic cattle outside the park, to reduce property damage, to increase human safety, and to further reduce entrenchment of migratory behavior of the northern bison herd. Three alternatives are considered in the EA; the no action alternative (control bison outside the park through a removal program which includes public hunting), control of bison inside the park, and control of bison outside the park (proposal).

DATES: Comments on the EA should be sent to the Superintendent, Yellowstone National Park, P.O. Box 168, Yellowstone National Park, Wyoming 82190 no later than December 30, 1991.

ADDRESSES: Copies of the EA are available from the Superintendent, Yellowstone National Park, P.O. Box 168, Yellowstone National Park, Wyoming 82190. Copies are also available for review in the Office of Public Affairs, room 155, National Park Service, Rocky Mountain Regional Office, 12795 West Alameda Parkway, Denver, Colorado 80225.

Dated: December 10, 1991.

Robert M. Baker,

Regional Director, Rocky Mountain Region, National Park Service.

[FR Doc. 91-30152 Filed 12-17-91; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731-TA-487, 488, 489, 490, and 494 (Final)]

Coated Groundwood Paper From Belgium, Finland, France, Germany, and the United Kingdom

Determination

On the basis of the record[1] developed in the subject investigations, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Belgium, Finland, France, Germany, and the United Kingdom of coated groundwood paper, provided for in subheadings 4810.21.00, 4810.29.00, and 4823.59.40 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted these investigations effective June 13, 1991, following preliminary determinations by the Department of Commerce that imports of coated groundwood paper from Belgium, Finland, France, Germany, and the United Kingdom were being sold at LTFV within the meaning of section 733(b) of the act (19 U.S.C. 1673b(b)). Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 17, 1991 (56 FR 32588). The hearing was held in Washington, DC, on October 30, 1991, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in these investigations to the Secretary of Commerce on December 11, 1991. The views of the Commission are contained in USITC Publication 2467 (December 1991), entitled "Coated Groundwood Paper from Belgium, Finland, France, Germany, and the United Kingdom: Determination of the Commission in Investigations Nos. 731-TA-487, 488, 489, 490, and 494 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

By order of the Commission.

Dated: December 12, 1991.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-30189 Filed 12-17-91; 8:45 am]

BILLING CODE 7020-02-M

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioners Crawford and Nuzum did not participate in these investigations.

INTERSTATE COMMERCE COMMISSION

Release of Waybill Data for Use by Department of Industry, Technology and Commerce, Australia

The Commission has received a request from the Australia Department of Industry, Technology and Commerce for permission to use certain data from the Commission's 1989 and 1990 ICC Waybill Samples.

A copy of the of the request (WB659—12/5/91) may be obtained from the ICC Office of Economics.

The Waybill Sample contains confidential railroad and shipper data; therefore, if any parties object to this request, they should file their objections (an original and 2 copies) with the Director of the Commission's Office of Economics within 14 calender days of the date of this notice. The rules for release of waybill data [Ex Parte 385 (Sub-No. 2)] are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 275-6864.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-30151 Filed 12-17-91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

City of Algoma, WI, et al.; Lodging of Consent Decree Under Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on December 6, 1991, a proposed Consent Decree in *United States* v. *City of Algoma, et al.* (Civil Action No. 91-C-1303) was lodged with the United States District Court for the Eastern District of Wisconsin. The proposed Consent Decree concerns the hazardous-waste site known as the Algoma Municipal Landfill ("Algoma") site located near Algoma, Wisconsin. The proposed Consent Decree requires the settlors, which include the City of Algoma and eight generators of hazardous substances sent to the Algoma site, to perform and finance the final remedy set forth in the Record of Decision with respect to the site issued by the U.S. Environmental Protection Agency on September 29, 1990. In addition, the settlors will reimburse the United States for a portion of its response costs associated with the Algoma site. Under the terms of the Consent Decree, the United States will recover approximately $73,000 of its past response costs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Environmental Enforcement Section, Department of Justice, P.O Box 7611, Ben Franklin Station, Washington, D.C. 20503, and should refer to *United States* v. *City of Algoma, et al.* and D.J. reference 90-11-2-490.

The proposed Consent Decree may be examined at the office of the United States Attorney, Eastern District of Wisconsin, Milwaukee, Wisconsin, 517 East Wisconsin Avenue, Milwaukee, Wisconsin; at the Region V Office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604; and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Washington, DC 20530 (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, Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $17.50 (25 cents per page

reproduction cost) payable to the Consent Decree Library.

Barry M. Hartman,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-30172 Filed 12-17-91; 8:45 am]

BILLING CODE 4410-01-M

American Cyanamid, et al.; Lodging of Consent Decree Under Comprehensive Environmental Response, Liability, and Compensation Act ("CERCLA")

In accordance with Department policy, 28 CFR 50.7, and section 122(d) of CERCLA, 42 U.S.C. 9622(d), notice is hereby given that on November 27, 1991, a proposed consent decree in *United States* v. *American Cyanamid, et al.*, Civil Action No. 2:91-1185 was lodged with the United States District Court for the Southern District of West Virginia. The proposed consent decree provides that thirteen defendants will perform the work and pay EPA oversight costs for the second operable unit at the Artel Chemical Company Superfund Site, Nitro, West Virginia. The defendants are American Cyanamid Company, E.I. du Pont de Nemours & Co., Inc., Ethyl Petroleum Additives, Inc., Halliburton Services, Hollingsworth & Vose Co., Mobay Corporation, Monsanto Company, Norton International, Inc., P B & S Chemical Company, Polaroid Corporation, PPG Industries, Inc., Specialty Polymers, Inc., and Union Carbide Corporation.

A complaint against the thirteen defendants has been filed concurrently with the decree seeking performance of the second operable unit under section 106 of CERCLA, 42 U.S.C. 9606, and payment of future oversight costs under section 107 of CERCLA, 42 U.S.C. 9607.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Acting Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *American Cyanamid, et al.*, DOJ. Ref. 90-11-3-706.

The proposed consent decree may be examined at the office of the United States Attorney, Southern District of West Virginia, 500 Quarrier Street, Charleston, West Virginia 25332, and at the Region III office of the United States Environmental Protection Agency, 841 Chestnut Street, Philadelphia, Pennsylvania 19107. The decree may also be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Ave., NW., Box 1097, Washington, DC 20004, 202-347-7829. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $13.25 (25 cents per page reproduction costs) payable to the Consent Decree Library.

Barry M. Hartman,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-30101 Filed 12-17-91; 8:45 am]

BILLING CODE 4410-01-M

Anderson Development Co.; Lodging of Consent Order Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with 42 U.S.C. 9622 and with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent order in *United States* v. *Anderson Development Company*, No. CA 91-CV-76705 DT, has been lodged with the United States District Court for the Eastern District of Michigan, on December 6, 1991. The proposed consent order concerns cleanup of the Anderson Development Company ("ADC") plant site, a hazardous waste site in southeast Adrian, Lenawee County, Michigan. The proposed consent order requires defendant to perform a cleanup at the Site and to pay certain United States Environmental Protection Agency costs.

The Department of Justice will receive for a period for thirty (30) days from the date of this publication comments relating to the proposed consent order. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to United States v. *Anderson Development Company*, D.J. Ref. 90-11-2-595.

The proposed consent order may be examined at the office of the United States Attorney for the Eastern District of Michigan, 817 Federal Building, 231 West Lafayette, Detroit, Michigan 48226, at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 111 West Jackson Street, Chicago, Illinois 60604, and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004, (202) 347-2072. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $58.75 (25 cents per page reproduction costs) payable to the Consent Decree Library.

Barry M. Hartman,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-30173 Filed 12-17-91; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree in United States v. City of Janesville, et al., Under the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with section 122(d)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 96222(d)(2), and the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *City of Janesville, et al.*, Civil Action No. 91-0999, was lodged with the United States District Court for the Western District of Wisconsin on Friday, November 22, 1991. This action was brought for the cleanup of the Janesville Disposal facility ("Site"), located in Janesville, Wisconsin, and for the recovery of costs expended by the United States in connection with this Site. The Site includes two waste treatment and disposal facilities listed on the National Priorities List set forth at 40 CFR part 300, appendix B, as well as two other waste disposal facilities.

The proposed consent decree is entered into between plaintiff, the United States, and 62 entities that have been identified as potentially responsible parties ("PRPs") with respect to the Site. Under the proposed decree, a group of six "Settling Defendants" with finance and perform a remedy which the Environmental Protection Agency previously selected for this Site. The main components of the remedial action that will be implemented by Settling Defendants include: (1) Repair or enhancement of caps covering two landfills known as the "1978 Site" and "1985 Site"; (2) collection and flaring of landfill gas; (3) repair or improvement of the leachate collection system for the "1985 Site"; (4) removal of residual wastes from an area known as the "Janesville Ash Beds"; and (5) installation and operation of a groundwater extraction and treatment system. The Settling Defendants responsible for implementing the remedial action include the city of Janesville, which owns the site and operated waste treatment and disposal operations there during the active life of the Site, and five generators that are alleged to have arranged for treatment

or disposal of hazardous substances at the Site.

In addition, under the proposed decree, two groups of *de minimis* PRPs would pay approximately $297,000 to the Hazardous Substances Superfund and contribute additional amounts toward the remedial work to be performed by the Settling Defendants. Payments received by the Hazardous Substances Superfund will be applied first toward reimbursement of the $220,000 of response costs previously incurred by the United States in connection with this Site. The remainder will be applied toward costs of the United States overseeing implementation of the consent decree.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *United States* v. *City of Janesville, et al.* DJ Ref #90–11–2–478.

The proposed consent decree may be examined at the Office of the United States Attorney for the Western District of Wisconsin, 120 North Henry Street, Madison, Wisconsin 53703; the Region V Office of the U.S. Environmental Protection Agency, 111 West Jackson Street, Third Floor, Chicago, Illinois 60604; and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Washington, 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 $73.75 (twenty-five cents per page reproduction costs) payable to the "Consent Decree Library."

John C. Cruden,

Chief, Environmental Enforcement Section.

[FR Doc. 30107 Filed 12–17–91; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Final Judgment by Consent Pursuant to the Safe Drinking Water Act and the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on December 4, 1991, a consent decree in *United States* v. *Melvin and Loreitta Manning,* Civil Action No. 3:91CV00228, was lodged with the United States District Court for the Eastern District of Virginia.

The Complaint filed by the United States on April 23, 1991, under section 1414(b) and 1414(g) of the Safe Drinking Water Act ("SDWA"); 42 U.S.C. 300g–3(b) and 300g–3(g) and section 309 (b) and (d) of the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987 ("CWA"), 33 U.S.C. 1319 (b) and (d), alleged violations of the National Primary Drinking Water Regulations ("NPDWRs"), 40 CFR part 141, promulgated pursuant to section 1401 of the SDWA, 42 U.S.C. 300g–1, and violations of sections 301 and 402 of the CWA, 33 U.S.C. 1311 and 1342. The United States sought civil penalties and injunctive relief pursuant to section 1414(b) of the SDWA, 42 U.S.C. 300g–3(b) and section 309 (b) and (d) of the Clean Water Act, 33 U.S.C. 1319 (b) and (d). The violations occurred at the Manning Mobile Manor in Prince George County, Virginia.

The proposed consent decree requires Melvin and Loreitta Manning (the "Mannings") to pay a civil penalty of $40,000. The Mannings are further required by the consent decree to construct and install the necessary equipment to connect the sewage treatment system to the Prince George County sewer system, and to employ a Consultant to operate and maintain the public water system at the site. The decree includes stipulated penalties for future violations of the consent decree, the SDWA and the CWA.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Melvin and Loreitta Manning,* DOJ Ref. No. 90–5–1–1–3630. The proposed consent decree may be examined at the office of the United States Attorney, Eastern District of Virginia, Main Street Centre, 600 E Main Street, Richmond, Virginia 23219. Copies of the consent decree may also be examined and obtained by mail at the Environmental Enforcement Section Document Center, 601 Pennsylvania Ave., NW. Box 1097 Washington, DC 20004 (202–347–7829). When requesting a copy of the consent decree by mail, please enclose a check in the amount of $6.75 (twenty-five cents per page reproduction costs) payable to the "Consent Decree Library."

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 91–30108 Filed 12–17–91; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Semiconductor Research Corp.; National Cooperative Research Notification

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("Act"), the Semiconductor Research Corporation ("SRC"), on November 4, 1991, filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notification was filed for the purpose of maintaining the protections of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

The following companies have been added to SRC: Solid State Measurements, Inc., Pittsburgh, Pennsylvania and Arizona Packaging Software, Inc., Tuscon, Arizona as affiliate members. No other changes have been made in either the membership or planned activities of SRC.

On January 7, 1985, SRC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 30, 1985, 50 FR 4281. The most recent notification of SRC membership changes published in the **Federal Register** with a then current and complete membership list was filed by SRC on October 25, 1989, and published by the Department on November 29, 1989, 54 FR 49123–24. Subsequent notifications filed on February 20, 1990, May 16, 1990, and July 18, 1990, were published on April 5, 1990 (55 FR 12750), June 13, 1990 (55 FR 23989), and August 15, 1990 (55 FR 33389–390), respectively, disclosing only membership changes. Notifications filed on September 24 and October 17, 1990, February 19, 1991, and July 22, 1991, disclosing further membership changes, were published on November 27, 1990 (55 FR 49349), March 15, 1991 (56 FR 11275), and September 12, 1991 (56 FR 46444), respectively.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91–30109 Filed 12–17–91; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Ranzy Weston, Sr., M.D.; Denial of Application for Registration

On August 9, 1991, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Ranzy Weston, Sr., M.D. (Respondent), of Augusta, Georgia, proposing to deny his application, executed on February 22, 1990, for registration as a practitioner. The statutory basis for the Order to Show Cause was that Respondent's registration would be inconsistent with the public interest, as set forth in 21 U.S.C. 823(f).

The Order to Show Cause was served on Dr. Weston on August 16, 1991. More than thirty days have passed since the Order to Show Cause was received by Dr. Weston. The Drug Enforcement Administration has received no response from Dr. Weston or anyone purporting to represent him.

Pursuant to 21 CFR 1301.54(d), the Administrator finds that Dr. Weston has waived his opportunity for a hearing. Accordingly, under the provision of 21 CFR 1301.57, the Administrator enters his final order in this matter, based on findings of fact and conclusions of law as hereinafter set forth.

The Administrator finds that in 1987 the State of Georgia initiated an inquiry into Respondent's prescribing practices. The investigating agents warned Dr. Weston that some of his patients were drug abusers who had been prescribed narcotic cough syrups. On three occasions during the period October to December 1987, the Respondent issued prescriptions for the controlled substances Tussionex, a Schedule III narcotic, and a Schedule V narcotic, terpin hydrate with codeine to a State of Georgia undercover agent. At no time did the agent inform the Respondent that there was anything physically wrong with her, but insisted that she was fine and wanted something to relax. The Administrator finds that these prescriptions were not issued for any legitimate medical purpose.

A subsequent investigation revealed that after Respondent's DEA Certificate of Registration expired in 1978, he continued to prescribe controlled substances without authority. The DEA gave written and telephonic notice to Dr. Weston in October 1988, asserting that he had no authority to possess, prescribe or dispense controlled substances. Notwithstanding this notice, Respondent unlawfully wrote ten prescriptions for controlled substances between November 1988 and January 1989.

On October 22, 1988, the Respondent submitted an application for registration. An Order to show Cause proposing to deny the application was issued on March 3, 1989. Dr. Weston submitted a letter response in lieu of requesting a hearing. The then-Administrator of the Drug Enforcement Administration found, after examining the entire record, that Dr. Weston's registration was inconsistent with the public interest and, on June 5, 1989, denied Dr. Weston's application. See Ranzy S. Weston, Sr., M.D., Volume 54, **Federal Register**, at page 24052.

The Administrator finds that Dr. Weston has violated Federal laws relating to controlled substances in that he wrote prescriptions for controlled substances for other than legitimate medical purposes and that he knowingly used an expired DEA number to write prescriptions for controlled substances. Dr. Weston did so after receiving specific warnings concerning his prescribing practices and concerning his use of an expired registration. Dr. Weston, although given the opportunity to request a hearing or to submit a written statement, has failed to do either. Thus the facts recited above stand uncontroverted. Based on those facts, the Administrator concludes that Respondent's registration would be inconsistent with the public interest and that his application for registration must be denied.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b), hereby orders that the application for registration, executed by Ranzy Weston Sr., M.D., on February 22, 1990, be, and it hereby is, denied. This order is effective December 18, 1991.

Dated: December 9, 1991.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 91–30114 Filed 12–17–91; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

Policy on Selection and Referral Techniques for Employment and Training Programs

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice; policy decision.

SUMMARY: This notice announces a policy decision regarding use of the General Aptitude Test Battery (GATB). GATB is an employment aptitude test used mainly by the State-administered public employment service agencies.

This notice announces a policy decision that Employment and Training Administration (ETA) contractors and grantees and programs under the National Apprenticeship Act shall terminate the use of within-group conversion scoring or other race or ethnicity-based adjustments to GATB scores in making selection and referral decisions. ETA contractors and grantees, and programs under the National Apprenticeship Act may, if they so choose, continue to use GATB and its variants, but they remain responsible for assuring that any use they make of GATB scores complies with applicable laws and regulations.

The Department of Labor (DOL or the Department) also will move forward with an aggressive research program to address the concerns identified by the National Academy of Sciences (NAS) and to develop as useful a test as possible.

Background

For several decades, the Employment Service (ES) used special adaptations of the GATB, called Specific Aptitude Test Batteries (SATBs), for selecting applicants for job referral. Developed for some 450 occupations, each SATB consists of the two to four occupationally relevant aptitudes with separate qualifying scores that were set at a level such that they would disqualify job applicants with ability levels similar to the lower third of the workers included in the SATB research samples.

During the early 1980's, the U.S. Employment Service (USES) pilot-tested a new use of the GATB for selecting applicants for job referral, called Validity Generalization (VG). The new procedure used the GATB to assess an applicant's relevant potential for occupational success in virtually any of the 12,000 jobs described in the Dictionary of Occupational Titles. Proponents of the new VG asserted that employment tests were much more generalized than previously thought, i.e., the same test was valid and could be used for more than one job in more than one location and setting. Most of the previously observed differences in a given test's ability to predict performance from one job setting to another were thought to be merely statistical artifacts caused by small sample sizes.

In 1981, USES began encouraging a few State employment service agencies (SESAs) to pilot the use of VG–GATB for all job referrals and to rank candidates according to test scores.

To avoid adverse impact when unvalidated SATBs were used, minority applicants were referred to employers in proportion to their relative numbers or ratio to non-minorities in the local office applicant pool. The same principle was built into the VG–GATB selection process through the method of within-group scoring. Within each applicant group (black, Hispanic, and others), an individual's raw job family scores are translated into percentile scores based on that group's score distribution. This resulted in the same percentage of black and Hispanic applicants receiving the same percentile score as those persons in the "other" category. By combining the percentile scores of individuals in all groups and selecting from the top of the list, applicants are referred in approximate proportion to their relative numbers or ratio within the applicant pool.

Currently, approximately 30 States use the VG–GATB system. In some States it is used in only one office, while in others it is used on a statewide basis. In no office, however, it is being used as the exclusive basis for all or even most of the referrals of workers to employers.

In 1986, questions were raised about the within-group scoring adjustment procedure. Because of the seriousness of these questions, the Department contracted for a special review of VG–GATB by the National Research Council of the National Academy of Sciences.

The NAS stated that it accepted the general thesis of validity generalization, that the results of validity studies can be generalized to many jobs not actually studied, but it urged a cautious approach of generalizing validity only to appropriately similar jobs. Based on some 750 validity studies of various jobs, the NAS found that VG–GATB is likely to be a useful predictor of job performance for a wide variety of jobs similar to those served by the Employment Service system. It characterized the relationship between GATB scores and job performance as "modest," and observed that the relationship is of about the same magnitude for GATB as for other general employment tests.

The NAS found, however, that GATB has certain technical weaknesses that should be corrected. It stressed that research was needed to develop more alternate forms of the GATB for retesting purposes and to replace forms that may have been compromised by falling into examinees' hands. Because the NAS also found the GATB tests to be too "speeded" (i.e., the tests' time limits were thought to be too short relative to the length of the tests), more research was needed to determine whether such short time limits are making it difficult for examinees to demonstrate their true potential and whether such short time limits encourage guessing as a strategy to improve one's score. The NAS also noted an unexplained drop in validities in recent years. It recommended continuing work on measures of job performance, better documentation of recent validity research, and continuing validation research to assure adequate and current occupational coverage, particularly for new and changed occupations.

The NAS concluded that VG–GATB, in its judgment, is of good enough quality and predictive power to play a significant role in Employment Service system referrals, but that it should not be the sole means of referring candidates, nor should it be used to the exclusion of other criteria such as experience and education.

In July 1990, the Department solicited comments from the public on a proposed directive containing revised policy on the use of Validity Generalization (VG) –GATB. 55 FR 30162. The comment period subsequently was reopened and extended through September 24, 1990. 55 FR 35379 (August 29, 1990).

Comments were received from 1,523 respondents. Many opposed the proposed policy that would have required the suspension of the use of the GATB for approximately two years, while the Department conducted research and made modifications to address NAS' concerns. Included among those opposing the proposal were a mix of employers, local apprenticeship councils and their parent unions, professional testing organizations, and several State employment service agencies (SESAs). These respondents felt that VG–GATB provided employers with a more productive work force while helping them to attract qualified minority workers. Respondents on behalf of special worker groups, however, were generally supportive of the proposal, as were a few SESAs. The principal professional organizations involved in testing submitted comments which opposed elimination of the GATB, and asserted that use of the test should be permitted during the research period, on the ground that there are currently no known alternatives that are as valid and economically useful as the GATB. See, for example, comments of the American Psychological Society, the American Phychological Association, and the Society for Industrial and Organizational Psychology, Inc. There was generally no opposition to the proposed GATB research.

Policy Decision

Although the comments on both sides of the issue of whether to retain the within-group scoring system raised thoughtful arguments, the passage of the Civil Rights Act of 1991 obviates the decision. Section 106 of the Act prohibits the use of any scoring system whose effect would be to "adjust the scores of, use different cutoff scores for, or otherwise alter the results of employment related tests on the basis of race, color, religion, sex or national origin." Thus, the Act requires that the use of within-group conversion scoring or other race-, color-, religion-, sex- or national origin-based adjustments to GATB scores for selection and referral by Employment and Training Administration contractors and grantees, and by programs under the National Apprenticeship Act, be terminated, effective immediately. Since the Civil Rights Act of 1991 is effective upon enactment (section 402), such entities shall immediately cease all use of the within-group scoring adjustment in test administration and scoring or for any referral or selection decisions.

The Department will undertake a vigorous program of research and attempt to improve the test, but will not prohibit use of the GATB while the research is being conducted.

There are a wide variety of circumstances and ways in which GATB scores conceivably might be used. ETA contractors and grantees, and programs under the National Apprenticeship Act may, if they so choose, continue to use GATB and its variants. But contractors, grantees, and programs under the National Apprenticeship Act are responsible for assuring that any use they make of GATB scores complies with applicable laws and regulations, including those relating to civil rights.

Should entities affected by this policy decision decide to continue to utilize GATB for selection and referral purposes, rather than solely for counseling purposes, DOL recommends that GATB scores be only one factor in the selection and referral process, with appropriate weight given to other factors (such as past job performance) as well, as suggested by the NAS report.

Based on the findings of the NAS report as to the usefulness of the test as a predictor of performance for a wide variety of jobs, the Department has decided against banning the use of GATB during the research period. The

Department has concluded that SESAs and other users should be allowed the flexibility to assess their own circumstances and determine whether to continue using the GATB, in appropriate ways, during the interim period while research is undertaken to make improvements in the test.

The Department will conduct a multi-year research study to sharpen the ability of the GATB to predict worker performance on the job and thereby increase worker productivity through the use of better and more accurate job placement techniques. The research study is designed to assure that the GATB is a state-of-the-art assessment tool for referring workers to productive, satisfying employment. The Department's research is designed to make the GATB as accurate a predictor as can be developed with existing research techniques and to make it a fair instrument for assessing all workers' capabilities, making it a comprehensive and job-related assessment tool to meet the needs of America's changing and more competitive job market.

EFFECTIVE DATE: Employment and Training Administration grantees and contractors, and programs under the National Apprenticeship Act, shall implement this revised policy on December 18, 1991.

FOR FURTHER INFORMATION CONTACT: Robert Litman, Acting Director, U.S. Employment Service, Employment and Training Administration, Washington, DC 20210. Telephone (202) 535-0157 (this is not a toll-free number).

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

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 91-30206 Filed 12-17-91; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL ACID PRECIPITATION ASSESSMENT PROGRAM

Mission, Goals, and Program Plan, Post 1990

AGENCY: National Acid Precipitation Assessment Program.

ACTION: Notice of Program Plan released for public comment.

SUMMARY: National Acid Precipitation Assessment Program Mission, Goals, and Program Plan, Post 1990.

The National Acid Precipitation Assessment Program (NAPAP) announces the release of its Congressionally-mandated Program Plan for a 60-day public review period.

The Acid Precipitation Act of 1980 and its re-authorization in 1990 mandates a comprehensive national program of policy-oriented research to assess the causes and consequences of acidic deposition and the effectiveness of the recently legislated acid rain controls. NAPAP is directed toward providing technical input for decision-making in the areas of energy production, natural resource management, pollution abatement, and environmental policy. The Program not only links the efforts of the federal agencies, but also coordinates them with the research and monitoring activities of the private sector, state and local governments, and fosters cooperation with the international community.

Initially mandated for ten years by Congress in 1980, NAPAP was re-authorized by title IX of the 1990 Clean Air Act Amendments. Title IV of the Amendments provides for a significant reduction in acid rain precursor emissions. The expanded mission of NAPAP under title IX includes evaluating the effectiveness of title IV. The draft Program Plan describes a coordinated approach to address the mission, goals, and approach for the reauthorized Program.

DATES: Comments must be submitted on or before February 17, 1992.

ADDRESSES: The Program Plan can be ordered free of charge from the National Acid Rain Program, 722 Jackson Place, NW., Washington, DC 20503 or call (202) 296-1002. Comments should be mailed to the same address.

FOR FURTHER INFORMATION CONTACT: Patricia M. Irving, National Acid Precipitation Assessment Program, 722 Jackson Place, NW., Washington, DC 20503, (202) 296-1002.

Patricia M. Irving,

Acting Director.

[FR Doc. 91-30207 Filed 12-17-91; 8:45 am]

BILLING CODE 3126-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Cooperative Agreement to Help Administer Applicant Evaluations

AGENCY: National Endowment for the Arts, National Foundation on the Arts and the Humanities.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of a Cooperative Agreement with a qualified individual or organization to assist the Endowment's Inter-Arts Program in the administration of on-site artistic and/or administrative evaluations of grant applicants or grantees. The task includes coordinating travel arrangements for designated evaluators, disbursing funds to evaluators, maintaining records, and furnishing reports. Those interested in receiving the Solicitation package should reference Program Solicitation PS 92-02 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitation will not be honored.

DATES: Program Solicitation PS 92-02 is scheduled for release approximately January 4, 1991 with proposals due February 3, 1992.

ADDRESSES: Requests for the Solicitation should be addressed to the National Endowment for the Arts, Contracts Division, room 217, 1100 Pennsylvania Ave., NW., Washington, DC 20506.

William I. Hummel,

Director, Contracts and Procurement Division.

[FR Doc. 91-30110 Filed 12-17-91; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* 10 CFR part 70—Domestic Licensing of Special Nuclear Material.

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* Applications for new licenses and amendments may be submitted at any time. Applications for renewal are submitted every five years. Applications for renewal for certain major fuel cycle facilities are submitted every ten years, with updates of the safety demonstration section submitted every

two years. Reports are submitted as events occur. Nuclear material control and accounting information is submitted in accordance with specified instructions.

5. *Who will be required or asked to report:* Applicants for and holders of specific licenses to receive title to, own, acquire, deliver, receive, possess, use, and initially transfer special nuclear material.

6. *An estimate of the number of responses:* 1,209.

7. *An estimate of the total number of hours needed to complete the requirement or request:* An average of approximately 48 hours per response for applications and reports, plus approximately 18 hours annually per recordkeeper. The total industry burden is 61,980 hours.

8. *An indication of whether section 3504(h), Public Law 96–511 applies:* Not applicable.

9. *Abstract:* NRC regulations in 10 CFR part 70 establish procedures and criteria for the issuance of licenses to own, acquire, receive, possess, use, and initially transfer special nuclear material. The information in the applications, reports and records is used by the NRC staff to assess the adequacy of the applicant's physical plant, equipment, organization, training, experience, procedures and plans for protection of public health and safety and the common defense and security.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Comments and questions may be directed by mail to the OMB reviewer: Ronald Minsk, Paperwork Reduction Project (3150–0009), Office of Information and Regulatory Affairs, NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395–3084.

The NRC Clearance officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 6th day of December 1991.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 91–30164 Filed 12–17–91; 8:45 am]

BILLING CODE 7590–01–M

Receipt of Responses to Request for Licensing Actions Regarding Reclamation Plans for Inactive Uranium Recovery Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Receipt of proposed reclamation schedules for inactive uranium recovery facilities.

1. Description of Federal Action

The NRC is issuing this notice to provide a corrected version of a notice which appeared December 6, 1991. The correction involves the uranium mill operated by Umetco Minerals Corp. in Wyoming.

By letter dated October 22, 1991, from the Director, Uranium Recovery Field Office, Region IV, licensees with inactive uranium mills were requested to propose license amendments to define completion schedules for reclamation of their facilities. This request was made in accordance with a memorandum of understanding (MOU) between the Environmental Protection Agency (EPA) and the Nuclear Regulatory Commission (NRC) published in the **Federal Register** on October 25, 1991, (Volume 56, No. 207, pp. 55432-55435). As stipulated in the MOU, the NRC is noticing the receipt of responses to the NRC request of October 22, 1991, from the following NRC licensees:

Licensee	Facility	Docket No.	Licensee
ARCO	Bluewater Mill	40–8902	SUA–1470
Homestake	Milan Mill	40–8903	SUA–1471
Kennecott	L-Bar Mill	40–8904	SUA–1472
Quivira	Ambrosia Lake	40–8905	SUA–1473
United Nuclear Corp.	Church Rock Mill	40–8907	SUA–1475
Utah:			
Atlas	Moab Mill	40–3453	SUA–917
Rio Algom Mining Corp.	Lisbon Mill	40–8084	SUA–1119
Wyoming:			
American Nuclear	Gas Hills	40–4492	SUA–667
Pathfinder Mines	Lucky McMill	40–2259	SUA–672
Petrotomics Company	Shirley Basin	40–6659	SUA–551
Umetco Minerals Corp.	Gas Hills	40–0299	SUA–648
Union Pacific Resources	Bear Creek Mill	40–4852	SUA–1310
Western Nuclear, Inc.	Split Rock Mill	40–1162	SUA–56

The NRC intends to review the above referenced responses, and amend the above referenced licenses to incorporate the reclamation plan milestones as appropriate for each facility. In accordance with the above referenced MOU, the NRC intent to amend each license will be noticed and a 30-day period will be provided for receipt of comments.

2. Contact

Copies of responses from the above licensees are available for inspection at the Uranium Recovery Field Office, 730 Simms, suite 100, Lakewood, Colorado, and at the Public Document Room, 2120 L Street, Washington, DC Comments or questions regarding the responses may be directed to the Director, Uranium Recovery Field Office, P.O. Box 25325, Denver, Co., 80225.

Dated at Denver, Colorado this 5th day of December, 1991.

For the Nuclear Regulatory Commission.

Ramon E. Hall,

Director, Uranium Recovery Field Office, Division of Radiation Safety and Safeguards, Region IV.

[FR Doc. 91–30165 Filed 12–17–91; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee (TPSC); Generalized System of Preferences (GSP); Special GSP Review for Central and Eastern Europe; Notice of Review of Product Petitions, Public Hearings and List of Articles To Be Sent to the U.S. International Trade Commission (USITC) for Review; Opportunity for Public Comment on USITC Advice in the 1991 GSP Annual Review

AGENCY: Office of the United States Trade Representative.

SUMMARY: The purpose of this notice is (1) to announce the list of articles that will be considered for designation as eligible for duty-free treatment under the GSP in the Special GSP Review for Central and Eastern European countries; (2) to announce a revised timetable for public hearings on the articles that are being considered for GSP designation in the Special GSP Review; (3) to announce that the list of articles herein will be sent by the United States Trade Representative (USTR) to the USITC to seek advice with respect to modification of the list of eligible articles for GSP; and, (4) to announce an opportunity for public comment on the USITC advice rendered in the 1991 GSP Annual Review.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW., room 517, Washington, DC 20506. The telephone number is (202) 395–6971. Public versions of all documents are also available for review by appointment with the USTR Public Reading Room. Documents will be available in the reading room shortly after the filing deadlines. Appointments may be made from 10 a.m. to noon and 1 p.m. to 4 p.m. by calling (202) 395–6186.

SUPPLEMENTARY INFORMATION:

I. Special GSP Review

A. Background

In announcing the Trade Enhancement Initiative for Central and Eastern Europe, the President stated that "(t)he United States will provide substantially expanded market access for Central and East European countries by enhancing the Generalized System of Preferences (GSP)" (White House Press Release, July 12, 1991). The President also stated that he would give "special and expedited consideration" to the GSP benefits for the countries in that region by inviting additional GSP petitions and reviewing previously rejected product petitions. Accordingly, the TPSC initiated the Special GSP Review for Central and Eastern Europe on August 8, 1991 (56 FR 37758), and announced that certain previously denied Central and Eastern Europe petitions would be reviewed pursuant to the GSP regulations (see 15 CFR part 2007, including 15 CFR 2007.0(f)). On September 18, 1991, the TPSC extended the deadline for the submission of petitions in the Special GSP Review to October 18, 1991 FR 47266).

B. Acceptance of Petitions for Review

In the Special GSP Review, petitions were submitted to the GSP Subcommittee of the TPSC by the Governments of Czechoslovakia, Hungary, Poland and Yugoslavia seeking to have: (1) Additional articles designated as eligible for the GSP; or (2) the competitive need limits waived for specific products of a specific beneficiary country. Notice is hereby given of the acceptance for review of petitions requesting modification of the list of articles eligible to receive duty-free treatment under the GSP, as provided for in title V of the Trade Act of 1974, as amended (the 1974 Act) (19 U.S.C. 2461–2465). The TPSC is initiating the review of these petitions and the consideration of articles for designation as eligible GSP articles pursuant to the GSP regulations as set forth at 15 CFR 2007. The products that will be considered for designation as eligible GSP articles in the Special GSP Review are set forth in the Annex to this notice.

As in previous reviews, modifications of the list of articles eligible for GSP duty-free treatment in the Special GSP Review will be considered in accordance with the "graduation" policy. "Graduation" refers to the discretionary removal of a beneficiary country from the GSP program or the discretionary denial of duty-free GSP treatment to a particular product from a particular beneficiary country. Pursuant to this policy, a GSP beneficiary country could be excluded from GSP eligibility on a newly-designated article if that country is found to be sufficiently competitive with respect to that product. Therefore, product designations in the Special GSP Review may be made on a differential basis. Four criteria will be taken into account when any such graduation action is considered: The development level of individual beneficiary countries; their competitive position in the product concerned; the countries' practices relating to trade, investment and worker rights; and the overall economic interests of the United States.

C. Deferral of Decisions on Petitions From Yugoslavia

On December 6, 1991, President Bush announced the suspension of Yugoslavia from eligibility under the GSP program, effective December 24, 1991 (see 56 FR 64467). Therefore, decisions on whether to accept petitions filed by Yugoslavia in the Special GSP Review on products contained in subheadings 4107.10.00, 9401.69.60 and 9401.90.40 of the Harmonized Tariff Schedule of the United States (HTS) will be deferred until such time as Yugoslavia's status under the GSP program changes. At such time that a decision to accept Yugoslavia's petitions is announced, a schedule for public comment, including hearings, will be published.

D. Public Hearings and the Opportunity for Public Comment

The GSP Subcommittee of the TPSC invites submissions in support of or in opposition to the designation of any product listed in this notice as eligible for GSP. Information submitted in connection with this Special GSP Review must be submitted to the GSP Subcommittee at the address listed above. All such submissions should conform to the GSP regulations set forth at 15 CFR 2007. All submissions should identify the product of interest in terms of the current numbering and nomenclature of the HTS and, if possible, the assigned case number that is contained in the annex to this notice.

1. Public Hearings

Public hearings in connection with the Special GSP Review will be held on January 21–23, 1992, beginning at 9 a.m. at a location in Washington, DC to be announced. The hearings will be open to the public and a transcript of the hearings will be made available for public inspection or purchase from the reporting company. No electronic media coverage will be allowed.

Requests to present oral testimony in connection with public hearings should be accompanied by fourteen (14) copies, in English, of all written briefs or statements and should be received by the GSP Subcommittee by 5 p.m. Wednesday, January 8, 1992. All interested parties wishing to make an oral presentation at the hearings must submit the name, address, and telephone number of the witness(es) representing their organization by 5 p.m. Wednesday, January 8, 1992. Oral testimony before the GSP Subcommittee must be in English and will be limited to five-minute presentations that summarize or supplement information

contained in briefs or statements submitted for the record.

2. Written Submissions

All submissions must be submitted in fourteen copies (14) in English. Interested parties that do not wish to appear at the public hearing may nonetheless submit pre-hearing briefs by 5 p.m. Wednesday, January 8, 1992. All interested parties may also submit post-hearing briefs by 5 p.m. Wednesday, February 12, 1992. Rebuttal briefs may be submitted by 5 p.m. Friday, February 28, 1992.

As part of the Special GSP Review, advice will be sought from the USITC, and an opportunity will be provided for the public to comment on nonconfidential USITC advice in March 1992. Notice of the availability of the USITC report and the timetable for comment will be published in the **Federal Register.**

3. Information Subject to Public Inspection

All submissions will be subject to public inspection by appointment with the staff of the USTR Public Reading Room, except for information granted "business confidential" status pursuant to 15 CFR 2003.6 and other qualifying information submitted in confidence pursuant to 15 CFR 2007.7. Briefs or statements must be submitted in fourteen (14) copies in English. If the document contains business confidential information, fourteen (14) copies of a nonconfidential version of the submission along with fourteen (14) copies of the confidential version must be submitted. In addition, the document containing confidential information should be clearly marked "confidential" at the top and bottom of each page of the document. The version that does not contain business confidential information (the public version) should also be clearly marked at the top and bottom of each page (either "public version" or "nonconfidential").

D. List of Articles Which May Be Considered for Designations as Eligible Articles for Purposes of the GSP or for Waiver of the Competitive Need Limit and on Which the USITC Will Be Asked to Provide Advice

On behalf of the President and in accordance with sections 503(a) and 131(a) of the 1974 Act (19 U.S.C. 2463(a) and 2151(a)), the USITC is being furnished with the list of articles published herein for the purpose of securing from the USITC its advice on the probable economic effect on U.S. industries producing like or directly competitive articles, and on consumers, of the modification of the list of articles eligible for GSP.

II. Notice of Opportunity for Public Comment on the USITC Advice Rendered in the 1991 GSP Annual Review

On August 26, 1991, USTR announced which product and country practice petitions were being accepted for further review in the 1991 GSP Annual Review (56 FR 42080). In that notice, it was noted that USTR would seek advice from the USITC on the probable economic effect of the modification of the list of articles eligible for GSP on industries producing like or directly competitive articles and on consumers.

The public version of the USITC advice will be available after December 11, 1991. The report containing the USITC advice is entitled President's List of Articles Which May Be Designated or Modified as Eligible Articles for Purposes of the U.S. Generalized System of Preferences, Report to the President on Investigation Nos. TA–131–17, 503(a)–22 and 332–312, USITC Publication 2464 (December 1991) (hereinafter USITC Publication 2646). After December 11, 1991, USITC Publication 2464 will be available from the USITC by calling the Office of the Secretary of the USITC at (202) 205–1806. USITC Publication 2464 will also available for review by appointment with the USTR Public Reading Room in Washington, DC. Appointments may be scheduled by calling (202) 395–6186.

The GSP Subcommittee of the TPSC hereby notifies interested parties of the opportunity to comment on the public version of the USITC advice. All comments must be submitted to the GSP Subcommittee in accordance with the GSP regulations and the requirements set forth in section I(D) of this notice. Comments on the USITC advice must be received by 5 p.m. Wednesday, January 22, 1992.

David A. Weiss,

Chairman, Trade Policy Staff Committee.

BILLING CODE 3190-01-M

Annex

Case No.	HTS Subheading 1/	Article	Petitioner :Government(s) of:
		[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
		Petitions to add products to the list of eligible articles for the Generalized System of Preferences.	
		Meat and edible meat offal, salted, in brine, dried or smoked; edible flours and meals of meat or meat offal:	
		Meat of swine:	
SCEER-1	0210.12.00	Bellies (streaky) and cuts thereof	Hungary
		Cheese and curd:	
		Other cheese:	
		Goya cheese:	
		[Made from cow's milk and not in original loaves]	
SCEER-2	0406.90.3040	Other	do.
		Dried vegetables, whole, cut, sliced, broken or in powder, but not further prepared:	
		Other vegetables; mixtures of vegetables:	
SCEER-3	0712.90.75	Tomatoes	do.
		Hop cones, fresh or dried, whether or not ground, powdered or in the form of pellets; lupulin:	
SCEER-4	1210.10.00	Hop cones, neither ground nor powdered nor in the form of pellets	Czechoslovakia
		Other prepared or preserved meat, meat offal or blood:	
		Of swine:	
		[Hams and cuts thereof; Shoulders and cuts thereof]	
		Other, including mixtures:	
		[Offal]	
		Other:	
		Not containing cereals or vegetables:	
		[Boned and cooked and packed in airtight containers]	
SCEER-5	1602.49.40	Other	Hungary
		Of bovine animals:	
		[Offal]	
		Other:	
		Not containing cereals or vegetables:	
		[Cured or pickled]	
		Other:	
		In airtight containers:	
		[Corned beef]	
SCEER-6	1602.50.20	Other	do.
		Mushrooms and truffles, prepared or preserved otherwise than by vinegar or acetic acid:	
SCEER-7	2003.10.00	Mushrooms	do.
		Fruit juices (including grape must) and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter:	
		Grape juice (including grape must):	
		Concentrated:	
		[Frozen]	
SCEER-8	2009.60.0060	Other	do.
		Wine of fresh grapes, including fortified wines; grape must other than that of heading 2009:	
SCEER-9	2204.10.00	Sparkling wine	do.

1/ Harmonized Tariff Schedule of the United States.

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Case No.	HTS Subheading 1/	Article	Petitioner Government(s) of:
		Petitions to add products to the list of eligible articles for the Generalized System of Preferences. (con.)	
		Wine of fresh grapes, including fortified wines; grape must other than that of heading 2009 (con.):	
		Other wine; grape must with fermentation prevented or arrested by the addition of alcohol:	
		In containers holding 2 liters or less:	
		[Effervescent wine]	
		Other:	
SCEER-10	2204.21.40	Of an alcoholic strength by volume not over 14 percent vol.	Hungary
	or	or	
		Of an alcoholic strength by volume not over 14 percent vol.:	
SCEER-11	2204.21.40(pt.)	If entitled under regulations of the United States Internal Revenue Service to a type designation which includes the name "Tokay" and if so designated on the approved label	do.
		Of an alcoholic strength by volume over 14 percent vol.:	
		[If entitled under regulations of the United States Internal Revenue Service to a type designation which includes the name "Marsala" and if so designated on the approved label]	
SCEER-12	2204.21.80	Other	do.
	or	or	
SCEER-13	2204.21.80(pt.)	If entitled under regulations of the United States Internal Revenue Service to a type designation which includes the name "Tokay" and if so designated on the approved label	do.
		Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 percent vol.; spirits, liqueurs and other spirituous beverages; compound alcoholic preparations of a kind used for the manufacture of beverages:	
		Spirits obtained by distilling grape wine or grape marc (grape brandy):	
		[Pisco and singani]	
		Other:	
		In containers each holding over 4 liters:	
SCEER-14	2208.20.50	Valued not over $2.38/liter	do.
		Cyclic hydrocarbons:	
		Other:	
SCEER-15	2902.90.50(pt.)	Anthracene; and 1,4-Di(2-methylstyryl)benzene	Czechoslovakia
		Sulfonated, nitrated or nitrosated derivatives of hydrocarbons, whether or not halogenated:	
		Derivatives containing only sulfo groups, their salts and ethyl esters:	
		Other:	
		Aromatic:	
SCEER-16	2904.10.20(pt.)	2-Anthracenesulfonic acid	do.
SCEER-17	2904.10.30(pt.)	Benzenesulfonyl chloride	Poland
		Other:	
SCEER-18	2904.90.35	4,4'-Dinitrostilbene-2,2'-disulfonic acid	Czechoslovakia

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Case No.	HTS Subheading 1/	Article	Petitioner Government(s) of:
		Petitions to add products to the list of eligible articles for the Generalized System of Preferences. (con.)	
		Phenols; phenol-alcohols:	
		Monophenols:	
		Naphthols and their salts:	
SCEER-19	2907.15.50(pt.)	2-Naphthol (β-Naphthol)	Czechoslovakia; Poland
		Polyphenols:	
SCEER-20	2907.23.00	4,4'-Isopropylidenediphenol (Bisphenol A, Diphenylolpropane) and its salts	Poland
		Halogenated, sulfonated, nitrated or nitrosated derivatives of phenols or phenol-alcohols:	
		Derivatives containing only sulfo groups, their salts and esters:	
SCEER-21	2908.20.10(pt.)	4-Hydroxy-1-naphthalenesulfonic acid (1-Naphthol-4-sulfonic acid)	Czechoslovakia
		Other:	
SCEER-22	2908.20.50(pt.)	1,8-Dihydroxynaphthalene-3,6-disulfonic acid and its disodium salt	do.
		Other:	
		Dinitro-o-cresol and 4-nitro-m-cresol:	
SCEER-23	2908.90.20(pt.)	4,6-Dinitro-o-cresol	do.
		Ketones and quinones, whether or not with other oxygen function, and their halogenated, sulfonated, nitrated or nitrosated derivatives:	
		Ketone-alcohols and ketone-aldehydes:	
		Other:	
		Aromatic:	
SCEER-24	2914.49.10(pt.)	1,2,3-Indantrione monohydrate (Ninhydrin)	do.
		Quinones:	
SCEER-25	2914.61.00	Anthraquinone	do.
		Saturated acyclic monocarboxylic acids and their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulfonated, nitrated or nitrosated derivatives:	
		Other:	
		Acids:	
		Other:	
SCEER-26	2915.90.15(pt.)	Valproic acid	do.
		Unsaturated acyclic monocarboxylic acids, cyclic monocarboxylic acids, their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulfonated, nitrated or nitrosated derivatives:	
		Aromatic monocarboxylic acids, their anhydrides, halides, peroxides, peroxyacids and their derivatives:	
		Other:	
		Other:	
		Other:	
SCEER-27	2916.39.60(pt.)	Cinnamic acid	do.
		Polycarboxylic acids, their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulfonated, nitrated or nitrosated derivatives:	
		Acyclic polycarboxylic acids, their anhydrides, halides, peroxides, peroxyacids and their derivatives:	
		Other:	
SCEER-28	2917.19.10	Ferrous fumarate	Hungary

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Case No.	HTS Subheading 1/	Article	Petitioner Government(s) of:
		Petitions to add products to the list of eligible articles for the Generalized System of Preferences. (con.)	
		Carboxylic acids with additional oxygen function and their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulfonated, nitrated or nitrosated derivatives:	
		Carboxylic acids with phenol function but without other oxygen function, their anhydrides, halides, peroxides, peroxyacids and their derivatives:	
		Salicylic acid and its salts:	
		[Suitable for medicinal use]	
SCEER-29	2918.21.50	Other	Poland
		Other:	
		Other:	
SCEER-30	2918.29.50(pt.)	3-Hydroxy-2-naphthoic acid	Czechoslovakia
		Amine-function compounds:	
		Aromatic monoamines and their derivatives; salts thereof:	
		Aniline derivatives and their salts:	
		Other:	
		Other:	
SCEER-31	2921.42.70(pt.)	N-Ethylaniline; N,N-Diethylaniline	Czechoslovakia; Poland
		Aromatic polyamines and their derivatives; salts thereof:	
		Other:	
SCEER-32	2921.59.20	4,4'-Diamino-2,2'-stilbenedisulfonic acid	Czechoslovakia
		Oxygen-function amino-compounds:	
		Amino-aldehydes, amino-ketones and amino-quinones, other than those containing more than one kind of oxygen function; salts thereof:	
		Aromatic:	
		Other:	
SCEER-33	2922.30.20(pt.)	2-Aminoanthraquinone	do.
SCEER-34	2922.30.30(pt.)	1-Aminoanthraquinone; and Ketamine hydrochloride	Czechoslovakia; Hungary
		Amino-acids and their esters, other than those containing more than one kind of oxygen function; salts thereof:	
		Other:	
		Aromatic:	
		Other:	
		Drugs:	
SCEER-35	2922.49.20(pt.)	Benzocaine; Procaine hydrochloride	Czechoslovakia
		Amino-alcohol-phenols, amino-acid-phenols and other amino-compounds with oxygen function:	
		Aromatic:	
		Other:	
		Drugs:	
		Other:	
		Cardiovascular drugs:	
SCEER-36	2922.50.15(pt.)	α-Methyldopa	Hungary
		Carboxyamide-function compounds; amide-function compounds of carbonic acid:	
		Cyclic amides (including cyclic carbamates and their derivatives; salts thereof:	
		Ureines and their derivatives; salts thereof:	
		Aromatic:	
		Other:	
SCEER-37	2924.21.30(pt.)	sym-Diethyldiphenylurea	Czechoslovakia

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Case No.	HTS Subheading 1/	Article	Petitioner Government(s) of:
		Petitions to add products to the list of eligible articles for the Generalized System of Preferences. (con.)	
		Carboxyimide-function compounds (including saccharin and its salts) and imine-function compounds:	
		Imines and their derivatives; salts thereof:	
		Aromatic:	
		Other:	
SCEER-38	2925.20.30(pt.)	Diphenylguanidine	Czechoslovakia
		Nitrile-function compounds:	
		Other:	
		Aromatic:	
SCEER-39	2926.90.10(pt.)	Benzonitrile	do.
		Other:	
		Other:	
SCEER-40	2926.90.35(pt.)	p-Chlorobenzonitrile; and Verapamil hydrochloride	Czechoslovakia; Hungary
SCEER-41	2926.90.40(pt.)	o-Chlorobenzonitrile	Czechoslovakia
		Organo-sulfur compounds:	
		Other:	
		Aromatic:	
		Other:	
SCEER-42	2930.90.20(pt.)	N-Cyclohexylthiophthalimide	do.
		Heterocyclic compounds with oxygen hetero-atom(s) only:	
		Lactones:	
		Other lactones:	
		Aromatic:	
SCEER-43	2932.29.40(pt.)	4-Hydroxycoumarin	do.
		Heterocyclic compounds with nitrogen hetero-atom(s) only; nucleic acids and their salts:	
		Compounds containing an unfused pyridine ring (whether or not hydrogenated) in the structure:	
		Other:	
		Other:	
		Drugs:	
SCEER-44	2933.39.35(pt.)	Cyproheptadine hydrochloride	Hungary
		Compounds containing a quinoline or isoquinoline ring-system (whether or not hydrogenated), not further fused:	
		Other:	
		Drugs:	
SCEER-45	2933.40.25(pt.)	Chloroquine diphosphate	do.
		Other:	
SCEER-46	2933.40.50(pt.)	4,7-Dichloroquinoline	do.
		Compounds containing a pyrimidine ring (whether or not hydrogenated) or piperazine ring in the structure; nucleic acids and their salts:	
		Malonylurea (Barbituric acid) and its derivatives; salts thereof:	
SCEER-47	2933.51.50(pt.)	Phenobarbital	do.
		Other:	
		Drugs:	
		Aromatic or modified aromatic:	
		Anti-infective agents:	
SCEER-48	2933.59.26(pt.)	Trimethoprim	do.

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Case No.	HTS Subheading 1/	Article	Petitioner Government(s) of:

Petitions to add products to the list of eligible articles for the Generalized System of Preferences. (con.)

		Heterocyclic compounds with nitrogen hetero-atom(s) only; nucleic acids and their salts (con.):	
		Other:	
		Aromatic or modified aromatic:	
		Other:	
		Drugs:	
		Anti-infective agents:	
SCEER-49	2933.90.27(pt.)	Carbadox	Hungary
		Drugs primarily affecting the central nervous system:	
		Antidepressants, tranquilizers and other psychotherapeutic agents:	
SCEER-50	2933.90.32(pt.)	Imipramine hydrochloride	do.
		Other heterocyclic compounds:	
		Compounds containing a phenothiazine ring-system (whether or not hydrogenated), not further fused:	
SCEER-51	2934.30.10(pt.)	Prochlorperazine maleate; and Promethazine hydrochloride	do.
		Other:	
		Drugs:	
		Antidepressants, tranquilizers and other psychotherapeutic agents:	
SCEER-52	2934.30.20(pt.)	Chlorpromazine hydrochloride	do.
		Other:	
		Aromatic or modified aromatic:	
		Other:	
		Other:	
SCEER-53	2934.90.45(pt.)	2,5-Diphenyloxazole	Czechoslovakia
		Sulfonamides:	
		Other:	
		Drugs:	
		Anti-infective agents:	
SCEER-54	2935.00.35(pt.)	Salicylazosulfapyridine (Sulfasalazine)	do.
		Other:	
SCEER-55	2935.00.46(pt.)	Glyburide; and Furosemide	Hungary
		Provitamins and vitamins, natural or reproduced by synthesis (including natural concentrates), derivatives thereof used primarily as vitamins, and intermixtures of the foregoing, whether or not in any solvent:	
		Vitamins and their derivatives, unmixed:	
SCEER-56	2936.26.00	Vitamin B_{12} (Cyanocobalamin and related compounds with Vitamin B_{12} activity) and its derivatives	do.
		Hormones, natural or reproduced by synthesis; derivatives thereof, used primarily as hormones; other steroids used primarily as hormones:	
		Other hormones and their derivatives; other steroids used primarily as hormones:	
		Estrogens and progestins:	
		Other:	
SCEER-57	2937.92.30(pt.)	Ethynodiol decanoate; D-Norgestrel; and DL-Norgestrel	do.
		Other:	
SCEER-58	2937.99.10(pt.)	Nandrolone phenpropionate	do.
SCEER-59	2937.99.50(pt.)	Nandrolone decanoate; and Pipecurium bromide	do.

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Case No.	HTS Subheading 1/	Article	Petitioner Government(s) of:
		Petitions to add products to the list of eligible articles for the Generalized System of Preferences. (con.)	
		Vegetable alkaloids, natural or reproduced by synthesis, and their salts, ethers, esters and other derivatives:	
		Alkaloids of opium and their derivatives; salts thereof:	
		Other:	
		Synthetic:	
SCEER-60	2939.10.20(pt.)	Codeine phosphate	Czechoslovakia
		Ephedrines and their salts:	
SCEER-61	2939.40.10	Pseudoephedrine and its salts	do.
SCEER-62	2939.40.50	Other	do.
	or	or	
SCEER-63	2939.40.50(pt.)	L-Ephedrine hydrochloride	do.
		Antibiotics:	
SCEER-64	2941.40.00	Chloramphenicol and its derivatives; salts thereof	Hungary
		Synthetic organic coloring matter, whether or not chemically defined; preparations as specified in note 3 to chapter 32 of the HTS based on synthetic organic coloring matter; synthetic organic products of a kind used as fluorescent brightening agents or as luminophores, whether or not chemically defined:	
		Synthetic organic coloring matter and preparations based thereon as specified in note 3 to chapter 32 of the HTS:	
		Acid dyes, whether or not premetallized, and preparations based thereon; mordant dyes and preparations based thereon:	
		Other:	
SCEER-65	3204.12.50(pt.)	Mordant Black 11	Czechoslovakia
		Vat dyes (including those usable in that state as pigments) and preparations based thereon:	
		Other:	
SCEER-66	3204.15.50(pt.)	Vat black 27; Vat blue 4, 6, 14, 18, 20; Vat brown 1; Vat green 1, 3; Vat orange 11; Vat red 13; Vat yellow 2	do.
		Synthetic organic products of a kind used as fluorescent brightening agents:	
SCEER-67	3204.20.10	Fluorescent brightening agent 32	do.
SCEER-68	3204.20.50	Other	do.
		Prepared rubber accelerators; compound plasticizers for rubber or plastics, not elsewhere specified or included; antioxidizing preparations and other compound stabilizers for rubber or plastics:	
		Prepared rubber accelerators:	
SCEER-69	3812.10.10	Containing any aromatic or modified aromatic rubber accelerator	do.
		Antioxidizing preparations and other compound stabilizers for rubber or plastics:	
		Containing any aromatic or modified aromatic antioxidant or other stabilizer:	
		[Mixtures of N,N'-diaryl-p-phenylenediamines]	
SCEER-70	3812.30.40	Other	do.
		Composite diagnostic or laboratory reagents, other than those of heading 3002 or 3006:	
		[Containing antigens or antisera]	
SCEER-71	3822.00.50	Other	do.

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Case No.	HTS Subheading 1/	Article	Petitioner Government(s) of:
		Petitions to add products to the list of eligible articles for the Generalized System of Preferences. (con.)	
		Cellulose and its chemical derivatives, not elsewhere specified or included, in primary forms:	
SCEER-72	3912.20.00	Cellulose nitrates (including collodions)	Czechoslovakia; Hungary
		Synthetic monofilament of 67 decitex or more and of which no cross-sectional dimension exceeds 1 mm; strip and the like (for example, artificial straw) of synthetic textile materials of an apparent width not exceeding 5 mm:	
		Monofilament:	
		[Racket strings]	
SCEER-73	5404.10.20	Other	Hungary
		Tableware, kitchenware, other household articles and toilet articles, of porcelain or china:	
		Tableware and kitchenware:	
SCEER-74	6911.10.10	Hotel or restaurant ware and other ware not household ware	do.
		Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china:	
		Tableware and kitchenware:	
		[Articles provided for in subheading 6912.00.10]	
		Other:	
		[Hotel or restaurant ware and other ware not household ware]	
		Other:	
		Available in specified sets:	
SCEER-75	6912.00.35	In any pattern for which the aggregate value of the articles listed in additional U.S. note 6(b) of chapter 69 of the HTS is not over $38	do.
SCEER-76	6912.00.39	In any pattern for which the aggregate value of the articles listed in additional U.S. note 6(b) of chapter 69 of the HTS is over $38	do.
		Other:	
		[Articles provided for in subheadings 6912.00.41 and 6912.00.44]	
SCEER-77	6912.00.45	Cups valued over $5.25 per dozen; saucers valued over $3 per dozen; soups, oatmeals and cereals valued over $6 per dozen; plates not over 22.9 cm in maximum diameter and valued over $6 per dozen; plates over 22.9 but not over 27.9 cm in maximum diameter and valued over $8.50 per dozen; platters or chop dishes valued over $35 per dozen; sugars valued over $21 per dozen; creamers valued over $15 per dozen; and beverage servers valued over $42 per dozen	do.
		[Serviette rings]	
SCEER-78	6912.00.48	Other	do.
		Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018):	
		Drinking glasses, other than of glass-ceramics:	
		Of lead crystal:	
SCEER-79	7013.21.20	Valued over $1 but not over $3 each	Czechoslovakia
SCEER-80	7013.21.30	Valued over $3 but not over $5 each	do.

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Case No.	HTS Subheading 1/	Article	Petitioner Government(s) of:
		Petitions to add products to the list of eligible articles for the Generalized System of Preferences. (con.)	
		Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018) (con.):	
		Glassware of a kind used for table (other than drinking glasses) or kitchen purposes other than that of glass-ceramics:	
		Of lead crystal:	
SCEER-81	7013.31.30	Valued over $3 but not over $5 each	Hungary
		Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron or steel:	
		Threaded articles:	
		[Coach screws; Other wood screws; Screw hooks and screw rings; Self-tapping screws]	
		Other screws and bolts, whether or not with their nuts or washers:	
		[Articles provided for in subheadings 7318.15.20 through 7318.15.50, inclusive]	
		Other:	
SCEER-82	7318.15.80	Having shanks or threads with a diameter of 6 mm or more	Poland
		Beryllium, chromium, germanium, vanadium, gallium, hafnium, indium, niobium (columbium), rhenium and thallium, and articles of these metals, including waste and scrap:	
		Other:	
		Unwrought; waste and scrap; powders:	
		[Waste and scrap]	
		Other:	
SCEER-83	8112.91.10	Gallium	Hungary
		Ball or roller bearings, and parts thereof:	
		Ball bearings:	
		[Ball bearings with integral shafts]	
SCEER-84	8482.10.50	Other	Hungary; Poland
		[Tapered roller bearings, including cone and tapered roller assemblies]	
SCEER-85	8482.30.00	Spherical roller bearings	Poland
SCEER-86	8482.40.00	Needle roller bearings	do.
SCEER-87	8482.50.00	Other cylindrical roller bearings	do.
SCEER-88	8482.80.00	Other, including combined ball/roller bearings	do.
		Other clocks:	
		Alarm clocks;	
		[Battery or AC powered]	
		Other:	
		With movement measuring not over 50 mm in width or diameter:	
SCEER-89	9105.19.10	Not constructed or designed to operate for over 47 hours without rewinding	Czechoslovakia
		Other:	
SCEER-90	9105.19.40	Valued not over $5 each	do.

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Case No.	HTS Subheading 1/	Article	Petitioner Government(s) of:
		Petitions to add products to the list of eligible articles for the Generalized System of Preferences. (con.)	
		Mattress supports; articles of bedding and similar furnishings (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered:	
		Sleeping bags:	
		[Containing 20 percent or more by weight of feathers and/or down]	
SCEER-91	9404.30.80	Other	Czechoslovakia
		Pencils (other than those pencils of heading 9608), crayons, pencil leads, pastels, drawing charcoals, writing or drawing chalks and tailors' chalks:	
SCEER-92	9609.10.00	Pencils and crayons, with leads encased in a rigid sheath	do.

1/ Harmonized Tariff Schedule of the United States.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-30063; International Series No. 352; File No. SR-CBOE-91-36]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Listing of Reduced Value Index Options on the Deutsche Aktien Index ("DAX")

December 11, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 15, 1991, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE is proposing to list and trade index options, pursuant to chapter XXIV of the Exchange's Rules, based on a reduced value of the Deutsche Aktien Index ("DAX" or "Index"). The DAX is a broad-based, capitalization-weighted index of 30 German blue-chip equities listed on the Frankfurt Stock Exchange ("FSE"). The Index options will be cash settled with a European-style exercise and have a value of one U.S. dollar for each reduced value DAX Index point.

The text of the proposed rule is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to permit the CBOE to list and trade cash-settled, European-style index options based on a reduced value of the DAX. The DAX is a capitalization-weighted index comprised of 30 German blue-chip equities listed on the FSE, the fourth largest stock exchange in the world. The DAX stocks are drawn from a broad base of industries and account for 70 percent of the volume on the FSE.

2. Index Description

a. *Design.* The stocks comprising the DAX are chosen on the basis of market capitalization, trading volume and the early availability of daily opening prices. The DAX is a capitalization-weighted index, in which the capitalization of each stock is calculated based on the "listed" capital of a company. The listed capital of companies in the DAX includes both common and preferred shares, including those shares held in the corporate treasury. This represents a departure from the procedure used to calculate U.S. indexes, such as Standard & Poor's ("S&P") indexes, which are based on the number of outstanding shares of common stock only. The DAX is a "total-return" index, *i.e.*, the index price is adjusted for cash dividends paid on the component securities.

As of September 20, 1991, the 30 stocks which comprise the Index ranged in capitalization from DM 1.1. billion ($679 million) to DM 36.4 billion ($21.8 billion). The stock with the highest capitalization, "Allianz," accounts for about 11 percent of the Index, primarily due to its unusually high share price of about DM 2,023 ($1,214). The median capitalization for the DAX as of this date was DM 6.7 billion ($4.0 billion).[1] The largest 13 stocks in the DAX Index account for approximately 75 percent of the Index's capitalization of DM 335 billion ($201.1 billion). The 30 stocks included in the DAX represent approximately 60 percent of the capitalization of the German equity market.[2]

In general, the stocks with the highest capitalization are the most actively traded. Average trading volume in DAX stocks ranges from approximately 34,000 to 670,000 shares per day, with average daily trading volume for all the stocks in the Index equalling approximately 226,000 shares per day. The Index is composed of ten broad industry groupings, such as chemicals, automobile and insurance companies, among others, which reflect the industry composition of the German equity market.

b. *Calculation and Dissemination.* The DAX is calculated every minute from 10:30 a.m. to 1:30 p.m. Frankfurt time (3:30 a.m. to 6:30 a.m. Chicago time), based on last sale prices of the component stocks. The Index is calculated by the FSE and disseminated over Reuters News Service. The Index price is not disseminated until opening prices are available for at least 15 component stocks, of any size, which together constitute at least 70 percent of the capitalization of the Index. Until each underlying stock opens, the Index is calculated using each stock's previous-day closing price.

As noted above, the DAX is a capitalization-weighted index that reflects changes in the capitalization or market value of the component stocks relative to the capitalization on a base date. The base date for DAX is December 30, 1987, at which time the Index equalled 1000. The capitalization of a particular stock in the DAX is calculated by multiplying the listed capital by the price of the common stock, or the price of the preferred stock if the common stock is not listed.

Since the DAX is a total-return index, the capitalization of each stock is adjusted to reflect its dividend payment on its ex-dividend date. This adjustment is made because German companies usually pay their dividends only once per year (generally in June or July). If not adjusted, the annual dividend payment would result in a significant drop in the Index value at the time when the dividends are paid. Therefore, the dividend adjustment is calculated so that share prices reflect full dividend reinvestment. As calculated by the FSE, adjustments are made by multiplying each stock's capitalization by an adjustment factor particular to each stock price. The resulting "adjusted" capitalization for each of the 30 stocks then is summed and divided by the base date capitalization. The type of adjustment described above is also utilized when a company issues new shares for which the shareholders have preemptive rights, or when any other intra-year adjustments, such as mergers and spinoffs, occur.

The number of "listed" shares of each stock is updated annually in September. At that time, the adjustment factors,

[1] In comparison, the median capitalization of the S&P 500 as of September 20, 1991, was $2.2 billion.

[2] The German equity market totals approximately DM 558 billion ($335 billion).

mentioned above, which reflect the dividend payments and/or intra-year adjustments are rescaled to 1. To maintain continuity in the Index when this occurs, the Index is adjusted through another calculation. For this calculation, the FSE multiplies the ratio of capitalization (current capitalization divided by base date capitalization) by the "chain index factor." The FSE employs the "chain index factor" to reflect all previous dividend and capitalization adjustments made during the year. In this manner, continuity in the DAX is maintained despite changes in the "listed" shares and rescaling of the individual adjustment factors back to 1.

Finally, the Index level at any point in time is equal to the "adjusted" ratio of the current market capitalization to the base-date capitalization, multiplied by 1000. Accordingly, the Index level equalled 1,616.07 as of the close on September 20, 1991.

c. *Maintenance.* The DAX is maintained by the FSE in conjunction with the Federation of the German Stock Exchanges (composed of 8 German stock exchanges) and the Borsen-Zeitung (an industry newspaper). "Listed" capitalization, as noted above, is updated once per year. Based on the FSE's policy, it will not alter the composition of the DAX unless a stock fails to meet certain criteria, including large market capitalization and trading volume. For instance, since mid-1989 "Feldmuhle Nobel" and "Nixdorf" were replaced in the Index as a result of failure to meet the FSE's criteria. Replacements are generally made from a list of substitute stocks. If there is no company from the same industry group, then other industry stocks may be substituted.

3. Index Options Trading

The Exchange notes that the DAX Index level is high (about 1,625) in relation to listed domestic index levels. The Exchange, therefore, proposes to base trading in its options on a fraction of the value calculated by the FSE. The Exchange anticipates that a U.S. index level of one-tenth of the DAX level would be appropriate. After dividing the DAX by 10 and rounding to the nearest $0.01, the Exchange will disseminate the reduced value of the Index to vendors through the OPRA system.

The value of one U.S. dollar will be assigned to one reduced value Index point, so that the option premium values will change in U.S. dollar terms. This method permits the option premiums to be quoted in U.S. dollars and trading accounts to be denominated in U.S. dollars. All Exchange, Options Clearing Corporation and clearing member systems will be able to accommodate trading and clearance and settlement of the options without alteration. This will facilitate the trading of DAX options by U.S. retail customers.

4. Exercise

The Exchange proposes that DAX options will have a European-style exercise and that they will not trade on the Friday preceding expiration (this corresponds to exercise and trading days of NSX index options). The proposed options will expire on the Saturday following the third Friday of the expiration month. The settlement value for exercise, which is termed the Current Index Value ("CIV"), will be calculated by the FSE based on FSE prices between 12:30 and 1:30 p.m. Frankfurt time (5:30 to 6:30 a.m. Chicago time) on the day following the last day of trading in the expiring contracts. The trading in the expiring contract month will normally cease on a Thursday at 3:15 p.m. Chicago time, unless a holiday occurs. Therefore, the CIV value for exercise of the DAX options will be determined during Friday trading at the FSE. If a stock does not trade during this interval, or if it fails to open for trading, the last available price on the stock will be used in the calculation of the Index, as is done for currently listed indexes. When expirations are moved in accordance with Exchange holidays, such as when the CBOE is closed on the Friday before expiration, the last trading day for expiring options will be Wednesday and the CIV for exercise will be calculated during the Thursday trading session on the FSE, even if it is open on Friday. If the FSE is closed on the Friday before expiration but the CBOE is not, the last trading day for expiring options will be moved up as if the CBOE had a Friday holiday.

The Exchange has designed the procedure for calculating the settlement value for its DAX options with the intent to eliminate the potential to manipulate the underlying markets in order to affect the options settlement value. The FSE calculates and disseminates its CIV for exercise based on the average Index values (excluding the 3 high and the 3 low Index value) taken at each minute in the period from 12:30 p.m. to 1:30 p.m. Frankfurt time. In other words, the CIV, upon which settlements will be based, represents the average of 55 separate prices taken over an hour period. To reflect the reduced-value Index in U.S. dollars, the Exchange's CIV will be equal to the fraction, *i.e.*, ⅒th, of the DAX CIV calculated by the FSE represented in U.S. dollars.

The Exchange feels that this method of settlement, based on an average of Index levels, severely restricts the potential to artificially support or depress the prices of component stocks in order to profit on an options position or positions. More importantly, however, the Exchange believes that the characteristics of the Index, particularly the high capitalization and turnover of DAX component stocks, should preclude manipulative activities. The following discussion provides an example of the price change in the highest capitalization stock within the Index (based on prices as of September 20, 1991 with other stock prices assumed constant) necessary to produce a $2.00 change in a 3-month, at-the-money DAX call option. In order to increase the reduced value DAX call option by about $2.00 (from $6.98 to $9.01), the full value DAX Index would have to increase by 32.43 (from 1617.07 to 1648.50). The change in total Index capitalization would increase from DM 335.1 billion to DM 341.8 billion, a change of DM 6.7 billion. This would translate into an increase in the price of Allianz of DM 373.54. Accordingly, the example illustrates that the price of the top stock in the index would have to increase by 18.5% in order to move the call price by $2.00. As can be seen, it would require a tremendous amount of influence in the underlying market to produce even a small move in the U.S. derivatives market. Further, the highest-weighted stocks in the Index are actively traded outside the FSE, in particular, on the Stock Exchange Automated Quotation System (SEAQ International) of the London Stock Exchange. Therefore, the Exchange feels that the settlement procedure it will apply to this option, coupled with the nature of the stocks in the Index, virtually forecloses any potential for manipulating the proposed DAX options.

5. Exchange Rules Applicable to Stock Index Options

The DAX option, as proposed, will be very similar to the two broad-based S&P Index options presently listed for trading, including position and exercise limits, expiration months, and index multiplier. The Exchange proposes to establish the same position limits which are used for existing stock index options, *i.e.*, 25,000 contracts on either side of the market, provided that no more than 15,000 of such contracts are in the series in the nearest expiration month. The Exchange intends to list a March quarterly cycle of expiration months, and may list two additional long-term options series with two and

three years to expiration. The Exchange also has proposed to list series in 2½ point intervals.

The Exchange proposes to amend the following rules to accommodate trading of options on the DAX. Exchange Rule 24.9(c) has been modified to include this Index in the definition of European Style Exercise. Other rules pertinent to this proposed rule change have recently been approved by the Commission.[3]

6. Surveillance of Underlying Trading

The Exchange has a market surveillance agreement with the FSE, which is the largest stock exchange in Germany and the fourth largest in the world. Its membership consists of 130 commercial banks. Exchange "official brokers" determine trade prices in the underlying stocks and are required to set prices at levels that allow for the matching of the largest number of shares. Fraudulent manipulation of stock is a criminal offense in Germany, which, with the cooperation of the FSE, is investigated by the public prosecutor of the State of Hessen. In addition, special rules apply to investigations into insider trading, which rules all FSE members have voluntarily agreed to put into practice. Pursuant to its surveillance agreement, the CBOE will be able to obtain volume, price and recorded transaction times from the records of the FSE, which will provide the Exchange with a means of surveilling the trading of stocks on the FSE underlying the DAX.

7. Economic Rationale

The DAX tracks an equity market that is not currently represented in the domestic derivative markets. DAX options will provide retail and institutional investors with a means to benefit from their forecasts of German equity market performance. the Index will provide a performance measure and evaluation guide for stock portfolios with exposure to the German equity market. Additionally, DAX options could provide an effective means for hedging the risks of German stocks and provide a low cost means of altering the composition of an equity portfolio.

[3] The Commission approved a CBOE proposal to trade options on a Reduced Value FT-SE 100 Index in Securities Exchange Act Release No. 29722 (September 23, 1991), 56 FR 49807. In addition, Exchange proposals to trade options on a Reduced Value Eurotrack 100 Index and Reduced Value Eurotrack 200 Index are pending with the Commission. See Securities Exchange Act Release Nos. 29045 (April 4, 1991), 56 FR 14553 (File No. SR-CBOE-91-08) and 29043 (April 4, 1991), 56 FR 14551 (File No. SR-CBOE-91-09).

8. Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act, and, in particular, section 6(b)(5), in that it is designed to prevent fraudulent and manipulative acts and practices, and to eliminate the potential to manipulate the underlying markets in order to affect the options' settlement value.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 8, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-30129 Filed 12-17-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30068; File No. SR-CBOE-91-45]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Corrections to Exchange Rule 30.18

December 12, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 20, 1991, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend Exchange Rule 30.18(a), entitled "General Floor Prohibitions," to make clarifying and clerical corrections. Exchange rule 30.18(a) is intended to prohibit a member from buying or selling a stock on the CBOE when the member or an affiliate has a position in an option or warrant underlying that stock.[1] As currently drafted, however, Exchange Rule 30.18(a) provides that a member or an affiliate cannot buy or sell a security on the CBOE where such member or affiliate "holds such security or has sold or granted an option or warrant on that security * * *." Therefore, as currently drafted, the Rule inappropriately applies when a member or an affiliate holds a long stock position. Accordingly, the CBOE proposes to delete the words "such security" from Exchange Rule

[1] However, a member may purchase or sell the underlying stock on another exchange.

30.18(a) to clarify that a member or an affiliate cannot trade a security on the Exchange only when its holds or has sold or granted an option or warrant on that security.

In addition, the Exchange proposes to amend paragraphs (a) and (b) of Exchange Rule 30.18 to clarify the identity of an affiliate of a member as a "person associated with such member or member organization." The text of the proposal is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

In October 1990, the Commission approved a CBOE proposal establishing listing and trading rules for stocks, rights, warrants and other securities.[2] Exchange Rule 30.18(a) is intended to prohibit a member from buying or selling an underlying stock on the Exchange when the member or an affiliate has a position in the related option. The CBOE proposes to amend Exchange rule 30.18 to make clarifying and clerical corrections. Specifically, the CBOE proposes to delete from Exchange Rule 30.18(a)(i) the words "such security" because that language indicates, incorrectly, that the rule's prohibition applies when the member has a long position in the security. As a result, amended Exchange Rule 30.18(a) clearly sets forth the CBOE's intent when proposing the rule that a member or its affiliates be prohibited from trading a security on the Exchange only when the member or its affiliate holds or has granted an option or warrant on that security.

[2] See Securities Exchange Act Release No. 28556 (October 19, 1990), 55 FR 43233 (order approving File No. SR-CBOE-90-08).

In addition, the Exchange proposes to amend paragraphs (a) and (b) of Exchange Rule 30.18 to define the affiliate of a member as a "person associated with such member or member organization." The proposed definition will conform Exchange Rule 30.18 to the definition proposed by the CBOE for Exchange Rule 1.1(qq), which defines affiliate as a "person associated with a member or associated person of a member." [3]

(2) Basis

The CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change interprets and clarifies a stated policy practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 thereunder. At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 8, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-30197 Filed 12-17-91; 8:45 am]

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[3] See File No. SR-CBOE-91-41.

[Release No. 34-30058; File No. SR-MSE-91-12]

Self-Regulatory Organizations; Order Approving Proposed Rule Change of the Midwest Stock Exchange, Inc., Regarding the Implementation of a Modified Version of the SuperMAX System to Run Concurrently With SuperMAX During the SuperMAX Pilot Program.

December 10, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), on July 23, 1991, the Midwest Stock Exchange ("MSE") filed with the Securities and Exchange Commission ("Commission") a proposed rule change to provide a modified version of the SuperMAX system (referred to by the MSE as "Enhanced SuperMAX") to run concurrently with SuperMAX during the SuperMAX pilot program,[1] currently in effect through May 14, 1992.[2]

Notice of the proposed rule change was given in Securities Exchange Act Release No. 29618 (August 27, 1991), 56 FR 43637. The Commission received no

[1] The filing requested that the proposed rule change be granted accelerated approval. The exchange withdrew its request for accelerated approval on August 15, 1991. See letter from Daniel J. Liberti, Associate Counsel, Midwest Stock Exchange, to Kathryn Natale, Assistant Director, Division of Market Regulation, SEC, dated August 15, 1991.

[2] Securities Exchange Act Release No. 29949 (November 18, 1991).

comments on the proposal. This order grants approval of the proposed rule change.

I. Description of the Proposed Rule Change and Exchange Rationale

The proposed rule change provides for a modified version of the SuperMAX system and will expand the current SuperMAX pilot program by offering the modified version of SuperMAX during the remainder of the pilot program. The modified version of SuperMAX ("Modified SuperMAX") will operate as a separate system and will be available to MSE specialists as an addition, or as an alternative, to SuperMAX. Participation in Modified SuperMAX will be voluntary for specialists and will apply on a stock-by-stock basis for agency market orders of 1,099 shares or fewer in Dual Trading Systems issues. Modified SuperMAX will operate during the trading day from 9 a.m. CST until the close.

Unlike SuperMAX, however, which executes automatically all eligible agency market orders either at the consolidated best bid or offer ("BBO") or at a price that represents a ⅛ price improvement,[3] Modified SuperMAX will stop a market order automatically if its execution at the BBO would create either a double up tick or double down tick. If the execution at the BBO would not result in a double up tick or double down tick, then Modified SuperMAX will execute the order at the BBO. Once a Modified SuperMAX eligible order is stopped, Modified SuperMAX will execute the stopped order based upon the next sale in the primary market.

The Modified SuperMAX algorithm compares the previous last sale price to the next sale price, and considers the direction of the market as evidenced by those sale prices, to determine that price at which the stopped market order will be filled. Modified SuperMAX will execute stopped orders according to the following criteria:

For Stopped Buy Orders:

1. If the next primary market sale is less than or equal to the last previous sale, then the stopped order will be executed at the last previous sale price. If the next primary market sale represents a double down tick or zero minus tick from the last previous sale, however, then the stopped order will be filled at the last previous sale price plus ⅛.

2. If the next primary market sale is greater than the last previous sale, then the stopped order will be executed at the next primary market sale price. If the next primary market sale is inferior to the stop price, however, then the stopped order will be filled at the stopped price (*i.e.*, the offer).

For Stopped Sell Orders:

3. If the next primary market sale is greater than or equal to the last previous sale, then the stopped order will be executed at the last previous sale price. If the next primary market sale represents a double up tick or zero plus tick, however, then the stopped order will be filled at the last previous sale price minus ⅛.

4. If the next primary market sale is less than the last previous sale, then the stopped order will be executed at the next primary market sale price. If the next primary market sale is inferior to the stop price, however, then the stopped order will be filled at the stopped price (*ie.*, the bid).

Modified SuperMAX will not execute an order at the BBO if such execution would result in an out of range execution, nor will Modified SuperMAX provide a fill at a price worse than the stop price.

If a specialist chooses Modified SuperMAX, the criteria outlined above will be followed for all eligible stocks. If a specialist chooses to have Modified SuperMAX run concurrently with SuperMAX, then the size of the agency market order will determine which method of execution to be followed. An order of 599 shares or fewer will execute according to SuperMAX rules; an order of 600 shares to 1,099 shares will execute according to Modified SuperMAX rules. An order will never be subject to execution under the rules of both SuperMAX and Modified SuperMAX.

Any eligible order in a stock included in Modified SuperMAX that is manually presented at the specialist post by a floor broker also must be guaranteed an execution by the specialist pursuant to the above-listed criteria. In the unlikely event that a contra side order that would better the Modified SuperMAX execution is presented at the post, the specialist must adjust the incoming order that was executed pursuant to the Modified SuperMAX criteria.

Certain stocks, depending upon the specific trading characteristics of the issue, may not be appropriate for SuperMAX, and the MSE believes that the specialist is in the best position to determine SuperMAX eligibility. During volatile periods, individual stocks or all stocks may be removed from SuperMAX with the approval of two members of the Committee on Floor procedure.[4]

The MSE represents that Modified SuperMAX will not have any adverse impact upon MSE systems capacity. In fact, the MSE increased its systems capacity in anticipation of the addition of Modified SuperMAX to sufficiently handle any added demands on the system for processing the Modified SuperMAX algorithm.

The purpose of the rule change is to offer a version of the SuperMAX system that will encourage more MSE specialists to use SuperMAX. The MSE intends to expand the existing pilot program for SuperMAX by offering the modified version during the remainder of the SuperMAX pilot.[5] The MSE wants to begin offering Modified SuperMAX in order to evaluate both systems during the SuperMAX pilot program. During the concurrent operation of both pilot programs, specialists will be able to use Modified SuperMAX in addition, or as an alternative, to SuperMAX.

Similar to SuperMAX, Modified SuperMAX does not provide order exposure, but substitutes the algorithm described above that permits price improvement under certain circumstances. Where SuperMAX automatically executes small agency market orders at the BBO or at ⅛ price improvement from the BBO, Modified SuperMAX stops agency market orders if their execution at the BBO would result in a double up tick or double down tick, as measured against the previous last sale price in the primary market. The MSE believes that this

[3] The execution criteria for SuperMAX are as follows:

A. Both buy and sell orders in markets quoted with a minimum variation (⅛th spread) or orders that do not meet the criteria in B or C below will be executed based upon the consolidated BBO as the case may be.

B. Buy orders in markets quoted with more than ⅛th spread will be executed at a price ⅛th better than the consolidated best offer if: (a) an execution at the consolidated best offer would create a double up tick based upon the last sale in the primary market; or (b) an execution at the consolidated best offer would result in a greater than a ⅛th price change from the last sale in the primary market.

C. Sell orders in markets quoted with more than a ⅛th spread will be executed at a price ⅛th better than the consolidated best bid if: (a) an execution at the consolidated best bid would create a double down tick based upon the last sale in the primary market; or (b) an execution at the consolidated best bid would result in greater than a ⅛th price change from the last sale in the primary market.

[4] The MSE represented that stocks would only be removed from Modified SuperMAX in the rare instances when the primary market had designated a "fast market." The MSE would broadcast a message indicating that the affected stocks were off SuperMAX. Executions in those stocks would then default into the MAX system.

[5] SuperMAX has been in effect on a pilot basis since May 14, 1990 (See Securities Exchange Act Release No. 20814 (May 14, 1990), 55 FR 20880). It is in effect currently until May 14, 1992 (See Securities Exchange Act Release No. 29949 (November 18, 1991).

feature of Modified SuperMAX provides a fairer and more accurate means of executing market orders than does SuperMAX because executions will be based on the current direction of the market prior to execution. While Modified SuperMAX will not automatically provide a ⅛ betterment on price, it will allow for even better price improvement if current market conditions dictate that such an improvement is warranted.[6]

The MSE believes that Modified SuperMAX fills will have a more reasonable relation to the current market in a stock than does SuperMAX. by waiting for a next sale, rather than executing based solely upon the consolidated BBO, Modified SuperMAX, in effect, requires validation of the displayed market before filling an order. The validation feature of Modified SuperMAX adds a check to a market that may be changing. The MSE believes that this enhancement will benefit customers and specialists alike because it provides a fairer and more accurate price at the time of execution.

In addition, Modified SuperMAX will continue to consider the last primary market sale, which customers look to in assessing the quality of executions on the MSE. However, by also looking to the next sale in the primary market, customers will receive the added benefit of an execution based upon consideration of two primary sales, one of which is the most current market information on that stock.

Modified SuperMAX is a result of the MSE's continuing efforts to offer customers quality fills on its trading floor. The MSE believes that it should contribute to increased order flow to the MSE, thereby making the exchange and its specialists more competitive without using disproportionate systems resources or placing undue burdens upon specialist profitability.

II. Discussion and Conclusion

The Commission has reviewed carefully the MSE's proposed rule change and concludes, for the following reasons, that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with section 6(b)(5) of the Act.

The Commission has expressed concerns, most notably in the original SuperMAX approval order,[7] about the possible adverse effects on execution quality of a lack of order exposure. At that time, the Commission emphasized that increased order exposure may provide economic benefits to the securities markets by encouraging enhanced interactions of orders, increased opportunities for best execution of customer orders, and greater intermarket competition for order flow (and, ultimately, increased market efficiencies). The Commission also acknowledged, however, that increased order exposure may impose certain economic costs in terms of execution delay and interjection of manual processing.

The Commission concluded that although SuperMAX orders would not be exposed to the market, SuperMAX's price betterment feature might actually improve the chances that a customer's order would be executed between the bid-ask spread. While Modified SuperMAX will not automatically provide a ⅛ price betterment, it will provide some opportunity for price improvement. In this respect, we note that most automatic execution systems currently in effect, including the MSE's MAX system, provide executions at the quote only. It is hoped that Modified SuperMAX's algorithm will encourage more MSE specialists to use the SuperMAX system, so that its benefits may inure to more customers.

The Commission believes that Modified SuperMAX pricing and execution procedures are consistent with the maintenance of fair and orderly auction markets on national securities exchanges. The execution criteria of Modified SuperMAX should contribute to an orderly market because they help to reduce variations from trade to trade on low volume.

The Commission approves this system on a pilot basis only, and will consider these issues again in the event that the MSE requests permanent approval of Modified SuperMAX. Any request for permanent approval would require, of course, that the MSE submit a rule filing pursuant to rule 19b-4. To help the Commission better evaluate these issues, the MSE must submit, in connection with any request for the permanent approval of Modified SuperMAX, the following data: (1) The number of orders executed in both SuperMAX and Modified SuperMAX during the pilot programs; (2) share and dollar volume for both systems during the pilot programs; (3) a comparison of order executed under SuperMAX, MAX, and Modified SuperMAX, indicating where orders executed under one system would have received a more favorable execution under another system and where use of the last sale price would have provided a superior execution;[8] (4) The number of specialists using each system, and the number of stocks included in each; and (5) the average length of time between receipt of an order and execution under each system.

While the Commission believes that this proposal is less ideal than SuperMAX, the Commission finds that it is consistent with the requirements of section 6 of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act, in that it is designed to promote just and equitable principles of trade, perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, That the rule change be, and hereby is, approved on a pilot basis until May 14, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-30198 Filed 12-17-91; 8:45 am]

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[6] The following example demonstrates an instance where Modified SuperMAX would provide a better execution than SuperMAX. For a customer buy order, if the previous sale were at 10¼, and the previous sale before that were at 10, and the market were currently quoted at 10 to 10½, Modified SuperMAX would stop the order at 10½. If the next sale were at 10¼, Modified SuperMAX would execute the order at 10¼. SuperMAX would have executed the same order at 10⅜.

[7] Securities Exchange Act Release No. 28014 (May 14, 1990), 55 FR 20880.

[8] An objective sampling of stocks using each system would be acceptable.

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

December 12, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Intelligent Systems Corporation
Common Stock, $.01 Par Value (File No. 7-7671)
Professional Bancorp, Inc.
Common Stock, $.08 Par Value (File No. 7-7672)

Orbital Engine Corporation Limited
American Depositary Shares (each representing eight ordinary shares, A, $.50 each) (File No. 7–7673)
Struthers Industries, Inc.
Common Stock, $.10 Par Value (File No. 7–7674)
Bio Whittaker, Inc.
Common Stock, Par Value 1¢ (File No. 7–7675)
General Motors Corporation
Depositary Shares (representing ¼ share of Series B Preferred Stock, $.10 Par Value) (File No. 7–7676)
Office Depot, Inc.
Common Stock, $.01 Par Value (File No. 7–7677)
Owens-Illinois, Inc.
Common Stock, $.01 Par Value (File No. 7–7678)
Plains Resources, Inc.
Common Stock, $.10 Par Value (File No. 7–7679)
British Telecommunications, Plc
Interim American Depositary Shares (File No. 7–7680)

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 6, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–30201 Filed 12–17–91; 8:45 am]

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[Release No. 34–30065; File No. SR–NASD–91–41]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Amendments to the Examination, Specifications and Study Outline for the Investment Company and Variable Contract Products ("Series 26") Qualifications Examination

December 11, 1991.

On August 12, 1991, the National Association of Securities Dealers, Inc. ("NASD" or "Association") submitted a proposed rule change to the Securities and Exchange Commission ("SEC" or "Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and rule 19b–4 thereunder.[2] The proposal amends the NASD's Series 26 examination which tests knowledge of investment company and variable contract products by adding new questions to reflect both regulatory and business changes in this segment of the securities industry. The number of questions per test has been increased to 100 and the testing time will be two hours. In addition, the proposal amends the study outline and examination specifications for the Series 26 examination. The amendments do not result in any textual changes to the NASD By-Laws, Schedules to the By-Laws, rules, practices or procedures.

Notice of the proposed rule change together with its terms of substance was provided by the issuance of a Commission release (Securities Exchange Act Release No. 29704, September 18, 1991) and by publication in the **Federal Register** (56 FR 48597, September 25, 1991). No comments were received on the proposal. This order approves the proposed rule change.

Pursuant to section 14A(g)(3) of the Act,[3] the NASD is authorized to prescribe standards of training, experience, and competence for persons associated with NASD members. To this end, the NASD has developed examinations that it administers to establish that such persons have attained the requisite levels of knowledge and competence. The NASD periodically reviews the content of the examinations to determine whether amendments are necessary or appropriate in view of changes pertaining to the subject matter covered by the examinations. Therefore, the NASD has determined to update the Series 26 examination in light of business and regulatory changes since the examination was last revised. The NASD has indicated that the new examination and study outline will be in use beginning April 1, 1992.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of sections 15A(g)(3) and 15A(b)(6) [4] of the Act and the rules and regulations thereunder. As previously mentioned, section 15A(g)(3) authorizes the NASD to condition the membership of any person associated with an NASD member firm if such person does not meet such standards of training, experience, and competence as are prescribed by the rules of the NASD. To this end, the proposed amendments to the Series 26 examination will assist in ensuring that associated persons are competent and knowledgeable in areas within the scope of the examination. Section 15A(b)(6), in part, requires that the rules of the NASD are designed to protect investors and the public interest. By periodically revising the contents of its qualification examinations to reflect regulatory and business changes, the NASD will help ensure that persons associated with NASD members keep abreast of regulatory changes, thus, fostering protection of investors and the public interest. The Commission believes, for the reasons stated above, that the proposed rule change satisfies these statutory requirements.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, That the above-mentioned proposed rule change be, and hereby is, approved, effective April 1, 1992.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Director.

[FR Doc. 91–30199 Filed 12–17–91; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1) (1988).
[2] 17 CFR 240.19b–4 (1991).
[3] 15 U.S.C. 78*o*–3(g)(3) (1988).
[4] 15 U.S.C. 78*o*–3(b)(6) (1988).
[5] 17 CFR 200.30–3 (a) (12) (1991).

[Release No. 34-30062; File Nos. SR-NYSE-91-28 and 91-29]

Self-Regulatory Organizations; Notice of Filing of Two Proposed Rule Changes by New York Stock Exchange, Inc., Relating to Its Floor Member (Series 15) Examination

December 11, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 10, 1991, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") two proposed rule changes relating to the Exchange's Floor Member (Series 15) Examination as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The first proposed rule change (File No. SR-NYSE-91-28) consists of the Content Outline for the Exchange's Series 15 Examination while the second proposed rule change (File No. SR-NYSE-91-29) includes the Series 15 Examination Specifications.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received on the proposed rule changes. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Series 15 Examination was created in 1962 as the basic test to be administered to all Floor Members. The Series 15 Exam is a qualifications examination required pursuant to NYSE Rule 304A (Member and Allied Member Examination Requirements) and is intended to ensure that Exchange Floor Members have the basic knowledge necessary to perform their functions and responsibilities. Additional qualification examinations must be successfully completed by members prior to receiving Exchange approval to act as specialists, registered competitive market-makers, competitive traders or Floor officials.[2]

The Series 15 Exam Content Outline was revised by the Exchange in conjunction with a committee comprised of the different categories of Exchange Floor Members. In addition, the Exam Specifications detail the areas covered by the 100 question examination and break down the proportion of examination questions culled from each area.

The statutory basis for the Series 15 Examination Specifications, Content Outline and examination questions is section 6(c)(3)(B) under the Act. Under that section, the Exchange may bar a natural person from becoming a member, if such natural person does not meet such standards of training, experience and competence as are prescribed by the rules of the Exchange. Pursuant to this statutory obligation, the Exchange has developed examinations that are administered to establish that Exchange Floor Members have attained specified levels of competence and knowledge.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the NYSE. All submissions should refer to File Nos. SR-NYSE-91-28 and/or 91-29 and should be submitted by January 8, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-30200 Filed 12-17-91; 8:45 am]

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[Release No. 34-30064; File No. SR-OCC-91-09]

Self-Regulatory Organizations; the Options Clearing Corporation; Filing of Proposed Rule Change Relating to Establishing a Cross-Margining Program with the Kansas City Board of Trade Clearing Corporation

December 11, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 20, 1991, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (SR-OCC-91-09)

[1] Additionally, the proposals include the actual examination questions (see letter from Donald van Weezel, Managing Director, Regulatory Affairs, NYSE, to Mary Revell, Branch Chief, Division of Market Regulation, SEC, dated September 30, 1991).

[2] For example, Compliance Supervisors, as that term is defined in NYSE Rule 342.13(b), must successfully complete the Compliance Official Qualifications (Series 14) Examination which is administered by the Exchange.

[3] 17 CFR 200.30-3(a)(12) (1990).

as described in Items I, II, and III below, which items have been prepared by OCC. On October 22, and December 9, 1991, OCC amended the proposal.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will establish a cross-margining program with the Kansas City Board of Trade Clearing Corporation ("KCC").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and statutory basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) General Purpose

The purpose of this rule change is to establish a cross-margining program between OCC and KCC which parallels the existing cross-margining program between OCC and the Chicago Mercantile Exchange ("CME"). A detailed discussion of the OCC–CME Cross-Margining Program is set forth in File Nos. SR–OCC–89–01[2] and SR–OCC–90–01.[3] Because the OCC–KCC Cross Margining Program is virtually identical to the OCC–CME Cross Margining Program, this filing will only discuss the differences between the two programs. OCC accordingly incorporates by reference the description of the legal considerations set forth in File Nos. SR–OCC–89–01 and SR–OCC–90–01.

(2) OCC–KCC Cross-Margining Program

KCC acts as the clearing organization for futures contracts and options on futures contracts for which the Kansas City Board of Trade ("KCBT") has been designate by the CFTC as a contract market. The OCC–KCC Cross Margining Agreement ("OCC–KCC Agreement") provides for cross-margining of both proprietary accounts and non-proprietary accounts of market professionals. The eligible contracts for such cross-margining include KCC-cleared futures on the Value Line Index and OCC-cleared put and call options on the Value Line Index.

Except for the several minor differences in terms and in language, the terms of the OCC–KCC Agreement and of the other required OCC–KCC cross-margining documents are the same as the terms of the OCC–CME Amended and Restated Cross-Margining Agreement ("OCC–CME Amended Agreement") and of the other OCC–CME required cross-margining documents. The minor differences are described below.

Consistent with the requirements of the CFTC, the OCC–KCC Agreement will not permit Clearing Members to designated either the paired proprietary cross-margin accounts or the paired non-proprietary cross-margin accounts or both as cross-margin pledge accounts as contemplated in section 3 of the OCC–CME Amended Agreement. Section 3 of the OCC–KCC Agreement, therefore, is intentionally left blank, and other references to cross-margin pledge accounts are omitted from the OCC–KCC Agreement. This additionally is in accordance with the September 5, 1989, correspondence of Don L. Horwitz, General Counsel, OCC, to Jonathan Kallman, Assistant Director, Division, Commission, concerning the proprietary cross-margining program between OCC and CME (File No. SR–OCC–89–01).

Section 9 of the OCC–KCC Agreement generally requires each clearing organization to maintain, except as otherwise provided for therein, the confidentiality of all information obtained in connection with the OCC–KCC Agreement. The OCC–KCC Agreement provides that one clearing organization has the obligation to notify the other of a request for confidential information. Additionally, the OCC–CME Amended Agreement provides that one clearing organization is obligated to cooperate to a reasonable extent with the other in the event the other determines to seek a protective order against disclosing the confidential information. The OCC–KCC Agreement does not contain this additional obligation.

Section 14 of the OCC–KCC Agreement reflects the information sharing arrangements between OCC and KCC. It specifically provides that one clearing organization must notify the other in the event that such clearing organization receives information which causes it significant concerns over the financial or operation capabilities of a clearing member. The OCC–CME Amended Agreement provides that the CME will advise OCC should any of its clearing members be on its "high risk" list. KCC has informed OCC that it does not have an equivalent listing.

Section 16 of the OCC–KCC Agreement concerns the arbitration of disputes under the OCC–KCC Agreement between OCC and KCC. In contrast to the OCC–CME Amended Agreement, the location of the arbitration proceedings will alternate between Chicago and Kansas City.

Lastly, the Subordination Agreement for OCC–KCC Cross-Margining (Joint Clearing Member) and the Subordination Agreement for OCC–KCC Cross-Margining (Affiliated Clearing Members) have been revised slightly to clarify the subordination arrangements. These revisions were made as a result of discussions between the CME and CFTC in connection with the establishment of the OCC–CME Cross-Margining Program.

The proposed rule change is consistent with the purposes and requirements of section 17A of the Act because it expands the implementation of cross-margining to another significant group of market participants, further enhancing the safety of the clearing system while providing lower clearing margin costs to participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will impose any burden on competition.

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[1] In Amendment No. 1, filed October 22, 1991, OCC requested that the Commission defer consideration of the portion of the original filing pertaining to non-proprietary cross-margining until regulatory approval is obtained from the Commission and the Commodity Futures Trading Commission ("CFTC"). Letter from Jean M. Cawley, Staff Counsel, OCC, to Jerry W. Carpenter, Branch Chief, Division of Market Regulation ("Division"), Commission (October 22, 1991).

In Amendment No. 2, filed December 9, 1991, OCC stated that because OCC and KCC had agreed to implement the portions of the original filing pertaining to non-proprietary cross-margining, OCC was requesting that the Commission review all portions of the proposed rule change. Letter from Jean M. Cawley, Staff Counsel, OCC, to Jerry W. Carpenter, Branch Chief, Division, Commission (December 9, 1991).

[2] Securities Exchange Act Release No. 27296 (September 26, 1989), 54 FR 41195 (order approving OCC–CME Cross-Margining Program limited to proprietary positions).

[3] Securities Exchange Act Release No. 29991 (November 26, 1991, 56 FR 61404 (order approving on a temporary basis the expansion of the OCC–CME Cross Margining Program to include futures and options positions of certain market professionals).

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which OCC consents, the Commissions shall:

(a) By order approve such proposed rule change or,

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–91–09 and should be submitted by January 8, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–30130 Filed 12–17–91; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

December 12, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Joy Technologies, Inc.
Class A Common Stock, $.01 Par Value (File No. 7–7668)
Shopko Stores, Inc.
Common Stock, $.01 Par Value (File No. 7–7669)
Stop & Shop Companies, Inc.
Common Stock, $.01 Par Value (File No. 7–7670)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 6, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–30202 Filed 12–17–91; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

December 12, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Van Kampen Merritt Ohio Quality Municipal Trust
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–7681)
Van Kampen Merritt Florida Quality Municipal Trust
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–7682)
Van Kampen Merritt New York Quality Municipal Trust
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–7683)
Orbital Engine Corp.
American Depositary Shares (File No. 7–7684)
Owens Illinois, Inc.
Common Stock, $.01 Par Value (File No. 7–7685)
Van Kampen Merritt California Quality Municipal Trust
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–7686)
Jundt Growth Fund, Inc.
Class A Common Stock, $.01 Par Value (File No. 7–7687)
Snyder Oil Corporation
Convertible Exchange Preferred Stock, $.01 Par Value (File No. 7–7688)
Office Depot, Inc.
Common Stock, $.01 Par Value (File No. 7–7689)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 6, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–30203 Filed 12–17–91; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC-18440; 811-5483]

Association Advisers Fund, Inc.; Application

December 11, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Association Advisers Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on November 13, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 6, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 40 Rector Street, New York, New York 10006.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272-3026, or Nancy M. Rappa, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified investment company that was organized as a corporation under the laws of Maryland. On February 26, 1988, applicant filed a notification of registration pursuant to the Act. A registration statement under the Securities Act of 1933 Act was filed on February 26, 1988. The registration statement was declared effective on October 3, 1988, and the initial public offering commenced on October 18, 1988.

2. From the time of commencement of its initial public offering, applicant's shares were offered solely through MetLife Securities, Inc. ("MetLife"), the distributor, as investments for members of certain professional associations and other organized groups of persons. By mid-1990, MetLife had determined that in its view, the distribution effort had not succeeded, and informed the applicant's investment adviser of its intention not to proceed further with the distribution effort. The distributor's parent, Metropolitan Life Insurance Company ("Metropolitan"), which had provided the initial seed capital and which held approximately 99% of the Funds' assets, advised applicant of its intention to redeem its shares as soon as practicable.

3. At a meeting held on June 27, 1990, applicant's board of directors determined that in view of MetLife's and Metropolitan's determinations, continued operation of the applicant would not be viable and that further offers and sales of shares should cease. It was further determined by the board that public shareholders should be advised of the events and given the opportunity to redeem their shares at net asset value. As of June 27, 1990, there were 27 shareholders in the fund, other than Metropolitan, with assets totalling approximately $192,000. In July 1990, all public shareholders of the applicant redeemed their shares, after which Metropolitan redeemed its remaining shares. A portion of Metropolitan's redemption proceeds was retained to establish a liquidating reserve ("Reserve") in the amount of $130,000. All unamortized organizational expenses in the amount of $140,802.66 were borne by Metropolitan.

4. At a meeting held on February 22, 1991, applicant's board of directors approved resolutions authorizing the applicant's liquidation and winding up of its affairs.

5. Expenses of approximately $15,000 relating to the liquidation of the applicant are to be paid from the Reserve.

6. There are no securityholders to whom distributions in complete liquidation of their interests have not been made, except as noted above. Applicant has no debts or other liabilities that remain outstanding except those associated with the winding up of its affairs. Applicant is not a party to any litigation or administrative proceeding.

7. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

8. Applicant intends to file articles of dissolution under Maryland law after the receipt of an order declaring that applicant is no longer an investment company.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-30131 Filed 12-17-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18439; 811-3995]

Kidder, Peabody Special Growth Fund, Inc.; Application

December 11, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Kidder, Peabody Special Growth Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on November 29, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 6, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 20 Exchange Place, 8th Floor, New York, New York 10005-3250. Attention: Lawrence H. Kaplan, Esq.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272-3026, or Nancy M. Rappa, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a free at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified investment company that was organized as a corporation under the laws of the State of Maryland. On March 26, 1984, applicant registered under the Act and filed a registration statement pursuant to section 8(b) of the Act. A registration statement under the Securities Act of 1933 was filed and the registration statement was declared effective on July 27, 1984. The initial public offering commenced immediately thereafter.

2. At a meeting held on June 27, 1990, applicant's board of directors adopted a plan of liquidation (the "Plan"). On or about August 16, 1990, applicant mailed proxy materials to its shareholders, who approved the Plan at a special shareholders' meeting held on October 15, 1990.

3. Pursuant to the Plan, applicant converted all portfolio securities and other assets into cash proceeds. Applicant's agency portfolio transactions were placed exclusively with brokers for best price and execution, to whom applicant paid $15,876 in brokerage commissions.

4. On November 8, 1990, applicant had total assets of $13,870,520, comprising 894,087.417 shares at a net asset value of $15.51 per share. On November 13, 1990, applicant distributed substantially all of its assets to its securityholders. Each shareholder received $15.51 per share.

5. Applicant retained approximately $17,446 for payment of expenses, which will not be invested in securities. Such expenses included, but were not limited to, legal fees, accounting fees, printing costs and miscellaneous expenses. Applicant's principal underwriter, Kidder, Peabody & Co. Incorporated, paid the expenses associated with the liquidation of applicant.

6. As of the date of the application, applicant's outstanding liabilities include shareholder servicing and custody fees, auditor's fees, and various miscellaneous expenses, including Commission filing fees. Any remaining liabilities after the use of applicant's remaining assets will be borne by Kidder, Peabody Asset Management, Inc., applicant's investment adviser and administrator.

7. There are no securityholders to whom distributions in complete liquidation of their interests have not been made. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

8. Applicant intends to file Articles of Dissolution with the State of Maryland as soon as practicable.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-30132 Filed 12-17-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18438; 811-5720]

McKeever Investment Trust; Notice of Application

December 11, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: McKeever Investment Trust.

RELEVANT 1940 ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

FILING DATE: The application on form N-8F was filed on June 21, 1991 and an amendment was filed on September 17, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 6, 1991, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, P.O. Box 1548, Medford, Oregon, 97501.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Staff Attorney, (202) 272-2190, or Barry D. Miller, Branch Chief, (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified management company organized as a Massachusetts business trust (the "Trust"). Applicant filed a registration statement pursuant to section 8(b) of the 1940 Act and pursuant to the Securities Act of 1933, which registered an indefinite number of shares of common stock. The registration statement became effective on June 9, 1989.

2. Pursuant to resolutions adopted by the applicant's board of trustees on April 1, 1991 and ratified on April 22, 1991, the board determined to: (1) Give notice to shareholders of the proposed liquidation of the Trust; (2) convert the Trust's assets to cash in an orderly manner; (3) liquidate the Trust as of April 30, 1991 by distributing all of the assets of the Trust to the remaining shareholders as of such date; and (4) promptly wind up the affairs of the Trust.

3. On April 5, 1991, applicant sent a letter dated April 3, 1991 to all shareholders notifying them of the liquidation.

4. On various dates between April 8, 1991 and April 30, 1991, shareholders redeemed their shares. All redemptions were executed at net asset value per share as determined on the date of the redemption.

5. Pursuant to the liquidation, applicant's portfolio securities were liquidated at fair market value as needed to meet all redemptions by its shareholders and to convert the Trust's assets into cash to effect a final liquidating distribution. The Trust paid $26,592 in brokerage commissions in connection with the liquidation.

6. All expenses incurred by the Trust in connection with the liquidation were paid by the Trust's investment adviser, CMC Services, Inc. ("CMC"). Unamortized organizational expenses totalling $76,663 were also assumed by CMC on April 30, 1991.

7. Applicant intends to file a certificate of dissolution with the Commonwealth of Massachusetts.

8. As of the date of the application, applicant had no debts or liabilities, and was not a party to any litigation or administrative proceeding.

9. Applicant is engaged only in the business of winding up its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-30133 Filed 12-18-91; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 1535]

Study Group 5 of the U.S. Organization International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 5 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will hold an open meeting January 10, 1992, in room CR-1-40, in the Engineering Center at the University of Colorado, Boulder, Colorado, The meeting will convene at 9 a.m.

Study Group 5 deals with matters relating to the propagation of radio waves and related noise phenomena in non-ionized media at and above the surface of the earth for the purpose of improving radiocommunication systems. The purpose of the meeting is to review the results of the recent Study Group 5 Working Party meetings and to develop plans for the remainder of the study cycle.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Request for further information should be directed to Dr. John F. Cavanagh, Naval Surface Warfare Center, Dahlgren, Virginia 22448-5000, phone (703) 663-8737.

Dated: December 4, 1991.

Warren G. Richards,

Chairman, U.S. CCIR National Committee.

[FR Doc. 91-30112 Filed 12-17-91; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice 1538]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea, Working Group on Stability and Load Lines and on Fishing Vessel Safety; Meeting

The Working Group on Stability and Load Lines and on Fishing Vessels Safety of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on January 6, 1992 at 1 p.m. in room 4315 at Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC.

The purpose of this Working Group meeting is to prepare for the 36th Session of the International Maritime Organization (IMO) Subcommittee on Stability and Load Lines and on Fishing Vessels Safety (SLF), which is scheduled for February 3 to 7, 1992.

Items of discussion will include the following: Improved standards for bulk carriers; review of existing ships' standards; subdivision and damage stability of dry cargo ships; New Code of Intact Stability; subdivision and damage stability standards of passenger ships; future revisions to the 1966 Load Line Convention; stability aspects of open-top container ships; safety of fishing vessels, double hull tanker stability; development of the Protocol to the 1977 Torremolinos Convention and the Work Program of SLF 36, and review of reporting requirements on Codes and Assembly resolutions related to the work of the Subcommittee.

Members of the public may attend these meetings up to the seating capacity of the room.

For further information, contact Mr. H.P. Cojeen or Mr. W.M. Hayden at (202) 267-2988; U.S. Coast Guard Headquarters (G-MTH), 2100 Second Street, SW., Washington, DC 20593-0001.

Dated: December 11, 1991.

Geoffrey Ogden, Chairman,

Shipping Coordinating Committee.

[FR Doc. 91-30115 Filed 12-17-91; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 88-079]

Commercial Fishing Industry Vessel Advisory Committee; Subcommittee Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub.L. 92-463; 5 U.S.C. app.2), notice is hereby given of a meeting of the Subcommittee on the Draft Protocol to the 1977 Torremolinos Convention. The meeting will be held on January 23, 1992, at the following address: Coast Guard Vessel Traffic Service Puget Sound, 1519 Alaskan Way South, Bldg. 1, Seattle, WA 98119. The meeting is scheduled to begin at 8:30 a.m. and end at 5 p.m. Attendance is open to the public.

TOPIC: Recommendations regarding the Draft Protocol to the 1977 Torremolinos Convention: The subcommittee will review: The Torremolinos International Convention for the Safety of Fishing Vessels, 1977; the draft Protocol to the 1977 Torremolinos Convention; and the proposed changes to the regulations in the 1977 Torremolinos Convention drafted by the responsible International Maritime Organization (IMO) subcommittees. Upon review, the subcommittee will make recommendations concerning the acceptability of the technical content of the Protocol to the U.S. delegation to the IMO subcommittee on Stability and Load Lines, and on Fishing Vessel Safety (SLF).

FOR FURTHER INFORMATION CONTACT: LCDR Tim Skuby, Merchant Vessel Inspection and Documentation Division, Fishing Vessel/Offshore Activities Branch (G-MVI-4), room 1405, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001, (202) 267-2307.

Dated: December 11, 1991.

D.H. Whitten,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 91-30162 Filed 12-17-91; 8:45 am]

BILLING CODE 4910-14-M

Federal Highway Administration

Environmental Impact Statement: Douglas County, NE

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Douglas County, Nebraska.

FOR FURTHER INFORMATION CONTACT: Mr. Philip E. Barnes, District Engineer, Federal Highway Administration, Federal Building, room 220, 100 Centennial Mall North, Lincoln, Nebraska 68508, Telephone: (402) 437-5521. Mr. Arthur Yonkey, Project Development Engineer, Nebraska Department of Roads, P.O. Box 94759, Lincoln, Nebraska 68509, Telephone: (402) 479-4795. J. Daniel Kutilek, Engineering & Planning Manager, Douglas County Engineers Office, 156th West Maple Road, Omaha, Nebraska 68116.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Nebraska Department of Roads and the Douglas County Engineers Office is preparing an environmental impact statement (EIS) for a proposal to provide

a roadway connection on a new location from 72nd Street to Irvington Road (90th Street). The described area is approximately 4.0 miles long and is located in the northwest portion of the Greater Omaha Area, in Douglas County, Nebraska. This proposal is being considered to develop a plan to provide an alternate route for Northwest Radial Highway traffic into and out of downtown Omaha, and to provide for existing and projected traffic demands in the Northwest Omaha Region.

Alternative under consideration include (1) taking no action; and (2) the construction of a four-lane roadway.

No formal scoping meeting is scheduled at this time. A public hearing will be held after the EIS has been made available for public and agency review and comment. Public notice will be given of the time and place of the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action and the EIS should be directed to the FHWA or the Nebraska Department of Roads at the addresses provided above.

(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 applies to this program.)

Philip E. Barnes,

District Engineer, Nebraska Division, Federal Highway Administration, Lincoln, NE.

[FR Doc. 91-30171 Filed 12-17-91; 8:45 am]

BILLING CODE 4910-22-M

Discretionary Grants to Support Highway Safety Research

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Announcement of discretionary grants to support highway safety research.

SUMMARY: The FHWA announces a discretionary grant program to support highway safety and solicits applications from U.S. colleges and universities interested in participating in this program.

DATES: Applications shall be received on or before March 20, 1992.

ADDRESSES: Applications shall be submitted to Lise S. Lyles, Office of Contracts and Procurement (HCP-31), Federal Highway Administration, 400 Seventh Street, SW., room 4410, Washington, DC 20590; and shall reference Solicitation Number DTFH61-92-X-00001.

FOR FURTHER INFORMATION CONTACT: General administrative questions may be directed to Lise Lyles, Office of Contracts and Procurement, at (202) 366-4229. Programmatic questions relating to this discretionary grant program shall be directed to Jerry A. Reagan, Design Concepts Research Division (HSR-20), at (703) 285-2057.

SUPPLEMENTARY INFORMATION:

Background and Objectives

The FHWA Office of Research and Development is responsible for developing strategies to save lives and reduce injuries and property damage through the prevention and reduction of motor vehicle accidents. The Office of Safety and Traffic Operations Research and Development is currently conducting highway safety research in six High Priority Areas (HPA's): Advanced Traffic Control Devices, Developing Specifications for Retroreflective Devices, Information Resources, Special Highway Users, Highway Safety Design Practices and Criteria, and Improved Highway Travel for An Aging Population.

Advanced Traffic Control Devices provides research and development for traffic control operations to establish and implement safety standards, and to improve traffic control devices for safe and efficient movement of motor vehicles on streets and highways.

Developing Specifications for Retroreflective Devices provides research and development to aid traffic operations personnel in determining whether the combination of lighting, signing, delineation, and signals provide adequate visibility to meet the information needs for a specific driving environment.

Information Resources provides research and development for improved methods for gathering and using accident, geometric design, and traffic count data for highway safety analysis.

Special Highway Users provides research and development for a safe and efficient operating environment for special highway users, such as large trucks, pedestrians and bicyclists.

Highway Safety Design Practices and Criteria promotes research and development to improve highway safety through the development and use of improved geometric design standards and safer roadside hardware.

Improved Highway Travel for An Aging Population provides research and development to address the problems of highway design related to features and operations that involve direct driver interaction.

Additional information on these programs can be found in the FHWA's Research and Development Program (See Annual Progress Report: Executive Summary Fiscal Year 1990, Publication Number FHWA-RD-90-100). This publication may be obtained by contacting Lise S. Lyles at (202) 366-4229.

The Research Projects/Programs in the HPA's are defined through an elaborate and structured procedure for defining research needs. While this program addresses the most important national needs, there is a need to support other promising safety research at U.S. colleges and universities.

Transportation Research Board Special Report 229, 1990, "Safety Research for a Changing Highway Environment" pointed out the need to make "* * *. provision for unsolicited proposals; more flexible funding methods, such as cooperative agreement and grants; and encouragement of small awards to individual researchers * * *." The committee preparing the report also indicated a need to provide funding for graduate programs to train new researchers in fields of highway safety.

This grant program has two objectives: (1) Broaden existing highway safety research at U.S. colleges and universities; and (2) encourage U.S. citizens to seek advanced degrees in highway safety related areas.

FHWA Involvement

The FHWA's Design Concepts Research Division has a limited role in the grants program. The FHWA will:

1. Provide, on an as-available basis, one professional staff person to be designated as the Contracting Officer's Technical Representative to participate in the planning and management of the grant program.

2. Arrange for the review of the research on its completion.

3. Arrange for the students participating in the program to present their findings at the Turner-Fairbank Highway Research Center in McLean, Virginia, or at the Transportation Research Board meeting held each January in Washington, DC.

Period of Support

Grants will be for a one year period.

Additional one year options to extend grants for up to two additional years, pending availability of funds, will be considered.

Eligibility Requirements

Up to four grants will be made to selected universities in amounts of up to $50,000 to enhance graduate student research in all highway related areas of traffic safety. These areas include geometric and roadside design; traffic control devices; traffic barriers; pedestrian and bicyclist safety; and human factors. Discipline necessary to conduct this research include: Civil engineering, transportation engineering, highway engineering, statistics, physics, structural mechanics, mechanical engineering, materials engineering, computer sciences, human factors, and hazardous materials.

Proposal submittals are limited to universities with current graduate course offerings and/or current research in fields related to highway safety research.

Application Procedure

Each applicant shall submit one original and five copies of its application package to: Federal Highway Administration, Office of Contracts and Procurement, 400 Seventh Street, SW., room 4410, Washington, DC 20590, Attention: Lise S. Lyles, HCP–31. Only complete application packages received on or before March 20, 1992, shall be considered.

Application Contents

The application package shall be submitted with OMB Standard Form 424 (Rev. 4–88, including 424A and 424B), with the required information filled in and the certified assurances included. While the form 424–A deals with budget information, section B identifies budget categories, the available space does not permit a level of detail which is sufficient for a meaningful evaluation of proposed costs. A supplemental sheet shall be provided which presents a detailed breakdown of the proposed costs, as well as any costs which the applicant proposes to contribute in support of this effort.

Research project statements shall include the following:

1. Background discussion of related research and rationale for doing proposed study.
2. Statement of research objective or hypotheses.
3. Description of research method including experimental design, equipment to be used, test procedures, and data analysis techniques.
4. Resources (staff and costs).

The main body of the proposal (points 1–3 above) shall be limited to a maximum of five pages. Longer proposals will be considered an indication of a lack of cost consciousness.

Application Review Process and Criteria

Initially, all applications will be reviewed to confirm that the applicant is an eligible recipient and to ensure that the application contains all the information required by the Application Contents section of this notice.

Each complete application from an eligible recipient will then be evaluated by a Technical Evaluation Committee. Grant proposals will be rated in accordance with the following criteria listed in descending order:

1. Professional vitae of proposed faculty and senior staff members, including participation in national safety committee activities and related research publications.
2. Research project statement(s).
3. Qualifications and availability of candidate graduate students, with preference for students who are U.S. citizens or permanent residents of the U.S.
4. Description of available research facilities.
5. Description of on-going safety related research projects and graduate course offering in safety related areas.
6. University administrative costs associated with the potential grant.

Terms and Conditions of the Award

1. Each Grantee shall produce a research paper suitable for publication in a national journal. Ten copies of each study research paper shall be provided to the FHWA before the oral presentation.
2. Upon invitation, papers will be presented orally by the student conducting the research at the Turner-Fairbank Highway Research Center in McLean, Virginia, or at the annual meeting of the Transportation Research Board held each January in Washington, DC. Oral presentation dates and locations will be arranged through discussions between the FHWA and student advisors.

Authority: 23 U.S.C. 315; 49 CFR 1.48.

*Issued on: December 9, 1991.

T.D. Larson,

Administrator.

[FR Doc. 91–30128 Filed 12–17–91; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

[Docket No. 91–56; Notice 1]

Receipt of Petition for Determination That Nonconforming 1986 BMW 518i Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1986 BMW 518i passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a determination that a 1986 BMW 518i that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is January 17, 1992.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. (Docket hours are from 9:30 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that

(I) the motor vehicle is * * * substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 (of the Act), and of the same model year * * * as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards * * *."

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register.**

Champagne Imports Inc. of Lansdale, Pennsylvania (Registered Importer No. R–90–009) has petitioned NHTSA to determine whether 1986 BMW 518i passenger cars are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1986 BMW 528e. Champagne has submitted information indicating that Bayerische Motoren-Werke A.G., the company that manufactured the 1986 BMW 528e, certified that vehicle as conforming to all applicable Federal motor vehicle safety standards and offered it for sale in the United States.

The petitioner noted that the agency, on its own initiative, has already made a determination of substantial similarity covering 1986 Model 528e vehicles that Bayerische Motoren-Werke A.G. did not certify and offer for sale in the United States (55 FR 47418). It contends that the 518i is substantially similar to the 528e, and "differs mainly in engine size and minor options which go with it." In accounting for the differences between the two vehicles, the petitioner observed the manufacturers such as Bayerische Motoren-Werke A.G. "generally design only a few basic body shell designs which they then equip with a multitude of engine-size and cosmetic or comfort options." The petitioner further surmised that the 518i's absence from the United States market could be attributed to "saleability considerations or legislative restrictions such as the strict emission control requirements in the United States."

Champagne submitted information with its petition intended to demonstrate that the 1986 model 518i, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as the 1986 model 528e that was offered for sale in the United States, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the 1986 model 518i is identical to the certified 1986 model 528e with respect to compliance with Standards Nos. 102 Transmission Shift Lever Sequence * * *, 103 Defrosting and Defogging Systems, 104 Windshield Wiping and Washing Systems, 105 Hydraulic Brake Systems, 106 Brake Hoses, 107 Reflecting Surfaces, 109 New Pneumatic Tires, 113 Hood Latch Systems, 116 Brake Fluid, 124 Accelerator Control Systems, 201 Occupant Protection in Interior Impact, 202 Head Restraints, 203 Impact Protection for the Driver From the Steering Control System, 204 Steering Control Rearward Displacement, 205 Glazing Materials, 206 Door Locks and Door Retention Components, 207 Seating Systems, 209 Seat Belt Assemblies, 210 Seat Belt Assembly Anchorages, 211 Wheel Nuts, Wheel Discs and Hubcaps, 212 Windshield Retention, 216 Roof Crush Resistance, 219 Windshield Zone Intrusion, and 302 Flammability of Interior Materials.

Petitioner also contends that the vehicle is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 Controls and Displays: (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 Lamps, Reflective Devices and Associated Equipment: (a) Installation of U.S.-model headlamp assemblies which incorporate sealed beam headlamps and front sidemarkers; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarkers; (d) installation of a high mounted stop lamp.

Standard No. 110 Tire Selection and Rims: Installation of a tire information placard.

Standard No. 111 Rearview Mirrors: Replacement of the passenger's outside rear view mirror, which is convex but does not bear the required warning statement.

Standard No. 114 Theft Protection: Installation of a buzzer microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 115 Vehicle Identification Number: Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 Power Window Systems: Rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 Occupant Crash Protection: (a) Installation of either a U.S.-model seat belt in the driver's position or a belt webbing-actuated microswitch in the driver's seat belt retractor to activate the seat belt warning system; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer.

Standard No. 214 Side Door Strength: Installation of reinforcing beams.

Standard No. 301 Fuel System Integrity: Installation of a rollover valve in the fuel tank vent line between the fuel and the evaporative emissions collection canister.

Additionally, the petitioner states that the bumpers on the 1986 model 518i must be reinforced to comply with the Bumper Standard found in 49 CFR part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: January 17, 1992.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(II) and (C)(iii); 49 CFR 593.8; delegation of authority at 49 CFR 1.50.

Issued on December 11, 1991.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 91–30134 Filed 12–17–91, 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 91–57; Notice 1]

Receipt of Petition for Determination That Nonconforming 1989 Volvo 240 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1989

Volvo 240 passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a determination that a 1989 Volvo 240 that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is January 17, 1992.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. Docket hours are from 9:30 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that

(I) the motor vehicle * * * substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 [of the Act], and of the same model year . . . as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards * * *.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

Liphardt & Associates of Ronkonkoma, New York (Registered Importer No. R–90–004) has petitioned NHTSA to determine whether 1989 Volvo 240 passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States. The vehicle which Liphardt believes is substantially similar is the 1989 Volvo 240 that was manufactured for importation into and sale in the United States and that was certified by its manufacturers as complying with all applicable safety standards.

Liphardt submitted information with its petition intended to demonstrate that the non-U.S. certified 1989 model 240, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its counterpart that was offered for sale in the United States, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the two models are identical with respect to compliance with Standards Nos. 102 Transmission Shift Lever Sequence * * *, 103 Defrosting and Defogging Systems, 104 Windshield Wiping and Washing Systems, 105 Hydraulic Brake Systems, 106 Brake Hoses, 107 Reflecting Surfaces, 109 New Pneumatic Tires, 111 Rearview Mirrors, 113 Hood Latch Systems, 116 Brake Fluid, 118 Power-Operated Window Systems, 124 Accelerator Control Systems, 201 Occupant Protection in Interior Impact, 202 Head Restraints, 203 Impact Protection for the Driver From the Steering Control System, 204 Steering Control Rearward Displacement, 205 Glazing Materials, 206 Door Locks and Door Retention Components, 207 Seating Systems, 208 Occupant Crash Protection, 209 Seat Belt Assemblies, 210 Seat Belt Assembly Anchorages, 211 Wheel Nuts, Wheel Discs and Hubcaps, 212 Windshield Mounting, 214 Side Door Strength, 216 Roof Crush Resistance, 219 Windshield Zone Intrusion, and 302 Flammability of Interior Materials.

Petitioner also contends that the vehicle is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 Controls and Displays: Recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 Lamps, Reflective Devices and Associated Equipment: Installation of U.S.-model headlamp assemblies.

Standard No. 110 Tire Selection and Rims: Installation of a tire information placard.

Standard No. 114 Theft Protection: Installation of a buzzer microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 115 Vehicle Identification Number: Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 301 Fuel System Integrity: Installation of a rollover valve in the fuel tank vent line between the fuel and the evaporative emissions collection canister.

Additionally, the petitioner states that energy absorbers must be added to the bumpers on the non-U.S. certified 1989 model 240 to comply with the Bumper Standard found in 149 CFR part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: January 17, 1992.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(II) and (C)(iii); 49 CFR 593.8; delegation of authority at 49 CFR 1.50.

Issued on December 11, 1991.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 91–30135 Filed 12–17–91, 8:45 am]

BILLING CODE 4910–59–M

UNITED STATES INFORMATION AGENCY

Democracy in Africa Program; Citizen Exchange Projects

AGENCY: United States Information Agency.

ACTION: Notice—Extension of deadline for request for proposals published November 26, 1991.

SUMMARY: The Office of Citizen Exchanges announces an extension of the deadline for submission of proposals for the program entitled "Democracy in Africa—Citizen Exchange Projects," which was announced in the **Federal Register** on November 26, 1991 (Vol. 56, No. 228, pp. 59973–59976). Program proposals must be received at the U.S. Information Agency by 5 p.m. EST on February 7, 1992. Proposals received after this deadline will not be eligible for consideration. The November 26 announcement requested proposals from public and private not-for-profit organizations for seven projects designed to contribute to mutual understanding between the U.S. and Nigeria and to support Nigerian efforts to foster the development of democracy and a market-guided economy. Please refer to the November 26 RFP and the appropriate Office of Citizen Exchanges concept papers for specific application requirements.

FOR FURTHER INFORMATION CONTACT: The Office of Citizen Exchanges (E/P), United States Information Agency, room 216, 301 4th Street, SW., Washington, DC 20547.

DATES: This action is effective from December 18, 1991, through February 7, 1992.

Dated: December 6, 1991.

Barry Fulton,

Deputy Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 91–30175 Filed 12–17–91; 8:45 am]

BILLING CODE 8230–01–M

Meeting of Advisory Board for Cuba Broadcasting

The Advisory Board for Cuba Broadcasting will conduct a meeting on December 17, 1991, in the 3rd floor Conference Room, Donohoe Building, 400 6th St., SW., Washington, DC 20547. Below is the intended agenda.

Tuesday, December 17, 1991.

AGENDA

Part One—Closed to the Public

10 a.m. 1. TV Marti Technical Enhancements.

2. Radio Marti Technical Enhancements.

Part Two—Open to the Public

1 p.m. 3. Consideration of Recommendations by the President's Task Force on U.S. Government International Broadcasting.

4. U.S. Government Information Policy in a Post-Castro Cuba—The Future of Radio and TV Marti.

5. Public Testimony.

The Federal Advisory Committee Act (FACA) and implementing regulations provide flexibility regarding the requirement that agendas for Advisory Board meetings be placed in the **Federal Register** 15 days prior to a meeting. The Director has determined that a shorter time period is necessary in this instance to enable the Advisory Board for Cuba Broadcasting to immediately consider recommendations about Radio and TV Marti from the President's Task Force on U.S. Government International Broadcasting. Since public announcement of those recommendations has been uncertain until recently, specific dates for this Advisory Board meeting have been delayed.

Members of the public interested in attending the open portion of the meeting should contact James Skinner, Executive Director to the Advisory Board, as access to the building is controlled. Mr. Skinner can be reached on (202) 401–7312.

Dated: December 12, 1991.

Henry E. Catto;

Director.

[FR Doc. 91–39255 Filed 12–16–91; 9:27 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 243
Wednesday, December 18, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 91–29927.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, December 19, 1991, 10:00 a.m., Meeting Open to the Public.

The following items are added to the agenda:

Title 26 Certification Matters—
Eligibility of Lyndon H. LaRouche, Jr. to Receive Presidential Primary Matching Funds.

Bank Loan Forms, With Explanation and Justification.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219–4155.

Delores Harris,
Administrative Assistant, Office of the Secretariat.

[FR Doc. 91–30336 Filed 12–16–91; 2:26 pm]
BILLING CODE 6715–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Notice forwarded to Federal Register on December 13, 1991.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Friday, December 20, 1991.

CHANGES IN THE MEETING: Addition of the following open item to the meeting:

Discussion Agenda: Consideration of whether to hold public meetings regarding the proposed acquisition of Security Pacific, Los Angeles, California, by Bank of America, San Francisco, California.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: December 16, 1991.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 91–30383 12–16–91; 8:45 am]
BILLING CODE 6210–01–M

FOREIGN CLAIMS SETTLEMENT COMMISSION

F.C.S.C. Meeting Notice No. 3–92—AMENDED

Notice of Meetings

Announcement in Regard to Commission Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

DATE AND TIME: Thurs., Dec. 19, 1991 at 10:30 a.m. (vice Wednesday, Dec. 18, 1991, at 10:30 a.m., as published at 56 F.R. 63757, Dec. 5, 1991).

SUBJECT MATTER: Consideration of Proposed Decisions on claims against Iran.

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 601 D Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 601 D Street, NW., Room 10000, Washington, DC 20579. Telephone: (202) 208–7727.

Dated at Washington, D.C. on December 13, 1991.

Judith H. Lock,
Administrative Officer.

[FR Doc. 91–30254 Filed 12–16–91; 9:21 am]
BILLING CODE 4410–01–M

NATIONAL COUNCIL ON DISABILITY

Quarterly Meeting and Forum

AGENCY: National Council on Disability.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming quarterly meeting of the National Council on Disability. This notice also describes the functions of the National Council. Notice of this meeting is required under section 522(b)(10) of the "Government in Sunshine Act" (P.L. 94–409).

DATES:

Quarterly Meeting

February 24, 1992, 8:30 a.m. to 5:00 p.m.
February 25, 1992, 8:30 a.m. to 5:00 p.m.
February 26, 1992, 8:30 a.m. to 12:00 noon.

LOCATION: Imperial Palace Hotel, 3535 Las Vegas Boulevard South, Las Vegas, Nevada 89109, (800) 634–6441.

FOR FURTHER INFORMATION CONTACT: National Council on Disability, 800 Independence Avenue, SW, Suite 814, Washington, DC 20591, (202) 267–3846, TDD: (202) 267–3232.

The National Council on Disability is an independent federal agency comprised of 15 members appointed by the President of the United States and confirmed by the Senate. Established by the 95th Congress in Title IV of the Rehabilitation Act of 1973 (as amended by Public Law No. 95–602 in 1978), the National Council was initially an advisory board within the Department of Education. In 1984, however, the National Council was transformed into an independent agency by the Rehabilitation Act Amendments of 1984 (Public Law 98–221).

The National Council is charged with reviewing all laws, programs, and policies of the Federal Government affecting individuals with disabilities and making such recommendations as it deems necessary to the President, the Congress, the Secretary of the Department of Education, the Commissioner of the Rehabilitation Services Administration, and the Director of the National Institute on Disability and Rehabilitation Research (NIDRR). In addition, the National Council is mandated to provide guidance to the President's Committee on Employment of People with Disabilities.

The quarterly meeting of the National Council shall be open to the Public. The proposed agenda includes:

Report from Chairperson and Executive Committee
Update on NIDRR
Update on the implementation of the Americans with Disabilities Act
Update on ADA Watch
Update on public policy studies: education; technology; and, health insurance
Committee Meetings/Committee Reports
Unfinished Business
New Business
Announcements
Adjournment

Records shall be kept of all National Council proceedings and shall be available after the meeting for public inspection at the National Council on Disability.

Signed at Washington, DC on December 12, 1991.

Ethel D. Briggs,

Executive Director

[FR Doc. 91-30250 Filed 12-16-91, 9:21 am]

BILLING CODE 6820-RS-M

Corrections

Federal Register
Vol. 56, No. 243
Wednesday, December 18, 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 AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 90-232]

Brucellosis

Correction

In rule document 91-27924 beginning on page 58635 in the issue of Thursday, November 21, 1991, make the following correction:

On page 58638, in the first column, in amendatory instruction 21, in the first line, "§ 78.1" should read "§ 78.8".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 675

[Docket No. 91172-1272]

Foreign Fishing; Groundfish of the Bering Sea and Aleutian Islands

Correction

In proposed rule document 91-27898 beginning on page 58531 in the issue of Wednesday, November 20, 1991, make the following correction:

On page 58533, in the 2nd column, beginning in the 16th line the sentence should read, "The SSC further cautioned that the declining biomass of the portion of the Aleutian Basin stock that spawns in the vicinity of the Bogoslof Island may inhibit the recovery of the threatened sea lion populations that use the Bogoslof Island rookery site."

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 176 and 178

[Docket Nos. 80N-0428 and 82N-0342]

Colorants for Polymers

Correction

In rule document 91-20836, beginning on page 42927, in the issue of Friday, August 30, 1991, make the following corrections:

§ 176.170 [Corrected]

1. On page 42932, in the third column, in § 176.170(b)(2), in the table, under the heading "List of substances", "Calcium suflate" should read "Calcium sulfate".

§ 178.3297 [Corrected]

2. On page 42934:

a. In § 178.3297(e), in the table; in the second column, under the heading "Limitations", in item 3., "4-4'-isopropylidenediphenol-epichlorohydrin" should read "4-4'isopropylidenediphenol-epichlorohydrin".

b. In the first column, under the heading "Substances", "D&C Red No.7 and its lakes", "Kaolin-modified ...", and "7-(2*H*-Naphtho..." should be moved flush to the left margin, "Magnesium silicate (italc)" should read "Magnesium silicate (talc)" and "7-(2*H*-Naphtho[1,2-*d*]triazol-2-yl)-2-phenylcoumarin" should read "7-(2*H*-Naphtho[1,2-*d*]triazol-2-yl)-3-phenylcoumarin".

c. In the second column, in the second item 1., in the first line, "chapter4" should read "chapter".

d. In the second column, in the second item 4., "-vinly" should read "-vinyl". In the same column, four lines down from item 4., "articles" should read "article".

e. In the second column, in the fourth item 2., "§ 177.2460" should read "177.1460".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91N-0428]

Draft of "Points To Consider in Human Somatic Cell Therapy and Gene Therapy;" Availability

Correction

In notice document 91-28604 beginning on page 61022 in the issue of Friday, November 29, 1991, make the following correction:

On page 61022, in the third column, the subject heading should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

RIN 1094-AA40

White Earth Reservation Land Settlement Act of 1985

Correction

In rule document 91-28904 beginning on page 61382, in the issue of Tuesday, December 3, 1991, make the following corrections:

§ 4.350 [Corrected]

1. On page 61384, in the first column, in § 4.350(c)(6), in the third line, "hearings", should read "Hearings".

§ 4.351 [Corrected]

2. On page 61384, in the first column, in § 4.351(b)(1), in the last line, "of" should read "or".

3. On the same page, in the second column in, § 4.351(b)(2)(ii), in the first and third line "know" should read "known".

4. On the same page, in the same column, § 4.351(b)(4), in the seventh line, insert "the" before "including".

§ 4.352 [Corrected]

5. On the same page, in the 3rd column, § 4.352(b)(2), in the 17th line, insert "#" before 2, . In the 25th line, "Community" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-ANE-02, Amendment No. 39-8035, AD 91-20-01]

Airworthiness Directives; General Electric Company (GE) CF6-45/-50 and CF6-80A Series Turbofan Engines

Correction

In rule document 91-25716 beginning on page 55230 in the issue of Friday, October 25, 1991, make the following corrections:

On page 55230, the phrase "CF6-45/-05" should read "CF6-45/-50" where it appears in the following places:

1. In the first column, in the subject heading, in the second line;

2. In the same column, in the **SUMMARY**, in the third line; and

3. In the second column, in the **SUPPLEMENTARY INFORMATION**, in the fifth line.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 26433; Amendment No. 91-225]

RIN 2120-AD96

Transition to an All Stage 3 Fleet Operating in the 48 Contiguous United States and the District of Columbia

Correction

In rule document 91-22950 beginning on page 48628 in the issue of Wednesday, September 25, 1991, make the following correction:

§ 91.869 [Corrected]

On page 48659, in the third column, in § 91.869(a), in the fifth line, "December 3, 1996" should read "December 31, 1996".

BILLING CODE 1505-01-D

federal register

Wednesday
December 18, 1991

Part II

Department of Transportation

Coast Guard

33 CFR Part 1

46 CFR Parts 10 and 12

User Fees for Marine Licensing, Certification of Registry and Merchant Mariner Documentation; Reopening of Comment Period; Proposed Rule

33 CFR Part 143

46 CFR Part 2

Direct User Fees for Inspection or Examination of U.S. and Foreign Commercial Vessels; Proposed Rule

DEPARTMENT OF TRANSPORTATION

33 CFR Part 1
46 CFR Parts 10 and 12

[CGD 91-002]

RIN 2115-AD72

User Fees for Marine Licensing, Certification of Registry and Merchant Mariner Documentation; Reopening of Comment Period

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: On June 20, 1991 the Coast Guard published in the **Federal Register** (56 FR 28448) a notice of proposed rulemaking to establish fees for Coast Guard services related to merchant marine licenses, certificates of registry, and merchant mariner documents. Because of requests for additional time to comment on the proposed rulemaking, the comment period is being reopened for 60 additional days.

DATES: Comments must be received on or before February 18, 1992.

ADDRESSES: Written comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA-2/3406) (CGD 91-002), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477 for information about comments.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Lieutenant J.K. Gillespie, Planning Staff (G-MP-1), Office of Marine Safety, Security and Environmental Protection, (202) 267-6923.

SUPPLEMENTARY INFORMATION:

Request for Comments

In the notice of proposed rulemaking published on June 20, 1991, the Coast Guard encouraged interested persons to participate in this proposed rulemaking by submitting written comments, including views, data, or arguments, on the proposal by August 5, 1991. Several persons requested additional time citing the reason that members of the merchant marine are often away from their home port for 30 days or more and a 45 day comment period is not sufficient time to allow for their participation. Further, the Coast Guard has determined that a 45 day comment period may have been insufficient for industry publications to notify their readers of the opportunity to comment on the proposed rule in time for them to do so.

Other persons requested additional time because of other Coast Guard user fees related to commercial vessels. Many persons in the marine industry both own and operate their vessels. Inspection and licensing fees would be the most significant portion of Coast Guard fees impacting persons owning and operating inspected vessels. To allow them opportunity to comment on the cumulative impact of the Coast Guard user fees, the Coast Guard has determined that reopening the comment period coextensive with the comment period for the notice of proposed rulemaking entitled "Direct User Fees for Inspection or Examination of U.S. and Foreign Commercial Vessels" (CGD 91-030, published elsewhere in this issue of the **Federal Register**) would be beneficial to this rulemaking. Because of these requests, and the need for more publishing lead time, the comment period is reopened for 60 additional days until February 18, 1992.

Persons submitting comments should include their name and address, identify this rulemaking (CGD 91-002) and the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope. The proposed rule may be changed in light of the comments received. All comments received before the expiration of the comment period, including those received between August 5, 1991, and the date of this notice, will be considered before final action is taken on this proposal.

Dated: December 10, 1991.

J.W. Kime,

Admiral, U.S. Coast Guard, Commandant.

[FR Doc. 91-29963 Filed 12-13-91; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF TRANSPORTATION

33 CFR Part 143
46 CFR Part 2

[CGD 91-030]

RIN 2115-AD78

Direct User Fees for Inspection or Examination of U.S. and Foreign Commercial Vessels

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Omnibus Budget Reconciliation Act of 1990 requires the Coast Guard to establish user fees for Coast Guard services related to the inspection and examination of U.S. and foreign vessels and issuance of Certificates of Inspection, Certificates of Compliance, and related documents. The proposed fees are based on the way the Coast Guard presently conducts vessel inspection activities. This proposal is intended to recover costs of providing certain vessel inspection services.

DATES: Comments must be received on or before February 18, 1992.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA-2/3406) (CGD 91-030), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: CDR Bruce A. Russell, Chief, Plans and Analysis Branch (G-MP-1), Office of Marine Safety, Security and Environmental Protection (202) 267-6923.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking (CGD 91-030) and the specific section of this proposal to which each comment applies, and give reasons for each comment. Persons wanting acknowledgement of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under "**ADDRESSES**." If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and

place to be announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are CDR Bruce A. Russell, Project Manager, LCDR C. Lahey, Assistant Project Manager, Office of Marine Safety, Security and Environmental Protection; and C.G. Green, Project Counsel, Office of Chief Counsel.

Background and Purpose

The Omnibus Budget Reconciliation Act of 1990 (the Act) amended 46 U.S.C. 2110 to remove long-standing prohibitions against imposing certain user fees. Although, prior to amendment by the Act, section 2110 did not prohibit the Coast Guard from charging fees for inspection of small passenger vessels, sailing school vessels, or foreign mobile offshore drilling units, it did prohibit fees for inspection or examination of all other U.S. and foreign vessels. The Coast Guard did not, therefore, exercise its authority to charge only those select few vessel owners among all those receiving similar Coast Guard services.

Section 2110 now requires the establishment and collection of user fees for Coast Guard services provided under subtitle II of title 46 United States Code. The Coast Guard must establish these fees in accordance with the criteria in section 9701 of title 31 United States Code (General User Fee Statute). That statute requires that the fees charged be fair, and that they be based on the cost to the government, the value of the service provided, the public policy served, and other relevant facts. The Coast Guard proposes to establish fees for inspection and examination of vessels under subtitle II of title 46. The Coast Guard also proposes to establish fees for inspection or examination of foreign mobile offshore drilling units (MODU's) under 43 U.S.C. 1356. These services are essentially the same as inspections and examinations of other foreign vessels under title 46, and it is appropriate to include fees for inspection of these vessels in this rulemaking.

Marine licensing and merchant mariner documentation, vessel documentation, commercial vessel inspections, and vessel plan review and equipment approval are program areas in subtitle II for which fees must be established. This proposal would establish user fees only for Coast Guard services relating to inspection and examination of existing commercial vessels. Fees for other Coast Guard services in subtitle II of title 46 United States Code, including inspection of new vessels for an initial Certificate of Inspection, inspections of vessels during rebuild or major modifications, factory inspections, equipment approvals, and plan review inspections will be the subject of separate rulemaking action.

Inspection fees and licensing fees are the most significant portion of Coast Guard fees impacting persons owning and operating inspected vessels. To allow additional opportunity for comment on the cumulative impact of these two proposals, the Coast Guard is reopening the comment period for CGD 91–002: User Fees for Marine Licensing, Certification of Registry and Merchant Mariner Documentation. The Notice of Reopening of the Comment Period for the Notice of Proposed Rulemaking on marine licensing user fees is published elsewhere in this issue of the **Federal Register**.

The fees proposed in this rulemaking would not be added or credited to Coast Guard appropriations. The Act provides that the proposed fees and charges "shall be deposited in the general fund of the U.S. Treasury as offsetting receipts of the department in which the Coast Guard is operating and ascribed to Coast Guard activities." This means that the fees are not added to current Coast Guard appropriations, and do not directly affect future appropriations for these programs. The Coast Guard considers this to be an advantage, since funding for these programs will be more predictable when based on firm appropriations. Furthermore, operation of the program will not be dependent on the amount collected, which will vary with the condition of the industry and the economy.

Discussion of Proposed Amendments

General Discussion of the Proposal

Section 2110 requires user fees be established for services provided by the Coast Guard under subtitle II of title 46, United States Code. To comply with this mandate, the Coast Guard proposes to amend 46 CFR part 2 to establish the following categories of user fees for Coast Guard inspections and examinations of existing U.S. and foreign commercial vessels:

For U.S. Vessels

(1) An annual inspection fee would be established for commercial vessels, covering all periodic inspections required by various statutes applicable to each category of vessel, including follow-on inspections conducted to ensure continued compliance with required certificates; and,

(a) A $500.00 cap on the annual inspection fee would be established for all non self-propelled tank barges;

(b) An optional (at the owner or operator's election) means of paying a series of annual user fee payments in advance would be provided;

(2) A fee would be established for excursion permit inspections;

(3) For inspections conducted outside the United States, an overseas inspection fee would be established, which would be in addition to the annual inspection fee described in (1) above.

For Foreign Vessels

(1) A fee would be established for the Certificate of Compliance or Letter of Compliance examination and annual tank vessel examination of tankers;

(2) Fees would be established for the Letter of Compliance examination of mobile offshore drilling units operating on the U.S. outer continental shelf;

(3) A fee would be established for control verification examinations of passenger vessels subject to the International Convention for the Safety of Life at Sea, 1974 as amended (SOLAS);

(4) Foreign vessels, operating in U.S. waters, which are not subject to SOLAS but are subject to U.S. commercial vessel safety inspection requirements would be required to pay the same fees paid for inspection services by U.S. vessels.

Section 2110 allows adjustments of fees to accommodate changes in the cost of providing services. The Coast Guard intends to review the fees annually to determine if adjustments or changes to the fees are necessary. The Coast Guard will revise these proposed fees when costs change because of inflation or deflation, there are changes in the services provided, there are improvements in the method and efficiency of providing services, or when otherwise appropriate. New statutes, such as the Oil Pollution Act of 1990, may require the Coast Guard to establish new regulations or make substantive amendments to existing regulations concerning inspections and examinations. When this occurs, the Coast Guard will propose appropriate user fees in each rulemaking.

Consistent with guidance provided by OMB Circular A–25, except where otherwise mandated by statute, the Coast Guard's goal is full cost recovery. The user fees in this proposal would recover less than full program costs. The statutorily-mandated provision in the Act limiting annual user fees for tank barges to $500 results in a cost to the

Treasury of approximately $2.1 million annually. The proposed user fees for periodic and follow-on inspections were reduced to minimize collection costs and to avoid sizeable inequities in the fee assessment at an annual cost to the Treasury of approximately $3.03 million. As annual workload and cost data is further refined, the Coast Guard will initiate necessary program and regulatory changes to enable full cost recovery.

Section 2110 provides that the fee for a service may also include the cost of collecting the fee. The Coast Guard has not yet determined collection procedures for the proposed fees. Our preliminary estimates indicate that collection costs will be minimal. Collection costs are not included in the fees listed in the proposed regulation. The Coast Guard expects that any adjustment of the proposed fees to cover collection costs will be less than $10 per transaction.

Section 2110 also provides authority to recover "appropriate collection and enforcement costs associated with delinquent payments of the fees." The Coast Guard may employ any government agency (Federal, State, or local) or a private enterprise or business (e.g., collection agency) to recover delinquent fees or civil penalty charges. Since the Coast Guard anticipates collecting fees prior to the services being provided, delinquent payments should not occur in most cases.

Section 2110 allows exemption of certain persons from fees, "if in the public interest." While there are no specific exemptions proposed in this notice of proposed rulemaking, the Coast Guard is interested in comments on exemptions that could be in the public interest, and will consider including appropriate exemptions in the final rule. The public is invited to comment on reasons to establish "public interest" exemptions.

Discussion of Fees

Overview

The proposed fees are based on the cost of Coast Guard resources expended to conduct the inspection and examination services. These resources include inspector hours, travel, administrative support, and training, and are discussed more fully in the Regulatory Evaluation. In developing the proposed fees, the Coast Guard reviewed all specific inspection activities in 46 CFR part 2, as well as the technical requirements for inspections in 46 CFR parts 31, 71, 91, 105, 107, 108, 109, 151, 167, 175, 176, 189, and 190 and in 33 CFR parts 140, 143, 151, 155, and 157.

The inspection workload (inspector hours per inspection) for U.S. vessels and foreign vessels subject to inspection under the laws of the United States varies by type of vessel, by length of vessel within some vessel types, and by number of passengers for some passenger vessels. Based on inspection workload variations, vessels were grouped into 28 categories. With more than 15 types of inspections and 28 vessel types, the Coast Guard calculated that it could establish up to 420 different user fees for over 38,000 inspections and examinations conducted each year just on the U.S. fleet of approximately 12,000 vessels.

To reduce the number of possible inspection user fee categories, the Coast Guard identified patterns in the amount of time it takes to conduct an inspection as a function of inspection type, vessel type and size, number of passengers, and other factors. The three primary inspections, the inspection for certification, annual reinspection, and drydock examination, generally take about the same amount of time for vessels of a particular category. However, there are wide variations in the time it takes to conduct follow-on inspections due to many factors, including but not limited to: Differences in the readiness of the vessel for inspection; knowledge, training, and experience of shipyard personnel and/or the ship's crew; the vessel owner's, or operator's management and operating procedures; coordination with third party contractors; the knowledge and training of the vessel inspector; the nature and extent of repairs; and the extent of any deficiency list to be inspected or cleared. In many cases, the Coast Guard determined that there are no accurate predictors of how long a particular type of inspection would take.

The Coast Guard considered billing for follow-on inspections after the fact at an hourly rate. A requirement to pay a separate fee for each of these inspections would increase administrative work requirements for vessel repair facilities, contractors, and vessel owners to ensure proper authorization of, and application for, inspections. For example, a shipyard could have to contact the vessel owner for authorization to expend funds for inspection of each stage of a repair, modification, or deficiency correction. Development of timekeeping and billing systems for over 38,000 inspections per year would be expensive and administratively burdensome to both the Coast Guard and industry. The estimated $1.75 million annual cost for Coast Guard billing clerks would increase the user fee cost base and result in higher fees for industry. After consideration of a pay-as-you go user fee system for these vessel inspections, the Coast Guard concluded that this alternative would be unworkable.

The Coast Guard then considered establishment of an annual inspection fee for each vessel category. In evaluating this alternative, the Coast Guard determined that the expected aggregate number of hours spent inspecting a vessel in a given category each year could be computed with more accuracy than when attempting to calculate the expected value of a single inspection or type of inspection. An annual fee would eliminate approximately 26,000 fee transactions per year for follow-on and drydock inspections. An annual fee would also provide a predictable annual cost to a vessel owner or operator. The Coast Guard, therefore, considers an annual inspection fee to be the most practical alternative for primary inspections and the follow-on inspections related to them.

In structuring an annual fee which would reasonably reflect the cost basis of the inspection services provided, the Coast Guard examined several alternatives. The primary basis for determining the annual fee is an annual accrual accounting system based on the annual expected value (measured in time) of services provided. The expected value of an inspection service is simply the average time it takes to conduct an inspection multiplied by the probability of the inspection taking place. The annual accrual accounting system sums the expected values of the various inspections conducted for each type of vessel. This process is an algorithm which assumes that the average time to conduct an inspection is representative for that category of vessel; that the distribution of the inspection time about the mean is normal (i.e. not skewed); and that the average has a relatively small standard deviation. This algorithm works well for the primary periodic inspections. It does not work well for the non-periodic inspections. For many of the non-periodic inspections, the standard deviation was found to be several times the mean, rendering the measure inappropriate.

Constructing a user fee based on the full cost average that is not representative or "well-behaved" would result in fees that do not reasonably reflect the cost of the services provided. The burden of paying for services calculated at full cost would be significantly shifted from those receiving extensive services to those receiving far less service. Such a user fee would

result in many shipowners requiring less inspection service subsidizing shipowners requiring much more service.

After examining several options, the Coast Guard determined that charging a reasonable percentage of the full cost average for the non-periodic inspections would create fewer inequities. Several approaches to discount the 252 average inspection times (28 vessel types and 9 inspection types) were considered, but no statistical basis simply applied was found.

The Coast Guard then weighted the option of a mixed system—an annual fee for the periodic inspections and billing at an hourly rate for the follow-on inspections—to recover the full costs. The necessary billing system to recover the additional $1.9 million is estimated to cost $1.75 million. These additional billing costs would be passed on to the industry. This option was not considered viable or reasonable.

To avoid establishing a billing system and to ameliorate the inequities, the Coast Guard found that by using 50% of the full cost of the non-periodic inspections, the algorithm would more fairly apportion the inspection costs in each inspection and vessel category.

Fees for the remaining inspections, excursion permits for passenger vessels, the additional charge for overseas inspections, and fees for examinations of foreign vessels would be paid when applying for the particular inspection or examination.

Vessels of foreign countries which are parties to the effective International Convention for the Safety of Life at Sea (SOLAS) are not inspected under U.S. inspection laws. They are examined only to the extent necessary to verify that they have complied with their own nation's laws and the requirements of various treaties. The proposed fees for these examinations are listed by type of examination. However, vessels of countries which are not parties to SOLAS are required to undergo the same inspections as U.S. vessels, and are issued the same Certificate of Inspection. Therefore, the Coast Guard proposes to charge these foreign vessels the same fees for inspection as for U.S. vessels of the same type.

Proposed Fees

Annual Inspection Fees

The Coast Guard proposes to establish a schedule of annual inspection fees for 28 categories of vessels. Payment of the annual inspection fee would establish a privilege of inspection for a specific vessel for all periodic inspections and follow-on inspections of a U.S. vessel or a foreign vessel subject to U.S. inspection laws. The privilege of inspection would extend to all inspections and examinations required for Certificates of Inspection, certificates required under international treaties, and follow-on inspections required to determine compliance with those certificates. The proposed schedule of annual inspection fees was developed using an accrual accounting system based on the annual expected value of inspection services provided.

Commercial vessels are subject to periodic inspections on quarterly, 1 year, 1.5 year, 2 year, 2.5 year, 3 year, 5 year and 10 year intervals as a function of vessel type or service, class, and route (fresh water/salt water and/or the number of months per year certain vessels are operated in fresh water). Some of these requirements date to the 1850's, while some are more recent and are defined by international treaty. Typically, Coast Guard marine inspectors visit each vessel at least once each year to issue the all-encompassing Certificate of Inspection (at a 1, 2 or 3 year interval), to conduct the annual reinspection, or to inspect the vessel's hull. Follow-on inspections to ensure that a vessel remains in compliance with its Certificate of Inspection are also conducted throughout the year. The Coast Guard conducts over 10,000 follow-on inspections annually. The purpose of these inspections vary from one vessel to the next. They typically include, but are not limited to, the following activities:

(a) Certifying that deficiencies noted in a previous inspection have been corrected;

(b) Surveying damaged ship structures, propulsion systems, or failed lifesaving, navigation, or firefighting equipment;

(c) Inspecting, testing, and approving repairs to damaged ship structures, propulsion systems, or failed lifesaving, navigation, or firefighting equipment.

There is a large range of variability in the time required to conduct many follow-on inspections, even within a particular vessel type. Because of this variability within types of follow-on inspections, and to simplify administration and collection of fees, only 50% of the expected value of follow-on inspections were included in the annual fee. This would result in a net reduction in user fee receipts, and cost to the Treasury, of $1.9 million annually.

There are several factors which determine a vessel's inspection intervals for some periodic inspections. The primary factors are whether the vessel's route is salt water or fresh, open water or protected, and how much of the year the vessel operates in each. The Coast Guard is working to simplify hull examination/dry dock requirements. When revised, the Coast Guard expects more consistent requirements overall. This would then allow for application of the accrual algorithm at full cost for many vessel categories. The Coast Guard proposes to charge all vessels for the longest hull examination/dry dock interval as an interim solution. The Coast Guard therefore proposes to charge only at the rate for the longest inspection interval for each category of vessel. This means that all vessels of a given fee category would pay the same amount as the lowest cost vessel of that type. For example, drydock inspection intervals for a small passenger vessel may vary from 1.5 years for a vessel operated exclusively in salt water, to 5 years for a vessel operated exclusively in fresh water. Selecting the longest interval, 5 years, means that the annual expected value of this service is 20% of the cost of a drydock inspection. The expected value would be 67% of the cost of the inspection for the 1.5 year interval. The Coast Guard estimates that use of the longest interval would result in a net reduction in user fees receipts and cost to the Treasury, of $950,000 annually.

Fee Limit for Tank Barges

User fees for inspections of all tank barges (U.S. and foreign) are limited by the Act to a maximum of $500 per year, including collection costs. Annual inspection fees were calculated for tank barges in various service and route categories and were all found to be in excess of $500 ($778–$1015 without collection costs included). The Coast Guard, therefore, proposes to set the annual inspection fees at the statutory limit of $500. Savings to the tank barge industry and cost to the Treasury, because of this statutorily-mandated provision, are estimated at $2.1 million annually.

Optional Prepayment of Annual User Fee

The Coast Guard proposes to establish an optional method of payment to allow a vessel owner/operator to elect to prepay the annual user fee for a period of years, from 3 years up to the design life or expected remaining life of the vessel. The Coast Guard proposes to calculate the prepaid fee by using the net present value of the expected series of annual payments to the Treasury. This means that the payment expected in each future year is

reduced by a discount factor to an amount which, if deposited in an interest bearing account until the payment year, would equal the payment due. The interest rate would be equal to the 10-year Treasury note rate. This rate is adjusted for inflation, using the projected rate for federal pay increases (4.2%). Once the fee is paid, the privilege of inspection for the period covered by this fee could be capitalized to become part of the value of the vessel. This privilege would be transferable with the vessel to a new owner, but could not be transferred to any other vessel. For a vessel which changes service, becoming a member of a different vessel category, the fee would be recalculated. All remaining credit from the prepaid fee would be applied to establish a privilege of inspection for the vessel in the new category based on the fee for inspection of vessels in the new category. The new fee would be calculated from the date of the first Certificate of Inspection for the vessel's new category, and the ending date of the privilege of inspection already paid for would be adjusted.

As the prepayment of multiple annual user fees is optional, the owner/operator electing to prepay the annual user fee assumes the risk that the annual user fee may go down over time (due to program/statutory changes), that the vessel may not remain in service or that inflation may be less than the projected rate. The government, on the other hand, assumes the risk that the discount rate may exceed the actual rate of interest; that inspection times and other program costs may increase; and that inflation may rise above the projected rate. While the Coast Guard may adjust the time period of the privilege of inspections paid for in advance, fees will not be refunded.

Excursion Permit Fee

Vessel operators desiring to carry passengers in excess of the number listed on the vessel's Certificate of Inspection must apply for an excursion permit. The excursion permit may be issued by the Officer in Charge, Marine Inspection after inspecting the vessel to ensure that the proposed excursion would be safe. The fee for this inspection would be paid upon application for the requested service.

Overseas Inspection Fee

Approximately 40,000 hours in overseas travel time are expended annually in connection with inspection of U.S. commercial vessels. These inspections are conducted overseas at the request of the vessel owner. Owners now compensate the Coast Guard (under 46 U.S.C. 3317) only for travel expenses and per diem, but not for operating costs associated with overseas inspections. Personnel hours expended during travel, waiting time at the inspection destination for a vessel to be ready for inspection, and the cost differential of maintaining offices overseas are included among the costs of providing this service which require this additional fee.

Inspectors are assigned to overseas inspections based on a variety of factors, including experience, availability, and convenience to the Coast Guard, rather than being sent from the nearest location. This results in large variations in travel and delay time which can neither be predicted nor controlled by the inspection applicant.

The Coast Guard proposes to base charges for these overseas inspections on the fact that they are overseas, and not on the location from which the Coast Guard chooses to send an inspector. Therefore, the Coast Guard proposes to charge a flat fee for all overseas inspections, based on apportionment of the additional costs among the inspection and examination activities conducted overseas. The apportioned share for each activity is approximately equal to 50 hours travel and delay time. It is derived from current overseas inspection workload data. Reported workload time for those inspections is limited to a maximum of 8 hours per day. The workload data thus represents actual personnel costs, and does not include off duty time.

Foreign Tankship Fee

Foreign chemical tankships operating in U.S. waters are required to be examined and issued a Certificate (or Letter) of Compliance (COC). The COC is valid for two years. Annual reexaminations of chemical tankers are conducted by a marine inspector and the COC is endorsed. Foreign tankships carrying petroleum products are required to be examined annually and issued an annual Tank Vessel Examination (TVE) Letter. As the time involved to conduct each of these exams is essentially the same, we propose to charge the same user fee for these three types of examinations of foreign tankships.

Foreign Mobile Offshore Drilling Unit Fees

Foreign MODUs are inspected under the authority of the Outer Continental Shelf Lands Act, codified at 43 U.S.C. 1356. The regulation requiring a foreign MODU to obtain a Letter of Compliance is published at 33 CFR 143.210. Since other types of foreign vessels are required to pay fees for inspections and examinations, and U.S. MODUs generally must be inspected by and pay fees to foreign agencies when operating in foreign waters, the Coast Guard proposes to establish user fees for these inspection services provided to foreign MODUs. Fees for foreign MODUs would be collected under the authority of 14 U.S.C. 664 and 31 U.S.C. 9701.

These inspections are conducted under 33 CFR 143.207 and 143.210 to ensure compliance with one of the following: (a) The design and equipment standards for MODU's in 46 CFR Part 108; (b) the design and equipment standards of the documenting nation, if those regulations have been found to meet or exceed U.S. standards; or, (c) the standards issued by the International Maritime Organization.

Inspections conducted to ensure compliance with (a) above are the same inspection services provided to a U.S. MODU, and the fee charged would be the same. Inspections conducted for compliance with categories (b) and (c) above are essentially the same as the examinations for a Certificate of Compliance for other types of foreign vessels, as listed in 46 CFR 2.01–6, and a separate fee is established for these vessels, which have already been certified by another government.

Foreign Passenger Vessel Fee

Passenger vessels from foreign countries which are parties to SOLAS are inspected to verify that they have complied with the laws of the flag state and the controls imposed by the treaty. Over 95% of these foreign passenger vessel control verification examinations are straightforward, are conducted on a regular basis, and are predictable in terms of inspection time spent per examination. A single annual fee is proposed for such control verification examinations. This fixed fee would be applicable to the initial, annual, and reinspection examinations. For the remaining 5%, inspection times are as much as 40 times the mean. At this time, the Coast Guard proposes to charge these vessels the same fee as the 95% which require no significant extra effort.

Inspection of Foreign Vessels not Subject to SOLAS Operating in U.S. Waters

These vessels are inspected under the same regulations and in the same manner as U.S. vessels, and are issued the same Certificates of Inspection as U.S. vessels. User fees proposed for the inspection of these vessels are the same as those for U.S. vessels.

Collection of Fees and Penalties for Failure to Pay

The Coast Guard is presently reviewing a variety of fee collection procedures including cash payment, checks, money orders, credit cards, and electronic payment procedures. Convenience to the applicant will be an important factor in selecting the procedures to be used. Although these administrative details are not required to be subject to notice and comment, the Coast Guard invites comments on desirable features of a collection system. The Coast Guard will include the collection procedure details in the Final Rule. The Coast Guard anticipates that payment would be required before inspection services would be provided.

For failure to pay fees, a civil penalty of up to $5,000 is authorized in 46 U.S.C. 2110. That section also authorizes the Secretary of the Treasury to withhold customs clearance for vessels which fail to pay fees, when requested by the Secretary of Transportation. The Coast Guard also proposes to withhold additional inspection and certification services pending payment of any outstanding fees. The Coast Guard intends to treat checks returned due to insufficient funds as a delinquent payment and to recover appropriate collection and enforcement costs in these cases.

Cost Methodology

The Coast Guard developed fees in this proposal using information from workload analysis studies and data contained in the Coast Guard's Marine Safety Information System (MSIS) and costs of conducting vessel inspection activities at Coast Guard Marine Inspection Offices and Marine Safety Offices.

Vessel inspection user fees for this rulemaking were derived based on the proposition that the fees should generate receipts approximating the total cost of the commercial vessel inspection program, less the cost of those activities which will be the subject of separate rulemakings; activities for which the program director has determined that the imposition of fees would impose an administrative burden which would outweigh the value of the fees; inspections conducted at the sole discretion of the OCMI for enforcement purposes; and inspection costs for tank barges in excess of the statutory $500 annual inspection fee cap imposed by the Act.

The program cost includes the cost of personnel and associated infrastructure necessary to provide the inspection services. These include, but are not limited to: Office space; office equipment and supplies such as telephones, computers and copiers; special training; and other personnel-related costs. The program cost also includes a portion of the annual cost to operate MSIS and local travel costs for inspectors. Using information from a workload analysis study, hourly standard rates provided in the Coast Guard Standard Rate Instruction (COMDTINST 7310.1), and the Coast Guard Staffing Standards Manual (COMDTINST M5312.11), the Coast Guard calculated this total program cost to be approximately $25.4–$27 million, not including any cost of collecting fees. Based on the workload analysis study and this total program cost the Coast Guard calculated a basic hourly rate for inspection services of $87 per qualified inspector hour.

Each proposed fee is calculated as a function of the time the Coast Guard would reasonably expect to spend inspecting or examining a specific category of vessel during an average year, including travel time. Categories were based on vessel type. Where wide variations in inspection time were found, vessel types were subdivided by length, number of passengers, and other criteria to provide increased predictability of inspection time. The proposed fees may be rounded to the nearest $5.00 in the final rule.

This rulemaking proposes to assess approximately $21–$22 million in user fees each year. The $500 annual limit on inspection fees for tank barges, established by the Act, reduces estimated receipts by approximately $2.1 million annually. Several adjustments were introduced to simplify the fee structure, and to minimize the administrative cost to industry and the government of assessing and collecting fees. These include charging for only one-half of follow-on inspection costs, charging only the minimum amount for drydock inspections, charging the same fee for control verification examinations for all foreign passenger vessels, and elimination of fees for minor miscellaneous services. These changes reduce expected collections by $3.2 million per year.

In each instance where a decision was made not to assess a fee for a particular activity, or to assess less than the full cost of an activity, the overhead for that activity was eliminated from the program costs on which fees were based. This procedure ensures that the direct costs and overhead for these activities will not be distributed to the users of other services which are subject to user fees.

Costs for different types of mobile offshore drilling units were developed based on program manager estimates, validated against historical data. Workload data was not originally captured based on type of unit, and further data collection and analysis is required. This analysis may adjust the apportionment of fees among types of drilling units based on the number of hours required to inspect each type, but should not affect the total cost to the industry. The Coast Guard expects to incorporate any adjustments which may be indicated by this analysis in a future rulemaking.

Section by Section Analysis

33 CFR Part 143

The Coast Guard proposes to revise the authority citation for this Part to include statutes related to user fees (i.e., 14 U.S.C. 664, 31 U.S.C. 9701).

Section 143.210—The Coast Guard proposes to revise this section by adding the requirement that the user fee for inspection of a foreign mobile offshore drilling unit (MODU) be submitted with the application for a Letter of Compliance inspection.

46 CFR Part 2

The Coast Guard proposes to revise the authority citation for this Part to include statutes related to user fees (i.e., 14 U.S.C. 664, 31 U.S.C. 9701, 46 U.S.C. 2110).

Section 2.01–1—The proposed amendments to this section require payment of user fees at the time of application for services.

Section 2.01–6—The Letter of Compliance listed in 33 CFR 143.201 is added to the list of certificates issued to foreign vessels in this section. This change is editorial in nature.

Section 2.01–45—This section would be amended to add a requirement for excursion permit fees to be paid when the application for an excursion permit is submitted.

Section 2.01–60—This section would be removed and the substance of the section, dealing with procedures for overtime compensation would be placed in a new Section 2.10–11.

Subpart 2.10—This is a new subpart titled "Fees."

Section 2.10–1—This section would add definitions of vessel types on which fees are based, and definitions of other terms to be used in this part. The vessel definitions are based on other regulations or statutes.

Section 2.10–11—This section is the old § 2.01–60. References to shipping commissioners have been deleted

because the Coast Guard no longer performs that function. Reference to 46 U.S.C. 382b was changed to 46 U.S.C. 2111 because of partial revision of title 46, United States Code. Reference to part 143 of this chapter was changed to part 9 because part 143 has been redesignated. These changes are editorial in nature.

Section 2.10–13—This section contains a summary of the statutory penalty provisions.

Section 2.10–101—An annual inspection fee is proposed for U.S. commercial vessels and those foreign vessels which are inspected under U.S. law and issued a Certificate of Inspection. The fee for each vessel is based on the expected value of inspection services in an average year for a vessel of that type, size and service. The section describes the inspection services provided under the privilege of inspection established when the fee is paid.

Section 2.10–103—This section would allow vessel owners the option of prepaying the cost of inspections covered by the annual inspection fee for a period up to the expected life of the vessel. The fee for each future year is discounted to the present value of the services to be provided in that year. The fee is discounted using the interest rate of 10% for 10-year Treasury notes, less a projected inflation rate of 4.2%. The section also proposes application procedures for vessel owners desiring to prepay fees.

Section 2.10–105—This section proposes a method of adjusting annual inspection fees when a vessel changes from one fee category to another, and provides that credit will be granted for fees already paid.

Section 2.10–106—This section proposes a fixed fee for excursion permit inspections. The fee would be required only when an excursion permit inspection must be conducted at a time other than the inspection for a Certificate of Inspection.

Section 2.10–107—Any vessel which must be inspected outside the United States, including territories and possessions of the United States would be required to pay a separate fixed fee under this section. This fee is intended to cover the personnel salary and overhead costs associated with travel to inspection sites in foreign countries and delays in transit, as well as an adjustment for the cost of operating offices overseas. The proposed fee would be in addition to travel and lodging expenses for which the Coast Guard is currently reimbursed.

Section 2.10–109—This section proposes fees for inspections of certain foreign vessels.

Section 2.10–110—This section proposes fees for inspections of foreign MODUs inspected under 33 CFR part 143.

Regulatory Evaluation

This proposal is not major under Executive Order 12291, but is significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The proposed fees are a deficit reduction measure, mandated by the Omnibus Budget Reconciliation Act of 1990, (the Act) which amended 46 U.S.C. 2110 to remove long-standing prohibitions against charging fees for Coast Guard commercial vessel services.

The Act required the Coast Guard to establish fees for services provided under subtitle II of title 46 United States Code. These services include licensing and documentation of merchant marine personnel, vessel documentation, commercial vessel inspections, and vessel plan review and equipment approval. Although precise cost impacts of these fees require further study, the total cost of these user fees is expected to be less than $45 million. This rulemaking deals only with vessel inspection user fees, which are estimated at $20–$22 million. This is well below the $100 million threshold which would make this a major regulation. Nonetheless, it is significant under the Department of Transportation Regulatory Policies and Procedures because it is an important program change, and the Coast Guard has prepared a regulatory evaluation.

The draft Regulatory Evaluation is available in the docket for inspection or copying where indicated under "**ADDRESSES**." A summary of this evaluation is published as an appendix at the end of this notice of proposed rulemaking.

The evaluation compared the annual cost of the user fees to revenues generated by operating vessels. It concluded that the financial impact on the public, and individuals subject to these user fees, would be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

The Coast Guard expects that this regulation will not have a significant impact on a substantial number of small entities. However, the small passenger vessel industry is predominantly made up of small firms. Information on costs, revenues and profits from this industry are not generally available. The Coast Guard is convinced that it has developed a fee structure specifically for this industry which will reduce the impact on owners and operators of smaller passenger vessels. Nevertheless, some passenger vessel owners may be substantially affected by this regulation. Some of the smaller tank barge operators may also be substantially affected, despite the inspection fee limitation imposed by the Act. The Coast Guard requests information from those companies and individuals that believe they will be significantly affected by this rulemaking. Comments should include type of vessel(s), number of vessels owned or operated, size, sales, profits, season of operation, and area of operation, and should be sent to the Marine Safety Council where indicated under "**ADDRESSES**." Based on the information currently available, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains minimal additional collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Existing requirements, for applications for inspection are covered under Office of Management and Budget control number OMB 2115–0141. The additional requirements involve collection of funds, and of such information as is required to calculate the fee due, or to ensure proper collection. These may include account numbers for checking accounts, credit card accounts, or other financial accounts from which payment is made, and addresses, telephone numbers, or other identifying information which will permit follow-up action when an incorrect amount is submitted or a payment instrument fails to clear. A new requirement is established for those persons desiring to pay annual inspection fees for future years in advance. The applicant must send a request in writing to the Coast Guard which furnishes the following information: The vessel's official number or other identifying information, the vessel category, the number of years

for which the applicant desires to prepay the annual inspection fee, and the applicant's name and return address. The burden placed on members of the public is considered to be minimal and within the scope of information collection permitted under the existing control numbers.

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612. Based on the information available to it at the present time, the Coast Guard is unable to determine whether the proposed rule would have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The proposal would result in payment of fees by States, State agencies, and local governments for inspection services provided to vessels owned by those entities. The impact of those fees on the agencies owning the vessels do not appear substantial based on the regulatory evaluation, which is summarized in the appendix to this notice. The Coast Guard specifically seeks public comment on the federalism implications of this rulemaking.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. Section 2.B.2 of that instruction excludes "administrative actions and procedural regulations and policies which clearly do not have any environmental impacts." A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under "**ADDRESSES**."

Appendix

To assist the reader in understanding the basis for the user fees proposed in this rulemaking, the Coast Guard has attached a summary of the preliminary regulatory evaluation, including the regulatory flexibility analysis, prepared for this rulemaking project. The summary is published as an Appendix to this notice of proposed rulemaking, and will not become part of the final rule. The complete preliminary regulatory evaluation is available in the rulemaking docket for inspection or copying where indicated under "**ADDRESSES**."

List of Subjects

33 CFR Part 143

Continental shelf, Fees, Marine safety, Occupational safety and health, Vessels.

46 CFR Part 2

Fees, Marine safety, Reporting and recordkeeping requirements, Vessels.

For the reasons set out in the preamble, the Coast Guard proposes to amend title 33, chapter I, subchapter N, part 143 and title 46, chapter I, subchapter A, part 2 as follows:

Title 33—[Amended]

SUBCHAPTER N—OUTER CONTINENTAL SHELF ACTIVITIES

PART 143—DESIGN AND EQUIPMENT

1. The authority citation for part 143 is revised to read as follows:

Authority: 14 U.S.C. 664; 31 U.S.C. 9701; 43 U.S.C. 1333(d)(1), 1348(c), 1356; 49 CFR 1.46.

2. Section 143.210 is amended by adding a new paragraph (c) to read as follows:

§ 143.210 Letter of compliance.

* * * * *

(c) To request a Letter of Compliance inspection, the owner of a mobile offshore drilling unit documented under the laws of a foreign nation shall submit an application for inspection of a foreign vessel (CG–986), as described in 46 CFR 2.01–1, to the Officer in Charge, Marine Inspection for the area in which the vessel expects to operate. The application must be accompanied by the inspection fee set out in 46 CFR 2.10–110.

Title 46—[Amended]

SUBCHAPTER A—PROCEDURES APPLICABLE TO THE PUBLIC

PART 2—VESSEL INSPECTIONS

3. The authority citation for part 2 is revised to read as follows:

Authority: 14 U.S.C. 664; 31 U.S.C. 9701; 33 U.S.C. 1903; 43 U.S.C. 1333; 46 U.S.C. 2110, 3306, 3703, 5115, 8105; E.O. 12234, 45 FR 58801, 3 CFR 1980 Comp., p. 277; 49 CFR 1.46; Subpart 2.45 also issued under the authority of Act Dec. 27, 1950, Ch. 1155, secs. 1, 2, 64 Stat 1120 (see 46 U.S.C. App. note prec. 1).

4. Part 2 is amended by removing § 2.01–60 from subpart 2.01 and reserving it, and adding a new subpart 2.10 to read as follows:

Subpart 2.10—Fees

Sec.

2.10–1 Definitions.
2.10–11 Overtime compensation.
2.10–13 Penalties.
2.10–101 Annual inspection fee.
2.10–103 Prepayment of annual inspection fees.
2.10–105 Changes in vessel category.
2.10–106 Excursion permit inspection fee.
2.10–107 Overseas inspection fee.
2.10–109 Fees for examinations of foreign vessels.
2.10–110 Fees for inspection of foreign mobile offshore drilling units.

5. Section 2.01–1 is amended by adding paragraph (a)(3) and revising paragraph (b) to read as follows:

§ 2.01–1 Applications for inspections.

(a) * * *

(3) Application forms must be accompanied by applicable fees required under §§ 2.10–107, 2.10–109 or 2.10–110, unless the requested inspection is covered by the annual fee and that fee has been paid. Evidence of payment of inspection fees will be endorsed on or affixed to the Certificate of Inspection, Certificate of Compliance, Letter of Compliance, or Excursion Permit when payment is verified by the Officer in Charge, Marine Inspection.

(b) *To whom submitted.* The completed form must be submitted to the Officer in Charge, Marine Inspection, in the Marine Inspection Office located in, or nearest, the port at which the inspection is to be made. When payment of all applicable fees has been verified, the applicant will be advised in writing when the inspection will be made.

* * * * *

6. In § 2.01–6 the section heading is revised, existing paragraph (a)(2) is redesignated as paragraph (a)(2)(i) and a new paragraph (a)(2)(ii) is added to read as follows:

§ 2.01–6 Certificates of Compliance issued to foreign vessels.

(a) * * *

(2) (i) * * *

(ii) Letter of Compliance—issued to Foreign Mobile Offshore Drilling Units engaged in Outer Continental Shelf activities under 33 CFR 143.210.

* * * * *

7. Section 2.01–45 is amended by revising paragraph (b) to read as follows:

§ 2.01–45 Excursion permit.

(a) * * *

(b) The application for an excursion permit is made by the master, owner, or agent of a vessel to the Officer in Charge, Marine Inspection, on Coast Guard Form CG–950, Application for Excursion Permit. The applicant shall include the excursion permit inspection fee required under § 2.10–6 of this part with the application. If, after inspection,

permission is granted, it is given on Coast Guard Form CG–949, Permission to Carry Excursion Party. The permit describes the vessel, the route over which and the period during which the excursions may be made, and the safety equipment required for the additional persons indicated.

§ 201.01–60 [Removed]

8. Section 2.01–60 is removed and reserved.

9. A new subpart 2.10 is added to read as follows:

Subpart 2.10—Fees

§ 2.10–1 Definitions.

The following definitions will be used for the purpose of assessing fees under this chapter:

All other inspected vessels means an unclassified vessel or any other vessel, not listed above, which is required to be inspected under this chapter.

Drill ship MODU means a mobile offshore drilling unit with a ship shape displacement hull intended for operation in the floating condition.

Freight barge means a non-self-propelled freight vessel.

Freight ship means a self-propelled freight vessel.

Freight vessel means a vessel of more than 15 gross tons that carries freight for hire, except an oceanographic research vessel or an offshore supply vessel.

Industrial vessel means a vessel which, by reason of its special outfit, purpose, design, or function engages in certain industrial ventures. This classification includes such vessels as dredges, cable layers, derrick barges, and construction and wrecking barges, but does not include vessels which carry passengers or freight for hire, oceanographic research vessels, or vessels engaged in the fisheries.

Liquefied gas tankship means a self-propelled vessel equipped with cargo tanks primarily designed to carry liquefied or compressed gasses in bulk.

Mobile offshore drilling unit (MODU) means a vessel capable of engaging in drilling operations for the exploration or exploitation of subsea resources that is: Seagoing and 300 or more gross tons and self-propelled by machinery; seagoing and 100 or more gross tons and non-self-propelled; or more than 65 feet in length and propelled by steam.

Nautical school vessel means a vessel operated by or in connection with a nautical school or an educational institution under section 13 of the Coast Guard Authorization Act of 1986, Public Law 99–640.

Oceanographic research vessel means a vessel that is being employed only in oceanography or limnology or both, or only in oceanographic or limnological research, including marine geophysical and geological surveys, atmospheric research, and biological research.

Offshore supply vessel means a vessel that is propelled by machinery other than steam, that is of at least 15 gross tons and less than 500 gross tons, and that regularly carries goods, supplies, and equipment in support of exploration, exploitation, or production of offshore mineral or energy resources, and is not a small passenger vessel.

Passenger barge means a non-self-propelled passenger vessel, including a prison barge or a barge which carries occupied recreational vehicles.

Passenger ship means a self-propelled passenger vessel.

Passenger vessel means a vessel of at least 100 gross tons carrying at least one passenger for hire.

Sailing school vessel means a vessel of less than 500 gross tons carrying at least 6 individuals who are sailing school instructors or sailing school students, which is principally equipped for propulsion by sail, and which is owned or demise chartered, and operated by an organization which is tax exempt under 26 U.S.C. 501(c)(3), or by a State or political subdivision of a State.

Self-elevating MODU means a mobile offshore drilling unit with movable legs capable of raising its hull above the surface of the sea.

Semi-submersible MODU means a mobile offshore drilling unit with the main deck connected to an underwater hull by columns or caissons, intended for drilling operations in the floating condition.

Small passenger vessel means a vessel of less than 100 gross tons carrying more than 6 passengers and subject to inspection under Subchapter T of this chapter.

Submersible MODU means a mobile offshore drilling unit with the main deck supported over an underwater barge type displacement hull or the main deck connected to an underwater hull of footings by columns or caissons intended for drilling operation in the bottom bearing condition.

Tank barge means any tank vessel not equipped with means of propulsion.

Tank vessel means a vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue.

Tankship means any tank vessel propelled by power or sail, including an integrated tug and barge designed to operate together only in the pushing mode.

Towing vessel means a commercial vessel engaged in or intending to engage in the service of pulling, pushing or hauling alongside, or any combination of pulling, pushing or hauling alongside.

§ 2.10–11 Overtime compensation.

The owner, master, or agent of a vessel shall pay extra compensation for overtime services performed by civilian officers and civilian employees who may be required to remain on duty between the hours of 5 p.m. and 8 a.m., or on Sundays or holidays, to inspect vessels or vessel equipment, or to perform related services. Overtime compensation is authorized by 46 U.S.C. 2111, and will be computed using the method described in 46 CFR part 9.

§ 2.10–13 Penalties.

(a) A person who fails to pay a fee or charge established under this subpart is liable to the United States Government for a civil penalty of up to $5000 for each violation under 46 U.S.C. 2110.

(b) A person who fails to pay a fee established in this subpart may be required to pay all costs of collection and enforcement of those fees, in addition to any civil penalty assessed.

(c) Any vessel for which the fees established under this part are unpaid may be denied clearance of Customs required by 46 app. U.S.C. 91 and 19 CFR 4.60 and 4.61 until the fee or charge is paid or until a bond is posted for the payment.

§ 2.10–101 Annual inspection fee.

(a) Each vessel for which a Certificate of Inspection (COI) is required must pay the annual inspection fee indicated in Table 2.10–101 for that type of vessel. This annual fee is the only payment required to establish a privilege of inspection for all inspections related to compliance with or reissuance of a Certificate of Inspection. These include inspection for issuance of the COI, except as noted below, reinspections, deficiency inspections, damage surveys, inspection of repairs, hull examinations (dry dock), and other miscellaneous inspections related to the COI or the hull examination. Inspections for a permit to proceed, drydock extension, or a special MARPOL (The International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978) examination are also included in the privilege of inspection. Inspections for an initial COI for a newly constructed vessel, a rebuilt vessel, or a modification of a vessel which requires issuance of a new COI are not within the privilege of inspection, and require a separate fee.

(b) The vessel owner shall pay the annual inspection fee each year on the anniversary date of the Certificate of Inspection, or may prepay the fee for a number of years, from a minimum of three years up to the design life or expected remaining life of the vessel, using the procedures in § 2.10–103 of this subpart.

TABLE 2.10–101.—ANNUAL INSPECTION FEES FOR U.S. VESSELS AND FOREIGN VESSELS INSPECTED FOR A CERTIFICATE OF INSPECTION

Freight Vessel:	
Freight Barge	$955.00
Freight Ship	5411.00
Ready Reserve Fleet Freight Ship	4245.00
Industrial Vessel	2751.00
Mobile Offshore Drilling Unit:	
Drill ship MODU	6712.00
Submersible MODU	4698.00
Self-elevating MODU	4698.00
Semi-submersible MODU	8054.00
Offshore Supply Vessel	1470.00
Oceanographic Research Vessel	4199.00
Ocean-Going Towboat	2915.00
Tank Vessel:	
Tankship	5805.00
Ready Reserve Fleet Tankship	4723.00
Liquefied Gas Tankship	14142.00
Tank Barge	500.00
Small Passenger Vessel or Sailing School Vessel:	
54 feet or less	820.00
longer than 54 feet up to 65 feet	880.00
longer than 65 feet up to 130 feet	1095.00
longer than 130 feet up to 160 feet and less than 150 passengers	1216.00
longer than 130 feet up to 160 feet and 150 passengers or more	2585.00
longer than 160 feet	2585.00
Passenger Barge	2525.00
Passenger Ship:	
Less than 250 feet and less than 150 passengers	3600.00
Less than 250 feet and 150 passengers or more	4054.00
250 feet up to 350 feet	5333.00
longer than 350 feet up to 450 feet	6836.00
longer than 450 feet	14650.00
Nautical School Vessel	7207.00
All other inspected vessels	1032.00

§ 2.10–103 Prepayment of annual inspection fees.

(a) Vessel owners may elect to pay the annual inspection fee for a vessel in advance for a period of years not less than three years, and up to the design life or expected remaining life of the vessel. Prepayment of such fees will establish a privilege of inspection for the vessel for all inspection services covered by the annual fee for the specified number of years.

(b) When the inspection fee has been prepaid for a vessel, the privilege of inspection for that period attaches to the vessel. The privilege of inspection shall run with the vessel if the vessel is sold, and may not be transferred to any other vessel.

(c) The prepayment amount will be discounted to its net present value using the following formula:

$$PV = \sum_{t=0}^{n} \frac{R_0(1+\pi)^t}{(1+i)^t}$$

Where:

PV is the Present Value of the series of annual user fees to be prepaid (the net amount to be prepaid)

R_0 is the published user fee of the vessel

i is the interest rate for 10-year Treasury notes on the day the fee is prepaid

π is the rate of inflation (4.2%—based on projected military personnel costs)

n is the total number of years to be prepaid

t is the number of years after prepayment of the fee for each annual increment (t=0, 1, 2, 3 . . . n)

(d) A vessel owner desiring to prepay the annual inspection fee for a vessel must submit a written request for prepayment, specifying the period for which prepayment is to be made, with a copy of the Application for Inspection or must certify the following information: The vessel's official number or other identifying information, the vessel category, and the applicant's name and return address. The request must be mailed to: Commandant (G–MP), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593–0001. The Commandant (G–MP) will then calculate the amount of the fee for the period requested and advise the applicant of payment procedures.

§ 2.10–105 Changes in vessel category.

(a) When a vessel owner desires to change the service in which the vessel operates, the fee for the new category of vessel must be submitted prior to issuance of the COI in the new service. The new fee establishes a privilege of inspection for the vessel which runs for one year from the date the COI is issued for the new category. The prorated value of the vessel's privilege of inspection remaining under the old category will be credited against the annual inspection fee for the new category.

(b) When a vessel owner desires to change the service in which the vessel operates, and annual inspection fees have been prepaid for a period of years, the Officer in Charge, Marine Inspection will notify the Commandant (G–MP) of the requested change of service. The Commandant (G–MP) will adjust the ending date of the prepaid privilege of inspection, and indicate any additional fees to be paid, prior to issuance of the COI in the new service.

§ 2.10–106 Excursion permit inspection fee.

(a) The fee for an inspection for an Excursion Permit issued under § 2.01–45 of this part is $424.00.

(b) Vessel owners desiring inspection for an Excursion Permit shall submit the fee listed in paragraph (a) of this section with the Application for Excursion Permit, Coast Guard Form CG–950 to the OCMI or designated collection agent.

§ 2.10–107 Overseas inspection fee.

In addition to any other fee required by this subpart, a fee of $4586.00 will be charged for vessels inspected outside the United States and its territories. This fee covers the cost of the inspectors' time while travelling, and is in addition to the reimbursement for travel expenses authorized under 46 U.S.C. 3317(b).

§ 2.10–109 Fees for examinations of foreign vessels.

(a) Vessels of foreign countries which are parties to the International Convention for the Safety of Life at Sea, 1974 as amended (SOLAS), will be subject to the fees listed below:

(1) Control Verification examination issued under § 2.01–6(a)(1)	$1,047.00
(2) Letter/Certification of Compliance examination for hazardous cargo vessel issued under § 2.01–6(a)(2)(i); or Tank Vessel Examination Letter issued under § 2.01–6(a)(3)	$1,102.00

(b) Foreign vessels from nations which are not parties to SOLAS will be subject to annual inspection under the laws of the United States, and will be required to pay the annual inspection fee listed in Table 2.10–101 for a vessel of that type.

§ 2.10–110 Fees for inspection of foreign mobile offshore drilling units.

(a) Foreign MODUs which are inspected for issuance of a Letter of Compliance which indicates compliance with the laws of the documenting nation, or which indicates compliance with the design and equipment standards of the International Maritime Organization for mobile offshore drilling units, must pay an inspection fee of $1831.00.

(b) Foreign MODUs which are inspected for issuance of a Letter of Compliance which indicates compliance with the design and equipment standards of 46 CFR part 108 must pay the inspection fee listed in Table 2.10–101 for a vessel of that type.

Dated: December 10, 1991.

J.W. Kime,

Admiral, U.S. Coast Guard, Commandant.

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Conventional Forces in Europe Treaty Implementation Act of 1991. (Dec. 12, 1991, 105 Stat. 1691, 10 pages) Price: $1.00

H.J. Res. 157/Pub. L. 102-229
Dire Emergency Supplemental Appropriations and Transfers for Relief From the Effects of Natural Disasters, for Other Urgent Needs, and for Incremental Cost of 'Operation Desert Shield/Desert Storm' Act of 1992. (Dec. 12, 1991; 105 Stat. 1701, 19 pages) Price: $1.00

H.R. 3576/Pub. L. 102-230
To amend the Cranston-Gonzalez National Affordable Housing Act to reserve assistance under the HOME Investment Partnerships Act for certain insular areas. (Dec. 12, 1991; 105 Stat. 1720; 2 pages) Price: $1.00

H.R. 1476/Pub. L. 102-231
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H.R. 3049/Pub. L. 102-232
Miscellaneous and Technical Immigration and Naturalization Amendments of 1991. (Dec. 12, 1991; 105 Stat. 1733; 28 pages) Price: $1.00

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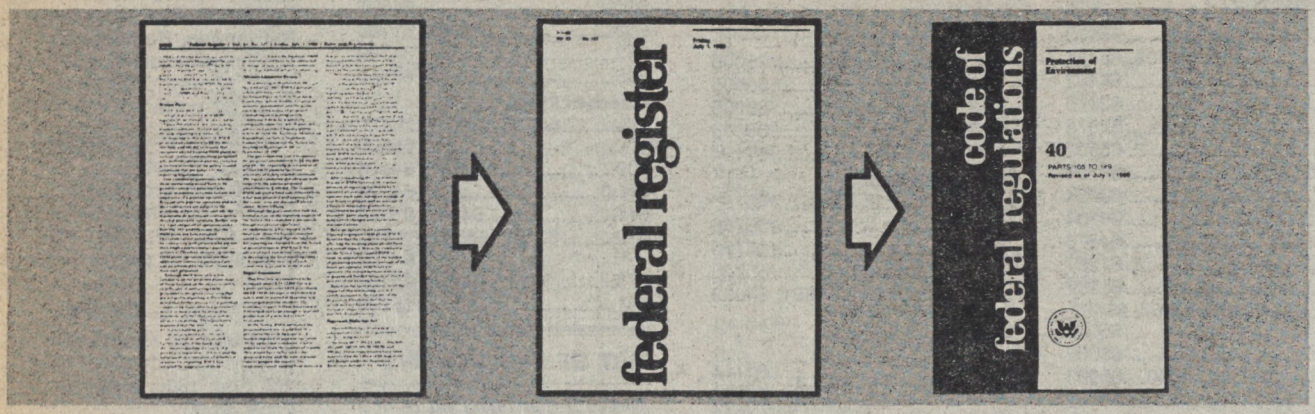

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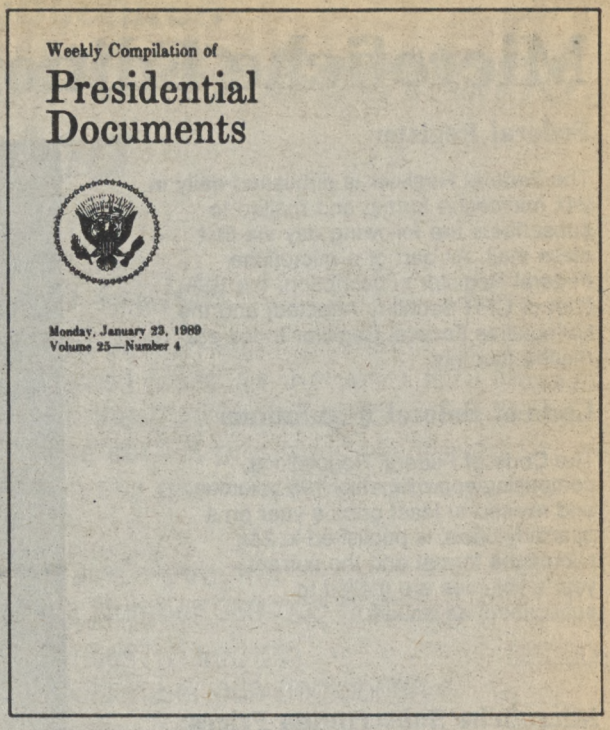

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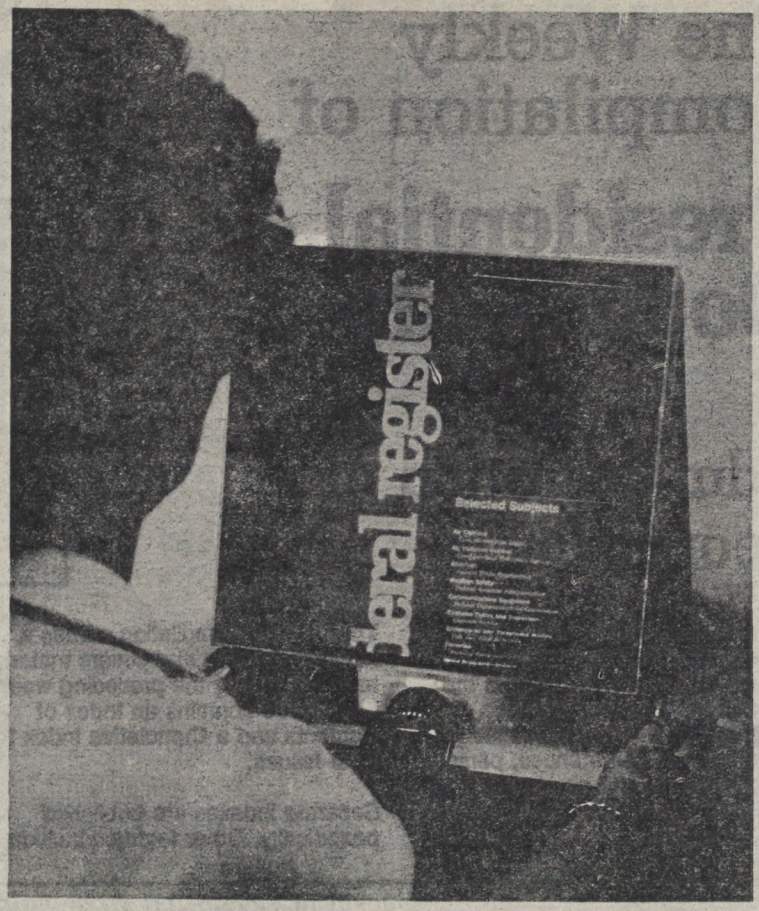

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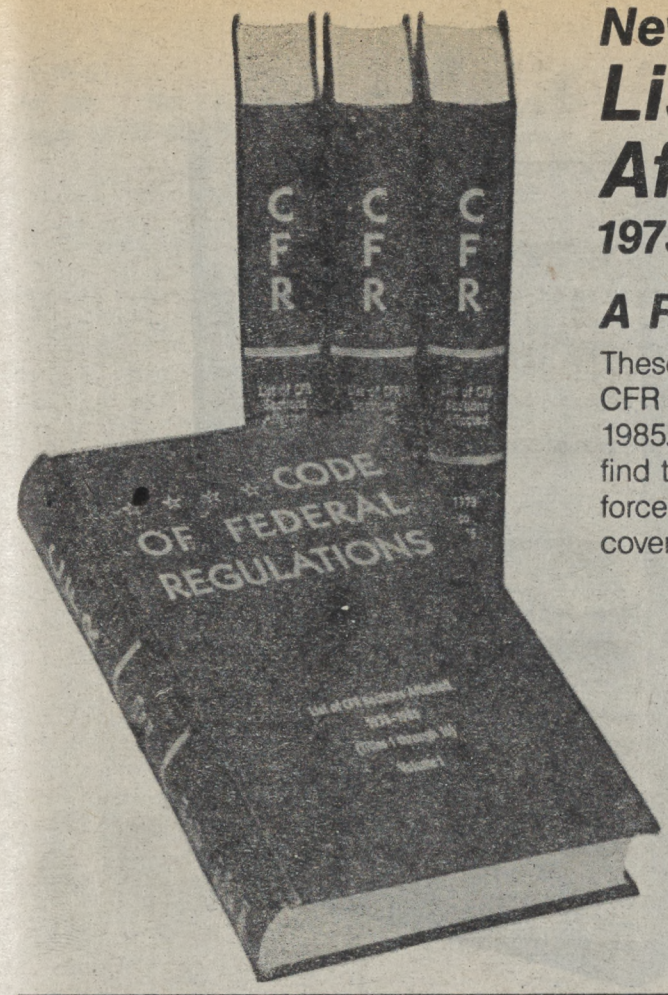

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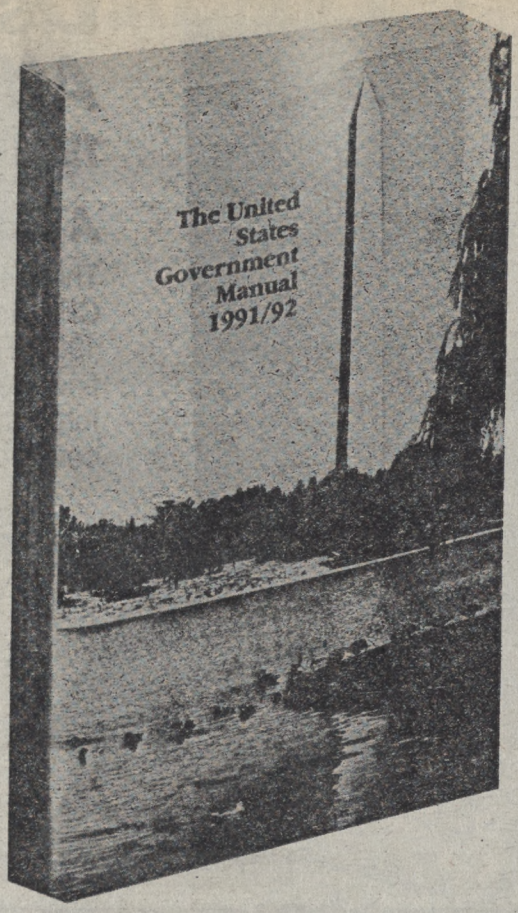

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