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Presidential Documents

Title 3—

The President

Proclamation 6394 of December 16, 1991

Year of Thanksgiving for the Blessings of Liberty, 1991

By the President of the United States of America

A Proclamation

Thomas Jefferson once noted that the only firm basis of a nation's liberties is the "conviction in the minds of the people that these liberties are . . . the gift of God." By observing the bicentennial of our Bill of Rights as a Year of Thanksgiving for the Blessings of Liberty, we not only give honor where it is due but also reaffirm the moral and spiritual foundation on which this great Republic rests.

Our Nation's Founders were men of faith and conviction, and it was a biblically inspired view of man that led them to declare "that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." The ratification of our Bill of Rights in December 1791 signalled their determination to uphold in law these timeless words from our Declaration of Independence.

Our Bill of Rights guarantees, among other basic liberties, freedom of speech and of the press, as well as freedom of religion and association; it recognizes the right to keep and bear arms; and it prohibits unreasonable search and seizure of a person's home, papers, or possessions. The Bill of Rights also states that no person shall be deprived of life, liberty, or property without due process of law, and it establishes fundamental rules of fairness in judicial proceedings, including the right to trial by jury. Two hundred years after its ratification, this extraordinary document is recognized around the world as the great charter of American liberty and democracy. Indeed, as James Madison predicted, the principles enshrined in our Bill of Rights have become for all peoples "fundamental maxims of free government."

Our ancestors fully recognized the value of freedom, and on September 26, 1789, just one day after they agreed on a draft Bill of Rights to be presented to the States for ratification, members of the First Congress requested that President Washington "recommend to the people of the United States a day of public thanksgiving and prayer, to be observed by acknowledging with grateful hearts the many signal favors of Almighty God." Washington, who had favored and even encouraged the observance of such a day, readily issued a proclamation calling upon all Americans to unite in thanksgiving "for the civil and religious liberty with which we are blessed . . . ."

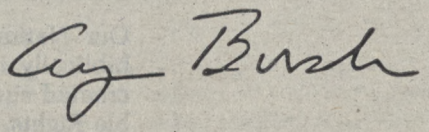
President Washington's call for a national day of Thanksgiving came less than two decades after our Declaration of Independence—and two years before the ratification of our Bill of Rights. How much greater reason do we have now, more than 200 years later, to give thanks! The fledgling republic led by George Washington has not only endured but prospered. Today we can be thankful for the very fact that we have maintained our Constitution and Bill of Rights throughout our Nation's history and for the expansion of freedom and democratic ideals around the world. Today we are also grateful for those brave Americans, past and present, who have been willing to put themselves in harm's way to defend the lives and liberty of others.

On this wonderful occasion, recalling the words of our first President, let us give thanks for the blessings of liberty, and let us strive—both as individuals and as a Nation—to remain worthy of them, always using our freedom in accordance with the will of that "great and glorious Being" who has so graciously granted and preserved it.

The Congress, by Public Law 101–570, has designated 1991 as a "Year of Thanksgiving for the Blessings of Liberty" and has authorized and requested the President to issue a proclamation in observance of this year.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby urge all Americans to join in observing 1991 as a Year of Thanksgiving for the Blessings of Liberty. Let us show through word and deed—including public and private prayer—that we are grateful for our God-given freedom and for the many other blessings that He has bestowed on us as individuals and as a Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of December, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and sixteenth.



[FR Doc. 91–30497
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Editorial note: For the President's remarks on signing this proclamation, see issue 51 of the *Weekly Compilation of Presidential Documents.*

Rules and Regulations

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 931

[Docket No. FV-91-406FR]

Establishment of Administrative Rules and Regulations for Marketing Order Covering Fresh Bartlett Pears Grown in Oregon and Washington

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule implements handler reporting requirements and communication procedures under Marketing Order No. 931. Several terms are also defined in the rules and regulations for clarity and ease of reference. This final rule is needed to help facilitate administrative operations under the order and provides for the collection and dissemination of valuable statistical information. This action was unanimously recommended by the Northwest Fresh Bartlett Pear Marketing Committee (Committee) established under M.O. 931.

EFFECTIVE DATE: December 19, 1991.

FOR FURTHER INFORMATION CONTACT: George Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone 202–690–3919.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 931 [7 CFR part 931] regulating the handling of fresh Bartlett pears grown in Oregon and Washington. The Bartlett pear marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This final rule has been reviewed by the U.S. Department of Agriculture (Department) 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 final 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 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 70 handlers of fresh Bartlett pears regulated under this marketing order each season and approximately 1,900 Bartlett pear producers in Washington and Oregon. 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 these handlers and producers may be classified as small entities.

The Committee met on May 30, 1991, and unanimously recommended the establishment of administrative rules and regulations covering handler reporting requirements and procedures and communications procedures. The Committee's recommendation also included definitions of terms used in the rules and regulations.

Section 931.60(a) of the order (7 CFR 931.60(a)) provides that the Committee, with the approval of the Secretary, may require that handlers furnish reports of pears received and disposed of and such other information as may be necessary for the Committee to perform its duties under the order.

Pursuant to § 931.60(a), the Committee recommended that rules be established at § 931.120 to require each handler to transmit to the Committee a "Semi-Monthly Report on Destination of Shipments and Assessment Payments" on the first and the fifteenth day of each calendar month during the shipping season (August through January). The estimated number of respondents for this collection of information is 78, with an estimated average reporting burden of 0.75 hours per response and an estimated annual reporting burden of 760 hours. This report will include the following information: (1) The quantity of each variety of pears shipped by that handler during the preceding half month; (2) the date of each shipment; (3) the ultimate destination, by city and state, or city and country; (4) the assessment payment due; and (5) the name and address of such handler.

The Committee recommended that each handler also transmit a weekly packout report each Friday during the shipping season (August through January). The estimated number of respondents for this collection of information is 78, with an estimated average reporting burden of 0.50 hours per response and an estimated annual reporting burden of 507 hours. This report will contain the following information for each variety: (1) The projected total packout; (2) the packout to date; (3) the volume sold export (shipped/not shipped), sold domestic (shipped/not shipped) and shipped auction; (4) the packout to date in controlled atmosphere (C.A.) storage and the volume in C.A. storage which is sold; and (5) the name and address of such handler.

In addition to these reports, the Committee recommended that each handler furnish, upon request of the Committee, a pear size and grade storage report, by variety, which will include the quantity of specific grades and sizes of pears in regular and C.A. storage. The estimated number of respondents for this collection of information is 88, with an estimated average reporting burden of 0.67 hours per response and an estimated annual reporting burden of 59 hours.

These reports contain valuable harvesting, packing and shipping information necessary for the Committee to carry out its program responsibilities and for handlers to make marketing decisions. Some Committee responsibilities include the collection of program assessments from handlers based on the quantities of pears shipped and making determinations as to whether Committee representation and production area

districts accurately reflect pear production within the districts. The dissemination of the statistical information on production, packout and shipments to the industry by the Committee is essential to the sound and orderly marketing of Northwest fresh Bartlett pears.

The Committee also recommended that the following terms be defined in the rules and regulations for ease of reference and clarity:

Section 931.100 Terms—Each term used in this subpart shall have the same meaning as when used in the marketing agreement and order.

Section 931.101 Marketing agreement—"Marketing agreement" means Marketing Agreement No. 147, as amended regulating the handling of Bartlett pears grown in Oregon and Washington.

Section 931.102 Order—"Order" means Order No. 931, as amended (§§ 931.1 to 931.71), regulating the handling of Bartlett pears grown in Oregon and Washington.

Finally, the Committee recommended that an administrative rule be added addressing marketing agreement and order communications. This rule will appear at § 931.110 (7 CFR 931.110) and will specify that, generally, all reports, applications, submittals, requests, inspection certificates, and communications in connection with the marketing agreement and order shall be forwarded to the Northwest Fresh Bartlett Pear Marketing Committee at 813 SW Alder, suite 601, Portland, Oregon 97205–3182.

Based on the above, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

Two of the handler report forms (the "Semi-Monthly Report on Destination of Shipments and Assessment Payments" and the weekly packout report) that are contained in the regulations to be added were approved by the Office of Management and Budget (OMB) in 1989 and were assigned OMB No. 0581–0092. This approval is valid through March 31, 1992. The third report form (the pear size and grade storage report) has been submitted to the OMB for approval based on current information on the number of respondents and estimated burden. Handlers will not be required to complete and submit this report form until it has been approved by the OMB.

Notice of this action was published in the **Federal Register** on October 10, 1991, [56 FR 51180]. The comment period ended October 25, 1991. No comments were received.

After consideration of all available information, including the recommendations made by the committee, it is found that this action will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because the requirements included in this final rule need to be implemented as soon as possible. The 1991 shipping season has already begun and no useful purpose would be served by delaying the effective date of this action.

List of Subjects in 7 CFR Part 931

Bartlett pears, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 931 is amended as follows:

Note: These sections will appear in the annual Code of Federal Regulations.

PART 931—FRESH BARTLETT PEARS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 931 continues to read as follows:

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

2. A new subpart entitled "Subpart—Rules and Regulations" is added following § 931.71 to read as follows:

Subpart—Rules and Regulations

Definitions

Sec.
931.100 Terms.
931.101 Marketing agreement.
931.102 Order.

Communications

931.110 Communications.

Reports

931.120 Reports.

Definitions

§ 931.100 Terms.

Each term used in this subpart, unless otherwise defined, shall have the same meaning as when used in the marketing agreement and order.

§ 931.101 Marketing agreement.

Marketing agreement means Marketing Agreement No. 147, as amended, regulating the handling of Bartlett pears grown in Oregon and Washington.

§ 931.102 Order.

Order means Order No. 931, as amended (§§ 931.1 to 931.71), regulating the handling of Bartlett pears grown in Oregon and Washington.

Communications

§ 931.110 Communications.

Unless otherwise specifically prescribed in this subpart or in the marketing agreement and order, or unless otherwise required by the Committee, all reports, applications, submittals, requests, inspection certificates, and communications in connection with the marketing agreement or order shall be forwarded to:

Northwest Fresh Bartlett Pear Marketing Committee
813 SW Alder, suite 601
Portland, Oregon 97205–3182

Reports

§ 931.120 Reports.

(a) Each handler shall transmit to the Committee on the first and the fifteenth day of each calendar month during the shipping season the "Semi-Monthly Report on Destination of Shipments and Assessment Payments" containing the following information:

(1) The quantity of each variety of pears shipped by that handler during the preceding half month;

(2) The date of each shipment;

(3) The ultimate destination, by city and state, or city and country;

(4) The assessment payment due; and

(5) The name and address of such handler.

(b) Each handler shall transmit to the Committee each Friday during the shipping season the "Weekly Northwest Bartlett Packout Report" containing the following information for each variety:

(1) The projected total packout;

(2) The packout to date;

(3) The volume sold export (shipped/not shipped), sold domestic (shipped/not shipped) and shipped auction;

(4) The packout to date in controlled atmosphere (C.A.) storage and the volume in C.A. storage which is sold; and

(5) The name and address of such handler.

(c) Each handler shall furnish to the Committee, upon request, the "Pear Size and Grade Storage Report" containing the quantity of specific grades and sizes of pears in regular and C.A. storage by variety.

Dated: December 11, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–29998 Filed 12–18–91; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Parts 1001, 1004, and 1124

[Docket No. AO–14–A65, etc; DA–91–013]

Milk in the New England and Certain Other Marketing Areas; Tentative Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders

7 CFR part	Marketing area	AO Nos.
1001	New England	AO–14–A65
1002	New York-New Jersey	AO–71–A80
1004	Middle Atlantic	AO–160–A68
1005	Carolina	AO–388–A5
1007	Georgia	AO–366–A34
1011	Tennessee Valley	AO–251–A36
1030	Chicago Regional	AO–361–A29
1033	Ohio Valley	AO–166–A62
1036	Eastern Ohio-Western Pennsylvania.	AO–179–A57
1040	Southern Michigan	AO–225–A43
1044	Michigan Upper Peninsula	AO–299–A27
1046	Louisville-Lexington-Evansville.	AO–123–A63
1049	Indiana	AO–319–A40
1065	Nebraska-Western Iowa	AO–86–A48
1068	Upper Midwest	AO–178–A46
1079	Iowa	AO–295–A42
1093	Alabama-West Florida	AO–386–A12
1094	New Orleans-Mississippi	AO–103–A54
1096	Greater Louisiana	AO–257–A41
1097	Memphis, Tennessee	AO–219–A47
1098	Nashville, Tennessee	AO–184–A56
1099	Paducah, Kentucky	AO–183–A46
1106	Southwest Plains	AO–210–A53
1108	Central Arkansas	AO–243–A44
1124	Pacific Northwest	AO–368–A20
1126	Texas	AO–231–A61
1131	Central Arizona	AO–271–A30
1135	Southwestern Idaho-Eastern Oregon.	AO–380–A10
1138	New Mexico-West Texas	AO–335–A37

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rules.

SUMMARY: This tentative decision proposes a special III–A class and price for producer skim milk used to manufacture nonfat dry milk (NFDM) under the New England, Middle Atlantic and Pacific Northwest orders. The decision is based on industry proposals considered at a public hearing held July 30–August 1, 1991. Federal orders classify milk used to produce storable dairy products (hard cheese, butter, and NFDM) in Class III and price it at the Minnesota-Wisconsin (M–W) price. The Class III–A product price formula is provided because it will more adequately reflect the value of milk used to produce NFDM, than is reflected by the M–W price. The changes will facilitate the orderly disposition of the reserve milk supplies associated with these three markets.

The Secretary of Agriculture will determine whether producers favor issuance of the amendments on an interim basis.

DATES: Comments are due on or before January 21, 1992.

ADDRESSES: Comments (six copies) should be filed with the Hearing Clerk, room 1081, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–6274.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601–612), requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amendments will facilitate the orderly disposition of the market's reserve milk supplies.

Prior document in this proceeding;

Notice of Hearing: Issued July 16, 1991; published July 22, 1991 (56 FR 33395).

Notice is hereby given of the filing with the Hearing Clerk of this tentative decision with respect to proposed amendments to the tentative marketing agreements and the orders regulating the handling of milk in the New England and Certain Other marketing areas. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulating of marketing agreements and marketing orders (7 CFR part 900).

Interested parties may file written exceptions to this tentative decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, DC 20250, by the 30th day after publication of this decision in the **Federal Register.** Six copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the Office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments and findings and conclusions set forth below are based on the record of a public hearing held at Alexandria, Virginia, on July 20–August 1, 1991, pursuant to a notice of hearing issued July 16, 1991 (56 FR 33395).

The material issues on the record of the hearing relate to:

1. Pricing producer milk used to manufacture butter and nonfat dry milk; and

2. The need for emergency action with respect to issue 1.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. Pricing Producer Milk Used To Manufacture Butter and Nonfat Dry Milk

A special III–A class and price should be provided for producer skim milk that is used to manufacture nonfat dry milk (NFDM). Only the New England, Middle Atlantic and Pacific Northwest orders should be revised to incorporate this pricing change.

Twelve cooperative associations (Agri-Mark, Associated Milk Producers Inc. (AMPI), Atlantic Dairy Cooperative (ADC), Darigold Farms (Darigold), Dairymen's Creamery Association (DCA), Dairymen Inc. (DI), Independent Cooperative Milk Producers Association (ICMPA), Maryland and Virginia Milk Producers Association (Maryland-Virginia), Michigan Milk Producers Association (MMPA), Milk Marketing Inc., (MMI), United Dairymen of Arizona (UDA) and Wisconsin Dairies) proposed that 27 Federal milk orders be amended to provide a separate class and price for skim milk and butterfat that is used to produce butter and NFDM. Proponents requested that the amendments be provided on an emergency basis so they could be effective as soon as possible. They also proposed that the amendment be provided on a temporary basis and be subject to review at any hearing that might be held to consider revising the Minnesota-Wisconsin (M–W) price series.

Currently, with the exception of the Pacific Northwest order (Order 124), the orders involved in this proceeding classify milk used to produce storable dairy products (hard cheese, butter and NFDM) in Class III and price it at the M–W price. Order 124 provides a "snubber" product price which applies to milk in such uses wher the price

established on the basis of such product price formula is lower than the M–W price.

In computing Class III milk prices under the New England, New York-New Jersey and Middle Atlantic orders (Orders 1, 2 and 4, respectively), seasonal adjustments are added to or subtracted from the M–W prices each month. The adjustments add to the M–W prices in the months of seasonally low milk production and high Class I demand and subtract from such prices when milk supplies are abundant and Class I needs are lower. Such plus and minus adjustments balance out annually.

Proponents offered a general statement regarding the proposal. In that statement a witness for the cooperatives contended that the M–W price, which is currently used under Federal orders to establish the value for producer milk that is used to manufacture butter and NFDM, does not properly reflect the value of the products made from such milk. In their opinion, the Class III–A product price formula they proposed, which would reflect monthly changes in market prices for butter and NFDM, would do a much better job than the M–W price in reflecting the marketplace value of milk so used.

At the hearing proponents clarified two aspects of the Class III–A proposal as it appeared in the hearing notice. First, they asked that the formula's NFDM price be the averaged price for Extra Grade NFDM for the Central States production area. They also deleted the fixed $1.22 make allowance figure for coverting 100 pounds of whole milk into butter and nonfat dry milk and proposed instead that the formula provide that the make allowance in effect under the dairy price support program when the Class III–A price is computed be used. They contended that this procedure would be more appropriate because the formula's make allowance would be automatically updated when the allowance is changed (up or down) in connection with the Secretary's duties under the support program.

As modified, the Class III–A price would be calculated by adding the amounts computed by multiplying the Chicago Mercantile Exchange Grade A butter by 4.2 and the Central States Extra Grade nonfat dry milk powder price by 8.2. From that sum the support programs' make allowance (currently $1.22) would be subtracted. The result would be the Class III–A price for producer milk used to produce butter and NFDM.

Proponents intended that the Class III–A price apply to all producer milk which is ultimately used to produce butter or NFDM. It would apply to producer milk that is separated into cream and skim milk if the cream is churned into butter and the skim milk is dried into power. Similarly, producer milk that is first condensed and ultimately dried would be classified as Class III–A milk and so priced under the cooperatives' proposal.

In support of this special class and price for milk used to make butter and NFDM, proponents argued that the M–W price, which is an average of competitive prices paid by Grade B manufacturing plants in Minnesota and Wisconsin, does not properly reflect the value of milk used to make butter and NFDM at all times. Proponents pointed out that the June 1991 M–W price was based on prices paid by 67 plants and most of those plants produced cheese. They noted that Minnesota cheese plants in 1990 accounted for 68 percent of all Grade B milk produced in the State, while such plants represented 88 percent of the manufacturing grade milk production in Wisconsin. Of the total amount of manufacturing grade milk purchased in the 2-state area during 1990, about 60 percent was bought from Wisconsin dairy farmers and 40 percent was purchased from Minnesota producers.

Conversely, proponents pointed out, less than 10 percent of the plants in the M–W survey are producing butter and NFDM. Such plants accounted for only 20 percent of the Minnesota Grade B milk and 1 percent of the Wisconsin manufacturing grade milk. Similarly, plants in Minnesota and Wisconsin produced only 9 percent of the nation's NFDM and 56 percent of the cheddar cheese.

Because of this, proponents argued that their product price formula should be used to establish the price under the orders for milk used to produce butter and NFDM. Based on the cooperatives' proposed formula, the value of milk used to produce butter and NFDM in June 1991 would have been 42 cents below the M–W price.

While butter and powder prices were fairly stable during most of 1991, cheese prices were increasing and driving up M–W prices. From March through August 1991, the M–W price increased $2.00 per hundredweight. These increases resulted primarily from higher market prices for cheese, which increased some 28 cents per pound during that same time period. A 28-cent increase in cheese prices represents a $2.80 per hundredweight increase in the price of milk. This meant that cheese prices could have supported further increases in the M–W price. The proponent cooperatives were especially concerned that the value of milk to produce butter/NFDM versus cheese would become even further misaligned in the future.

Generally, the national production of butter and NFDM has exceeded domestic consumption of these products, so the Federal government has accumulated substantial inventories of both products under the price support program. These government holdings of butter and NFDM, as well as the availability and price of California powder, effectively limit future price increases for these products, whereas no such limit exists for cheese prices.

Market prices for butter and NFDM tended to remain low relative to cheese prices through most of 1991. Butter was in a surplus situation and prices remained at or near the government support level. Prices for NFDM were held down by surplus powder production on the West Coast, where about 60 percent (37 percent in California alone) of the nation's powder is manufactured. Consequently, NFDM prices in the rest of the country increased by an amount equal to the cost of shipping powder from California, some 7 cents per pound or about 60 cents per hundredweight of milk equivalent.

In addition, the government was purchasing large quantities of butter, and as of July 12, 1991, had accumulated 565 million pounds of uncommitted butter inventories available for sale at not less than $1.08 per pound. On the other hand, the government was purchasing only small quantities of NFDM and no cheese. Uncommitted inventories of NFDM and cheese, as of July 19, 1991, totaled 265 and 33 million pounds, respectively. On May 14, 1991, the Government withdrew sales offerings for these two products.

In the event that the government offered to sell its stocks of cheese and NFDM back to the dairy industry it could have resulted in lower NFDM prices relative to cheese prices in view of the wide difference in commercial sales of these products. Total 1990 U.S. commercial disappearance of NFDM, for example, accounted for only 695 million pounds (79 percent) of the more than 877 million pounds produced. Conversely, commercial disappearance of American cheese represented 2.78 billion pounds (96 percent) of the more than 2.89 billion pounds of cheese manufactured. (Official notice is taken of Dairy Products Annual Summary for 1990.)

These marketing circumstances resulted in a substantial tilt between the M–W price (which was largely being

driven by cheese prices) and the value of milk used to produce butter and NFDM. In situations like this, cooperatives and other market suppliers attempt to channel their reserve milk supplies to the most remunerative outlets, which are cheese plants. In certain markets cooperatives have a very limited opportunity to do this either because the cheese plants are not favorably located or the nearby plants do not have sufficient capacity available. In these situations, the residual milk supplies normally end up at plants processing butter and NFDM, which are lower-valued in the marketplace relative to cheese. However, the handlers (primarily cooperatives) responsible for pooling the milk under the order must account to the pool at the cheese-driven M–W price. This reduces the manufacturing margins of butter/NFDM operators.

The manufacturing margins of butter/NFDM operators declined significantly during 1991. For January the margin was 87 cents per cwt. and in September it was minus 10 cents. Also, for the recent 12-month period of October 1990-September 1991, the processing margin averaged only 76 cents per cwt. All such margins are below the $1.22 make allowance that the government uses in connection with its price support activities. These data show that the financial situation for such operators worsened considerably during the year.

In certain markets, cooperatives limited to butter/NFDM manufacturing are marketing the major portion of the market's reserve milk supplies. When this happens, the members of these cooperatives, relative to other producers supplying the market, are actually being penalized because the returns from the manufactured dairy products at prevailing market prices are below the price level at which the association is accountable to the marketwide pool. In such cases, they are bearing an unfair share of the costs associated with disposing of the market's reserve milk supplies.

Comparisons of the net returns from milk used to make butter and powder or cheese with the M–W price indicate a much closer relationship between cheese values and the M–W price than between butter/NFDM values and the M–W price. For the 45-month period of January 1988-September 1991, the value of milk used to make cheese averaged 9 cents per hundredweight above the M–W price while the value of milk for butter/powder manufacturing averaged 31 cents per hundredweight below the M–W price. In 1988, cheese values averaged only 2 cents per hundredweight less than the M–W price whereas butter/powder milk was valued 19 cents lower. The value of milk for cheese was 18 cents above the M–W price in 1989 while butter and nonfat dry milk values were 38 cents higher. In 1990, cheese values averaged 9 cents per hundredweight above the M–W price while butter/powder values were 96 cents below that level. Similarly, for January through September 1991, the returns from cheese processing averaged 11 cents above the M–W price while the returns from milk used to produce butter/NFDM was 52 cents per hundredweight below the M–W price level. The numbers for the last two years clearly indicate why butter/powder processors are complaining.

While the returns established from product prices in the marketplace for milk used to make hard cheeses generally were higher than for milk used to produce butter and NFDM, this was not the case in each of the 45 months surveyed. For example, cheese milk reflected greater values in 27 of the 45 months and milk for butter/powder production reflected higher values in the other months. However, the annual averages mask the wide range of value differences reflected by the dairy product prices. For example, in November 1989 the value of milk for butter/powder production exceeded the value of milk for cheese processing by $1.83 per hundredweight. Just two months later in January 1990, the market prices for dairy products reflected a value of milk to make cheese that was $3.35 per hundredweight greater than the value of milk of butter/powder manufacturing.

With milk prices generally above supports during the 45-month period, there have been dramatic swings in the market prices for cheese and NFDM. Powder prices varied in each year of 1988–1991 by 20, 79, 47 and 9 cents per pound, respectively. On a fluid equivalent basis, such variations reflect annual value changes for milk used to make powder which represent $1.64, $6.48, $3.85 and $.74 per hundredweight, respectively. Also, cheese prices ranged form high to low in each such year by 21, 46, 40 and 28 cents per pound, respectively. Such variations represent value changes during each year of $2.10, $4.60, $4.00 and $2.80 per hundredweight, respectively.

The foregoing analysis shows that cheese values generally were higher than butter/powder values. However, in some months the opposite was true. It is likely that similar fluctuations will occur in the future. The proponent cooperatives were primarily concerned with protecting their member dairy farmers in situations when they incurred losses because the proceeds from the sale of the butter and powder made from milk would not equal the amount they were charged under the order for such milk. Accordingly, they agreed to share with the market's other dairy farmers any gains associated with butter/NFDM processing operations when market values for such products exceed the Class III price in exchange for sharing their losses in any month when market values for butter and nonfat dry milk are below such price.

Powder prices increased about 20 cents per pound from September to October 1991. If the market prices for powder hold firm, increases of $1.64 per hundredweight for milk used to make butter/NFDM could be expected. If such prices advance further, it is possible that when the Class III–A price becomes effective, the price for skim milk used to make NFDM under the product price formula adopted herein could exceed the skim value of the M–W price.

The dramatic increase in powder prices during October was the result of the hot dry weather in California. Milk production dropped significantly and many dryers ceased operations because of insufficient milk supplies. Commercial buyers were having difficulty locating enough powder to cover their needs. This situation is expected to be temporary, with milk and powder production returning to normal when temperatures cool. (Official notice is taken of the weekly Market News reports issued from August 23, 1991, through November 29, 1991.)

The preceding discussion of market prices for the major Class III dairy products (butter, nonfat dry milk and cheese) shows that these prices do not always move together. The price changes do not always occur in the same month, in the same direction or with the same magnitude. It also shows that cheese prices are influenced primarily by strong demand for cheese and such changes are rapidly reflected in M–W prices because there are extensive cheese manufacturing operations in the 2-State area. However, market prices for NFDM are heavily influenced by marketing conditions in California, as proponents contended. Because of the limited amount of powder processing plants in the Midwest, changes in market prices for powder are not as quickly reflected in M–W pay prices.

It is evident from the foregoing that the market values for NFDM are not appropriately reflected by the M–W price at all times. In recognition of the

potential for such misalignment problems in the future, it is concluded that a separate class and a separate product price formula should be provided for producer skim milk which is processed into NFDM.

No such special pricing arrangement need be provided for cream which is separated from producer milk and used to manufacture butter. The issue of the appropriate value for butterfat was addressed at a national hearing held in 1990. Dairy industry representatives testified that handlers (cooperatives and pool plant operators) were incurring substantial losses in handling surplus cream. On the basis of that hearing record, the formula for computing butterfat differentials under Federal orders was revised to reflect the more realistic values of butterfat in the marketplace. The change resulted in placing more of the value of cream on the skim milk portion and less value on the butterfat contained in such cream.

The following comparative analyses show how the recent change in the formula to compute the butterfat differential has affected the order values of milk components and alleviated the financial problems facing handlers in disposing of surplus butterfat in cream. From July to August 1991, the M–W price increased 51 cents per hundredweight. Using the new formula to compute the butterfat differential, the butterfat differential went down 2 cents per pound even though the butter price was unchanged from July to August. The lower value for butterfat resulted in an increase of 58 cents per hundredweight in the skim value even though the market price for powder went down fractionally. Consequently, the order value for a 48,000-pound tanker of 40-percent cream actually decreased by $106 from July to August.

Comparatively, if we analyze the same scenario but use the prior formula to compute the butterfat differential (.115 × the average wholesale selling price of Grade A 92-score butter at Chicago), an entirely different financial picture unfolds. For instance, since the butter price did not change from July to August, the butterfat differential would be the same in both months. Under the previous formula, the butterfat differential for July would have been 9 cents per pound higher than under the current formula and for August it would have been 11 cents higher. With the butterfat value virtually unchanged, most of the 51-cent increase in the M–W price from July to August would be reflected in the skim value even though the powder price decreased fractionally. If the prior formula were in effect, the order value for a 48,000-pound tanker of 40-percent cream would have increased by $225 from July to August.

The real significance of the monetary change is highlighted by comparing the order values of the 48,000-pound tanker of 40 percent cream in July and August 1991 using the new butterfat differential formula with such values using the prior formula. For instance, using the current butterfat differential, the load of cream would be valued $1,576 and $1,907 lower under the order in July and August, respectively, when compared with using the prior butterfat differential. Thus, the cream and butterfat pricing problems of handlers have been dealt with previously.

There is record evidence to reinforce this conclusion. The Darigold witness testified that the change in the butterfat differential, which became effective under Federal orders in December 1990, made the cooperative's butter operations profitable. An exhibit entered into the record shows that for January–May 1990 Darigold lost $2.3 million manufacturing butter, while in those same months of 1991 the cooperative made $2.2 million churning butter. The Darigold witness attributed the change in the cooperative's financial picture regarding its butter operations to the change in the butterfat differential and stated that he expects the favorable results to continue into the future.

The evidence on this record supports the adoption of a special class and price for skim milk used to manufacture NFDM. The special Class III–A pricing should apply, however, only in a market that meets these criteria: (1) A substantial amount of NFDM is produced; (2) there are no practical cheese outlets available for handlers to use in disposing of the market's reserve milk supplies; and (3) the lower returns from milk used to produce NFDM are not being shared equitably by all producers. For the reasons described later, it is concluded that only the New England, Middle Atlantic and Pacific Northwest markets meet these criteria.

The Class III–A skim value would be computed, by subtracting a processing allowance of 12.5 cents from the powder price and multiplying the result by 9. For Orders 1 and 4, the Extra Grade Powder Price for the Central States production area should be used. For Order 124, the Grade A powder price for the Western production area should be used. In August 1991, the skim value of Class III–A milk would have been $7.27 per hundredweight under Order 1 and $7.29 under Order 4. For Order 124, the skim value would have been $6.89 per hundredweight. This compares with a $7.89 skim value under orders that provided the M–W price as the Class III price and $7.63 under Order 124, which provided a lower butter/powder "snubber" price for Class III milk in that month.

In Orders 1 and 4, the skim values for Class III–A milk would have averaged about 19 cents per hundredweight less in 1990 and about 9 cents per hundredweight less for the first 10 months of 1991 under the new pricing formula adopted herein. For Order 124, the Class III–A skim value would have averaged about 35 cents per hundredweight less in 1990 and 18 cents per hundredweight less during January–October 1991.

The skim values for Class III–A milk under the product formulas provided for Orders 1, 4 and 124 would have averaged somewhat lower than such values for Class III milk in both 1990 and 1991. However, it is noteworthy that for Orders 1 and 4 the values would have been lower in 5 months and higher in 7 months of 1990 and lower in 4 months and higher in 6 months thus far in 1991. For Order 124, skim values under the new formula for NFDM would have been lower in 5 months and higher in 7 months of 1990 and lower in a 6 months and higher in 4 months so far in 1991.

The formula provides a factor of 9 because if 100 pounds of skim milk are dried they will yield 9 pounds of dried product. Such factor is reasonable and widely accepted by the dairy industry. The record indicates that it costs about 12.5 cents a pound to make skim milk powder. A 12.5-cent-per-pound drying cost is compatible with industry experience and also with the processing allowance formerly recognized under the support program in connection with drying whey. Such factor is now used in the computation of the Class II formula price under Federal orders.

The plant operating cost information in this record is not exhaustive. However, there is sufficient data to indicate that the $1.125 make allowance provided in the formula for drying a hundredweight of skim milk into powder is not so high that it would create an incentive for handlers to divert milk to drying plants rather than making the milk available to other plant operators processing dairy products demanded by consumers. On the other hand, it is not so low that such plants would be unable to continue functioning as outlets of last resort for distress milk which exceeds the needs of the market's handlers.

The record also indicates that the California Milk Stabilization Branch regularly collects data on operating costs for the purpose of establishing

make-allowance costs under the State's milk program. The latest survey covered plants that processed 98 percent of the nonfat dry milk processed in that area. The results of that survey indicate that for a wide range of plant volumes the weighted average per pound cost of producing NFDM was 12.87 cents. Using a yield factor of 9, a manufacturing cost of $1.16 per hundredweight of skim milk is reflected.

There was considerable opposition to the cooperatives' proposal. Many of the objections were of a general philosophical nature and opposed changes in all orders. Others specifically opposed the adoption of the proposal in a particular market or markets. Any opposing arguments raised by objectors in connection with a specific market where the new formula is provided will be addressed in the decision when marketing conditions are analyzed with respect to that order. In that regard, the marketing area situations will be reviewed in the same order in which they were presented at the hearing. The general opposing arguments will be dealt with at the end of the findings and conclusions involving the individual markets.

Orders 65 (Nebraska-Western Iowa), 68 (Upper Midwest), and 79 (Iowa) marketing areas. The hearing notice indicated that proposed amendments to the Nebraska-Western Iowa, Upper Midwest and Iowa orders would be considered at this hearing. However, shortly after the hearing opened a fax transmittal of a letter from AMPI, the proponent who requested the inclusion of the proposed changes for these three orders, was received as an exhibit into the record by the Administrative Law Judge. In that letter, AMPI withdrew its support for the Class III–A proposal as it pertains to these three orders. Since no other hearing participant supported the proposed changes for these markets, no further action is necessary.

Order 4 (Middle Atlantic) marketing area. Order 4 should be amended to provide the special Class II–A price. The ensuing findings and conclusions indicate that the criteria set forth previously to justify the need for such changes have been met in this market.

The Class III–A price formula was supported for Order 4 by the Pennmarva Dairymens Federation (which includes ADC, DI, Maryland-Virginia and Valley of Virginia cooperatives); Atlantic Processing Inc. (which includes Mount Joy, Cumberland Valley, ADC and Dairylea cooperatives); and Eastern Milk Producers Cooperative. These cooperatives supply more than 90 percent of the milk pooled under Order 4.

The Order 4 cooperatives embraced the general statement advanced on behalf of the 12 proponent cooperatives for 27 markets and testified specifically about marketing conditions in Order 4. In that regard, the proponents' witness testified that sufficient cheese capacity is not available to Order 4 handlers to dispose of all of the market's reserve milk supplies. He also contended that such handlers must rely on butter/NFDM outlets to efficiently and effectively clear the market of milk supplies which exceed the needs of processors.

He further argued that in performing this market-clearing function in many months cooperatives actually are subsidizing the market's other producers when there is an imbalance between the Class III price under the order for milk used to produce butter and NFDM and the returns the cooperatives receive from the sale of such products in the marketplace. This happens because the cooperative associations are obligated to the marketwide pool for the milk at the Class III price even though the dairy products manufactured from such milk are of lesser value. When this occurs, the market's uniform prices, which are shared by all producers, are artificially inflated by the amount by which the Class III price for the milk exceeds the market value of the products. Any such shortfalls are reflected in the form of lower reblended prices to the member producers of the processing cooperatives, the Order 4 proponents' insisted.

Since there are only two handlers processing NFDM in the Order 4 market, milk used to produce whole milk powder, which would not be a Class III–A products, is included with NFDM to establish a market total for dry milk powders. This results in three or more Order 4 handlers producing all types of dry milk powders, thus the data can be published.

Order 4 has been a 3-class market only since April 1, 1991. During the ensuring April-June quarter Order 4 handlers used 267 million pounds of milk to make all types of powder. This represented almost 17 percent of the milk receipts from producers during those three flush milk production months.

In that same April-June quarter, Order 4 handlers used more of their milk receipts to produce dry milk powers than they did to make hard cheeses. For 1990, 721 million pounds of milk were used to produce dry milk powders while only 633 million pounds of milk were used to make cheese.

There is considerable information in the record which indicates that a substantial amount of NFDM is produced by Order 4 handlers. The total production of NFDM in Order 4 is accounted for by two Pennmarva cooperatives, ADC and Maryland-Virginia. ADC operates a butter, powder and condensed milk processing plant located at Mt. Holly Springs, Pennsylvania. The Holly plant was built in 1977. Such plant has been relied upon to dispose of the market's reserve milk supplies since that time. An evaporator was added in 1984 to expand the plant's operating capacity.

In June 1991, the plant operated at 69 percent of capacity and processed 21.6 million pounds of skim milk into NFDM. This represented 45 percent of the total volume processed at the plant. Most of the plant's other milk receipts were used to produce condensed milk that was disposed of for Class II purposes. The Holly plant's operating cost in June was $1.51 per hundredweight.

In May 1991 the Holly plant operated at 89 percent of capacity and processed 34.8 million pounds of skim milk into NFDM (57 percent of the plant's total volume processed). The 61 million pounds of milk processed by the Holly plant of ADC represented 4.5 percent of the market's producer milk used for manufacturing purposes. The plant operating cost during May was $1.31 per hundredweight.

During the current ADC fiscal year (August 1, 1990 to June 30, 1991) the Holly plant processed 250 million pounds of raw milk into NFDM. The average plant operating cost for the year was $1.52 per hundredweight, utilizing 69 percent of the plant's capacity.

Maryland-Virginia operates the other butter/powder plant in Order 4. The plant is located at Laurel, Maryland. Although no operating cost information was provided for that facility, the witness for Order 4 proponents indicated that the processing operations at Laurel were comparable to those for the Holly plant of ADC. In that regard, he testified that the Laurel plant had similar operating capacity and processed a similar range of dairy products.

In view of the larger quantities of milk that are processed at butter/powder plants to clear the Order 4 market's excess supplies, it would not be feasible for the cooperatives handling such supplies to channel the milk to local cheese plants because there is not adequate cheese plant capacity available to accomplish this.

Actually, more cheese was processed by Order 4 handlers in 1982 than was so processed in 1990. [Official notice is taken of the Annual Summary of Federal

Milk Order Market Statistics for 1982.) Although 1990 cheese manufacturing by Order 4 handlers was up 10 percent from 1987, the increase was accomplished by utilizing existing capacities more fully because only one new cheese plant has been opened. That was a cream cheese facility with limited capacity which is located in Cumberland County, Pennsylvania.

Currently under Order 4 the negative impact resulting from any disparities between the regulated prices for Class III milk and the marketplace value of the butter and powder produced from such milk has fallen on the members of ADC and Maryland-Virginia because they are the only handlers involved in manufacturing these dairy products. The classification and pricing change adopted herein will better align the price and the value of milk used to produce NFDM. By pooling the value and sharing the proceeds uniformly among all of the market's producers, a more equitable solution will be provided.

As indicated, Order 4 provides seasonal adjustments, which vary from month to month, to Class III prices. These same adjustments should also apply to Class III–A prices.

Order 4 proponents asked that the uniform price for excess milk continue to be the Class III price. It seems reasonable to grant producers' wishes regarding the computation of the excess milk price.

There was only limited opposition to the proposal for Order 4. The National Farmers Organization (NFO), a national bargaining association of dairy farmers that has some milk pooled on this market, contended that the Order 4 cooperatives decided several years ago to invest their members' capital in butter/NFDM manufacturing and that they have been quite profitable as evidenced by the thirteenth checks they have paid to their members over the years. NFO argued that these proponent cooperatives should not ask other producers to take lower prices now because they made bad decisions in the past. The issue in this proceeding, however, is whether the regulated price for milk under the order reasonably reflects the value of the dairy products made from such milk.

One of the major objections raised by opponents was that this pricing change would lower pay prices to producers. Since all of the Order 4 producer milk that is used to make NFDM is processed at the plants of Pennmarva member cooperatives, most, if not all, of any reduction in Order 4 producer prices resulting from the pricing change adopted herein, will be returned to the member producers of ADC and Maryland-Virginia in the form of increased cooperative dividends or reduced processing losses which will result in higher reblended prices.

Order 1 (New England) marketing area. Order 1 should also be amended to provide the special Class III–A price. The following findings show that marketing conditions under the New England order indicate that the criteria defined previously as a basis for justifying adoption of the proposal have been met.

The cooperatives' Class III–A proposal was supported for Order 1 by four dairy farmer cooperatives supplying milk for the New England market. The Agri-Mark witness for Order 1 proponents spoke on behalf of Dairylea, Eastern and St. Albans in addition to Agri-Mark. These four cooperatives represent more than 60 percent of the producers supplying the New England market.

The Order 1 spokesman supported the general statement offered on behalf of the 12 proponent cooperatives which outlined the proposal and explained how the new class and price provisions were intended to work in the 27 orders where the changes were proposed. His testimony focused on why this change should be adopted for the New England market.

The Agri-Mark representative testified that his cooperative assumes the primary responsibility for disposing of the reserve milk supplies associated with Order 1. This is accomplished through the handler's butter/NFDM operation at West Springfield, Massachusetts, which can handle up to 60 million pounds of milk per month and has served as an outlet for the market's reserve milk supplies for more than twenty years. In 1984, the plant's operating capacity was expanded to its present level.

The witness presented information showing significant variations in the amount of milk received for processing at West Springfield. He contended that the plant's receipts of milk vary seasonally, as well as on weekends and holidays. These dramatic swings in milk receipts result in little or no butter/powder production in the late summer to as much as 40 million pounds per month or more in the winter and spring months.

Agri-Mark contended that the large fluctuations in receipts at West Springfield make it impractical for the cooperative to consider investing in a new cheese plant to supplement its cheesemaking capacity at Troy, Vermont. He testified that it would be too inefficient to build a cheese plant with sufficient capacity to handle the milk receipts at peak times while operating at low levels of capacity sometimes and having no milk to process at other times. Cheese plants in New England are unable to operate effectively with such fluctuations, the cooperative's spokesman claimed. They must rely on regular steady flows of milk to operate profitably. He testified that butter/powder plants are able to handle milk components (skim milk and butterfat) better than cheese plants because they are less affected by such variations.

The Agri-Mark witness also claimed that the large fluctuations in receipts at the West Springfield plant result in higher than normal operating costs and sizable losses for his association's members. For the July 1989–June 1990 fiscal year, Agri-Mark's manufacturing costs averaged $1.78 per hundredweight and for the July 1990–June 1991 fiscal year, they averaged $1.43 per hundredweight. Agri-Mark estimated that it will show a $4 million loss in the 1990–1991 fiscal year primarily because of its West Springfield operations.

Proponents' spokesman indicated that the cooperative does not intend to allow these losses to continue. Agri-Mark will do what it must to minimize future losses to its members. He indicated that the cooperative will not make its West Springfield plant available to manufacture the market's residual milk supplies if the order Class III price for milk exceeds the market value of the dairy products produced from such milk.

The Order 1 spokesman further contended that adoption of the proposal would not make the West Springfield operation profitable because Agri-Mark's manufacturing costs far exceed the current support program make allowance of $1.22 per hundredweight. It will, however, minimize the disparity between the order Class III price for milk used to produce butter and powder and the market value of such products.

Agri-Mark testified that disorderly marketing conditions already prevail in the New England market but are likely to deteriorate further if nothing is done. Early in 1991 Agri-Mark began paying 50 cents to $1.00 per hundredweight below the Class III price for milk it bought from outside sources for processing at West Springfield. If the milk handling losses persist, the cooperative intends more drastic action, which could involve downsizing the West Springfield operation somewhat or ultimately closing the plant entirely. If that happens, Agri-Mark testified that it would not take on new members and would aggressively seek new customers in the marketplace.

Record data indicate that 234 million pounds of milk were processed into butter and NFDM at the West Springfield facility in 1990. This represented 4.6 percent of the Order 1 producer receipts in that year and about 10.2 percent of the market's pooled milk used for manufacturing. Thus, it is obvious that the West Springfield butter/powder plant of Agri-Mark is performing a vital role in disposing of the reserve milk supplies associated with the New England market.

The record also shows that three Order 1 cooperative (Agri-Mark, Cabot and St. Albans) were making butter in 1990. Since there are at least three handlers involved in producing butter, the market's data for butter production are available. During 1990, Order 1 handlers used 43.6 million pounds of cream to produce butter. Of that total, 39.7 million pounds (or 91.3 percent) were used for butter manufacturing at Agri-Mark's West Springfield plant.

Since only Agri-Mark and St. Albans are involved in producing NFDM in the New England market, the data for nonfat dry milk are not published. However, since butter and powder production are closely related, it is not unreasonable to assume that the 194 million pounds of skim milk dried at Agri-Mark's West Springfield plant also would represent about 90 percent of the NFDM processed by Order 1 handlers. Based on that assumption, Order 1 handlers would have used about 215 million pounds of skim milk to make NFDM. Such a figure represents 4.2 percent of the Order 1 pooled receipts from dairy farmers during 1990 and 9.4 percent of the market's milk that was used for manufacturing.

Order 1 handlers used between 4 and 5 times as much milk to produce hard cheeses as they did to make butter and NFDM in 1990. Such handlers used 22 percent of their milk supplies to make cheese that year. It is evident that the market's suppliers deliver the milk to West Springfield only if the milk cannot be disposed of to plants making dairy products demanded by consumers.

Agri-Mark has a cheese plant at Troy, Vermont. Since September of 1990 the cooperative has operated the plant 7 days a week because returns from the sale of cheese were far more lucrative than from butter and powder. Agri-Mark testified that even if this proposal had been in effect last year the cooperative would have operated its Troy cheese plant 7 days a week in an attempt to move as much of its milk as possible into cheese.

While there is a significant amount of milk processed into cheese by Order 1 handlers, the more important factor is that there is really no additional cheese processing capacity available nearby to accommodate the milk supplies being manufactured at the butter/powder plants of Agri-Mark and St. Albans.

Furthermore, Kraft testified that due to its inventory position and consumer demand the handler has sold milk away from its cheese plants since April 1991. Kraft buys all the cheese manufactured at Agri-Mark's Troy plant. After the spring flush in 1991, Kraft asked Agri-Mark to cut its plant production schedule at Troy to 5 days a week even though the cooperative wanted to maintain the plant's 7-day work week. At the same time, Kraft reduced its cheese production by 25 percent at its Middlebury, Vermont, plant for the same reasons. This situation is expected to continue through this fall's shipping season. These actions are expected to further limit the amount of Order 1 milk that is processed into cheese. Most, if not all of the milk that is not accommodated at the Middlebury and Troy cheese plants will end up at West Springfield because there really is no other reasonable alternative outlet.

It is possible that the displaced Order 1 milk could be handled at New York cheese plants. However, such dispositions would involve several hundred miles of transportation costs at great expense to dairy farmers. In addition, those handlers will view the milk as distress milk and are likely to offer to buy such milk only at levels below the Class III price. In such cases, the cooperatives' net return may be better at the local butter/powder plants. Also, Kraft is a major cheese manufacturer in New York and it is possible that neither Kraft nor other cheesemakers would be willing and/or able to accommodate additional milk supplies.

The adverse impact resulting from the current disparity between the prices that handlers must account to the pool for the milk used to produce butter and nonfat dry milk and the value of the products made from such milk now falls on the producer members of Agri-Mark and St. Albans because these cooperatives are the only Order 1 handlers making such products in the New England market. Although the change adopted in this decision could lower the blend price slightly to all producers, it is not likely to alter the total money received by Order 1 dairy farmers because the cooperatives' reblended prices would be higher since their processing losses on milk used to produce NFDM would be reduced.

Order 1 provides seasonal adjustments to Class III prices. As proponents requested, the same plus minus adjustments which vary from month to month, will apply to Class III–A prices.

NFO, a bargaining association which does not operate manufacturing plants and markets some milk under Order 1, opposed adoption of the proposal for Order 1. They claimed that Agri-Mark made a bad decision in 1984 when it expanded its West Springfield plant and should not expect the market's other producers to accept lower prices now to cover its butter/powder losses. Actually, in the past the income of cooperatives producing butter and powder have been reduced any time that the Order's Class III price exceeded the market value of the dairy products in the class. In such cases, income is transferred from cooperatives manufacturing butter/NFDM from the market's reserve milk supplies to those not involved with manufacturing such dairy products. Pooling the lower or higher value of milk used to make NFDM and sharing that value among all of the market's dairy farmers will provide a more equitable solution to this problem.

Order 2 (New York-New Jersey) marketing area. The special Class III–A price should not be provided for the New York-New Jersey market. The following findings and conclusions indicate why it is not necessary to revise the classification and pricing provisions of Order 2 for producer skim milk that is used to make NFDM to preserve orderly milk marketing under that order.

The cooperatives' Class III–A proposal was supported for Order 2 by five cooperatives (Agri-Mark, ADC, Dairylea, Eastern and Upstate). These producer groups represent only about one-third of the Order 2 pool milk.

The Eastern spokesman for Order 2 proponents supported the general statement introduced on behalf of the 12 proponent cooperatives and proceeded to show why the special Class III–A price should be provided for Order 2. He testified that even though butter/NFDM manufacturing represents a minor outlet for Order 2 milk and thus would impact producer prices only incidentally, such plants serve as an important last resort outlet for the market's reserve milk supplies.

In 1990, about 6.6 billion pounds of milk received from producers was used for manufacturing purposes. Of this total, Order 2 handlers used only 129 million pounds (1.9 percent) of skim milk to manufacture NFDM. Measured in terms of the total milk pooled, NFDM processing by Order 2 handlers represented only 1.1 percent. Also, Order 2 handlers used 31 percent less

milk to produce NFDM in 1990 than they did in 1987.

As Order 2 proponents testified, the market's reserve milk supplies primarily are used to produce hard cheeses. During 1990, Order 2 handlers used 3.6 billion pounds of milk to produce cheese. This represents 55 percent of the pool receipts used for manufacturing and 32 percent of the total pool milk. In addition, Order 2 handlers used 3.4 percent more milk to make cheese in 1990 than they did in 1987.

The record also indicates that because of concern about the availability of future Northeast milk supplies, two New York cheese plants recently closed. A plant at Skaneateles Junction was closed last year. Also, about two years ago Leprino Foods Company, a major cheesemaker in Order 2, closed one of its plants and expanded the capacity at its two other plants. It is unclear from the record whether these plants are currently operational. However, it appears that the limiting factor on cheese production in the New York market at the present time is the availability of milk for processing rather than the capacity at cheese plants.

In support of the proposal for Order 2, the Eastern representative contended that if the special pricing formula is adopted for Orders 1 and 4 it will be necessary to adopt the change in the New York-New Jersey market to maintain price alignment among the Federal orders in the Northeast region. It is not anticipated that the price changes resulting from the adoption of this special class and price for milk used to manufacture NFDM under Orders 1 and 4 will be of such magnitude or duration that they will interfere unduly with the price alignment situation of competing handlers in the Northeast.

It is evident from the foregoing that NFDM production is not a significant use of milk under Order 2. While it may provide an outlet of last resort for certain handlers, it is not imperative that the proposal be adopted for this market to preserve orderly marketing, and no order changes are warranted.

Order 124 (Pacific Northwest) marketing area. The special Class III–A price should be provided for the Pacific Northwest market. The ensuing findings indicate why it is necessary to revise the Order 124 classification and pricing provisions to preserve orderly milk marketing under such order. The criteria established previously as a basis for justifying this pricing change have been met in this market.

As indicated, Order 124 provides that the price for Class III milk shall be the M–W price for the month unless the butter/powder "snubber" price results in a lower price. The "snubber" price formula, which provides only a 48–cent make allowance, was the effective price for Class III milk under the Pacific Northwest order for August and September 1991. Also, it was the Class III price for 6 months in 1990.

The Class III–A price formula was supported for Order 124 by Darigold and Farmers Cooperative Creamery (FCC). These two producer groups represent about 77 percent of the milk pooled under the Pacific Northwest order. The Darigold spokesman for Order 124 proponents endorsed the general statement entered into the record on behalf of the 12 proponent cooperatives. He then testified about why this pricing change should be provided under the Pacific Northwest order.

He claimed that the current Federal order system establishes prices for milk used to produce butter and powder that have no relationship to the value of such finished products in the marketplace. Class III prices for milk are higher in some months and lower in others than the value of the butter and powder made from the milk. The witness indicated that in a market that produces as much butter and powder as is the case in Order 124, it would be more appropriate that all producers receive prices which reflect actual milk product values both when they are higher and when they are lower than the present order's Class III prices.

The witness also testified that the nation's powder markets are influenced heavily by California processors who are able to set low market prices because the California State milk order has consistently provided lower Class 4a prices for butter and NFDM, which are based on commodity market values rather than the Federal order Class III prices, which essentially are based on M–W prices.

The ability and willingness of California processors to set low powder market prices is a concern to powder processors who buy milk priced under Federal orders. Order 124 proponents testified that they are caught in the middle between the traditional Federal order concepts and the California State program. He testified that Darigold and FCC have no alternatives for processing their members' milk, so they are forced to suffer losses.

The Darigold witness testified that powder is truly a residual dairy product in that the milk must be processed whether it is or is not profitable to do so. He further contended that in some markets handlers may have the option of redirecting milk from butter-powder plants into cheese plants when the market prices tilt against powder, but in Order 124 there is very little opportunity to do this.

Order 124 proponents insisted that considering the supply and demand conditions in the West the Federal order prices for milk used to produce butter and powder have not been realistic. In their opinion, the Class III–A price formula would correct the situation where Order 124 handlers processing butter and NFDM are forced to "buy high and sell low" in many months.

Darigold's witness testified that the principal reasons for the adoption of this proposal are economic. He indicated that Darigold lost a lot of money on its butter/powder operations over the past few years. During the recent 12-month period of October 1989 through September 1990, the association lost nearly $17 million. He stated that prices for milk used to make butter and powder would have averaged 32 cents lower under proponents' formula during the last three and a half years. This would have lowered the market's blend prices about 12.8 cents per hundredweight. However, in 9 of the 42 months, the market's blend prices would have been higher.

Market data show that 57 percent of the market's 5.7 billion pounds of producer milk in 1990 was priced as Class III milk. About 30 percent of the market's Class III milk was processed into cheese (about 17 percent of all milk pooled). The remaining 70 percent of the Class III milk (40 percent of the pool's receipts) was processed into butter and powder. They also show that Order 124 handlers used 1.9 billion pounds of milk to make NFDM.

There are three milk drying plants currently operating in Order 124. Darigold operates drying plants at Chehalis and Lynden, Washington. FCC operates a powder plant at McMinnville, Oregon. During 1990, 1.745 billion pounds of milk were processed into powder at Darigold's plants at Chehalis and Lynden.

Only about 35 percent of the market's milk supply is needed by fluid operators. The remainder is disposed of by manufacturing processors. There is limited opportunity to process these large amounts of excess milk at other than the powder plants of Darigold and FCC.

Because of the large quantities of milk that are processed into NFDM by Order 124 handlers, it would not be possible for such processors to redirect this milk to cheese plants. If cheese plant capacity had been available over the last three and a half years, the Order 124 cooperatives who lost sizable amounts of money processing powder would

have taken advantage of these facilities because the order pricing was tilted in favor of cheese and against butter/powder manufacturing.

The Darigold witness testified that his cooperative has decided to build a new powder plant at Sunnyside, Washington. He indicated that this may be the first step in possibly a two-stage program which eventually could involve building a new cheese plant. The drying capability must come first because a handler must be able to dry the whey resulting from cheese processing.

In addition, the cooperative handles about 6 million pounds of milk per day at its drying plants. Only about one-third of that total could be accommodated at the new cheese plant. This would still leave Darigold with a sizable amount of milk moving to powder.

The cooperative also indicated that the cheese market in the Western region is very limited for Order 124 handlers. Because of the pricing situation under the California State order, any cheese processed by Darigold would most likely end up being sold to the government under the price support program.

Since only Darigold and FCC are producing butter and NFDM in Order 124, any adverse impact resulting from the differences between the order pricing of milk used to produce such products and the market value falls on the dairy farmer members of these two organizations. Adoption of the Class III–A formula will provide more equitable pricing under the order. It will eliminate the subsidization which takes place now in the months when Darigold and FCC are accounting to the Order 124 pool for the milk at Class III prices which are higher than they receive when the butter and NFDM are sold in the marketplace. In such cases, the money from producers who do not share in the losses associated with NFDM processing will be redistributed to the dairy farmer members whose cooperatives are involved in manufacturing powder.

Similarly, any gains that cooperatives make from processing powder in months when the market value of such product exceeds the Class III price which have not been shared in the past would now be pooled and shared with the market's other dairy farmers. Such a policy is consistent with the concept of marketwide pooling and should contribute to orderly marketing under Order 124 by facilitating the disposition of the market's reserve milk supplies.

The Order 124 proponents suggested that the Class III–A formula proposed by the 12 cooperatives be modified in two respects. First, they asked that "the price per pound of Grade A nonfat dry milk for the Western States production area" as published in Dairy Market News be used instead of "the simple average of the prices per pound of nonfat dry milk for the Central States production area". They also proposed that the order provide that the Class III–A price not exceed the Class I price in any month.

The Western area price for Grade A NFDM should be used to compute the price for the Class III–A milk under the Pacific Northwest order. In view of the extensive powder production in the West and the low price for milk used to make NFDM under the California State program, Order 124 handlers should get the benefit of the somewhat lower powder prices enjoyed by their primary competitors.

The modification proposed whereby the Class III–A price could not exceed the Class I price should not be adopted. No such limit should apply. Proponents indicated their willingness to share any gains from powder processing with other producers thus all such higher values for NFDM should be reflected in producer pay prices.

A proposal was made at the hearing to keep the butter/powder "snubber" price for the remaining Class III uses, because of competition from California's lower prices under State regulation. The remaining Class III uses are essentially butter and cheese. As indicated previously no change is warranted in the pricing of cream used to make butter, since the 1990 amendment to the butterfat differential formula appropriately aligned cream values with the market price of butter. Also, as indicated previously in this decision, the M–W basic formula price tends to reflect the value of milk used to make cheese. Accordingly, the Class III price should be the basic formula price.

Adoption of this pricing change in Order 124 was opposed by three cooperatives representing 280 dairy farmers supplying the market and by three pool distributing plants and two nonpool cheese plants. The primary concern of the opponents was that adoption of this change would lower producer pay prices at a time when dairy farmers are already low.

As indicated in earlier findings, powder market prices have strengthened lately. If that situation continues, it is possible that adoption of this Class III–A pricing change for NFDM could actually add money to the pool. On the other point made by objectors, the M–W price has advanced more than $2.00 per hundredweight since spring and further increases are expected as the dairy product prices continue to advance. These increases have boosted the income of dairy farmers considerably since the hearing.

Opponents also argued that adoption of the proposal would give butter/powder manufacturers a competitive advantage over cheesemakers in procuring milk supplies in this market because the cost for milk at butter powder plants will be reduced while the market prices they received for the products are unchanged. This change is intended to eliminate any disadvantages experienced by handlers processing NFDM by equating the market price for powder and the regulated price of the milk used to make the powder. The Order 124 prices for Class III–A milk would increase when market prices for powder advance and the total value of milk in the pool would go up. Conversely, when powder prices decrease, Class III–A prices would go down and the pool value would go down also. All such overages and shortfalls resulting from powder production would be pooled and shared by all the market's diary farmers. This procedure would eliminate any gains or losses by individual handlers producing NFDM.

Opponents also claimed that adoption of the Class III–A price will provide a guaranteed return for powder operators because with current technology powder can be made for less than $1.22 per hundredweight. All data in this record indicate operating costs in excess of this make allowance at the powder plants involved in this proceeding. It is noted that the California State order periodically computes a make allowance based on processing plant audits, which justified a recent butter/powder allowance of $1.7854 per hundredweight. Hence, the $1.125 make allowance provided herein to dry one hundred pounds of skim milk should not provide a windfall to NFDM manufacturers.

Order 135 (Southwestern Idaho-Eastern Oregon) marketing area. The special Class III–A price need not be provided for Order 135. Orderly marketing can be preserved in this area without the special class and price for producer skim milk used to make NFDM. The following findings and conclusions indicate why no action should be taken.

The Class III–A formula was supported for Order 135 by DCA, Idaho's largest dairy cooperative, which marketed 73 percent of the market's producer milk in June 1991. DCA supported the overall position of the 12 proponent cooperatives and the modification advanced by the Western cooperatives by asking that the Western region powder price be used to establish the value of milk in the product price

formula. The witness testified that the M–W price, which is the Order 135 Class III price, does not accurately reflect the value of milk used to make butter and NFDM at all times.

In support of the proposal for Order 135, DCA's spokesman cited the Order 135 marketing conditions which he believed would justify the adoption of the product price formula for such market. He testified that DCA has made a concerted effort to increase cheese production during the past five years. These shifts were made in anticipation of cheese providing a stronger and more stable market in terms of value both in light of support prices and commercial demand. Regardless of the Association's best efforts, a significant portion of the market's Class III producer milk was still processed into butter and powder during the first six months of 1991. DCA contends that butter/powder production will continue to play a significant role in disposing of the market's excess Grade A milk supplies.

The witness indicated that the proposed formula will more closely relate the order prices to the values realized from the marketplace when processors sell butter and NFDM than does the prevailing order pricing for such products. DCA's witness testified that the cooperative experienced a $4.7 million operating loss in 1990 as a direct result of low powder prices, which had to be passed on to its members in the form of lower reblended prices which were well below the order's blend prices. He also testified that DCA operates in a market with low Class I use and thus has little opportunity to gain additional revenue from other operations to cover such losses.

Darigold and FCC supported the changes proposed by DCA for Order 135. They took the position that there is a strong marketing relationship between Orders 124 and 135 and that in the future it is possible that the two markets may be merged. Because of the similarities in economic conditions and marketing problems associated with butter and NFDM, the Northwest cooperatives asked that the same price apply under both orders for milk used to make such products.

Market data for Order 135 show that milk used to produce cheese has increased substantially while considerably less milk is used in butter/power manufacturing. During the first six months of 1991, the volume of milk processed into NFDM at DCA's multi-use plant at Caldwell, Idaho, decreased about 52 percent, to about 14 million pounds per month from January–June 1990. DCA's Caldwell plant is the only Idaho plant processing NFDM.

On the other hand, Order 135 handlers processed 62 percent more cheese in 1990 than they did in 1988. This represents a big shift to cheese processing of Order 135 reserve milk supplies, which was most likely aided by the pricing tilt in favor of cheese relative to butter/powder processing during such time.

In addition to DCA's cheese plant at Caldwell there are several other cheese plants in Idaho. The cheese plants at Twin Falls, Gooding and Nampa are regularly used to dispose of the market's reserve milk supplies. The record shows that Kraft operates cheese plants at Blackfoot and Rupert. It also identifies cheese plants at Rexburg, Carey, Richfield and Idaho Falls.

The record shows that DCA receives and processes milk from 132 Grade B producers (about 7 million pounds per month) at its Caldwell cheese plant. Also, the cooperative processes about 200,000 pounds per month of Order 124 milk for Darigold. If other processing arrangements could be made for this milk, which is not pooled under Order 135, additional processing capacity would be available to accommodate reserve milk supplies associated with this market.

Furthermore, only about 15 percent of the market's milk is used for fluid purposes. In the first six months of 1991, the market's uniform prices averaged only 30 cents above the Class III price level in such months. Hence, when a wide disparity between the M–W price and the market value of butter and NFDM develops, the cooperative could elect not to pool the milk. By so doing, DCA would not be required to account to the pool for such milk at the high M–W price. The nonpool milk could be sold to one of the many cheese plants identified earlier. If market demand for cheese is driving up the M–W price, as proponents contend, cheese plants should be actually procuring milk supplies in such months and willing to pay at least the M–W price for it.

The record indicates that the Associations' fluid milk plants get first call on DCA's milk, while the remainder goes to the cheese plant. If not all of the excess milk can be handled at the cheese plant on a given day, then the rest goes to the butter/powder operation. Because the cheese plant and the butter/powder plant are located at the same site, DCA has the processing flexibility within capacity limitations to move milk from butter/powder to cheese when it is economically advantageous to do so and vice versa.

It is evident that DCA has several options to lessen any adverse financial impacts resulting from a misalignment between Class III prices and the market value of butter and nonfat dry milk. Hence, no action should be taken with respect to the Southwestern Idaho-Eastern Oregon market.

DCA asked that the same Class III pricing provisions apply under Order 135 as apply under the Pacific Northwest order. Specially, the cooperative asked that if the "snubber" provisions are retained as a Class III pricing alternative under the Pacific Northwest order, the "snubber" formula should be incorporated under Order 135. Since the "snubber" alternative is eliminated for pricing Class III milk under Order 124, the basic formula price would be the Class III price under both orders.

Order 131 (Central Arizona) marketing area. The Class III–A price should not be provided for the Central Arizona market. Orderly marketing conditions will continue to prevail under this order without providing special pricing for producer skim milk which is used to manufacture NFDM. The ensuing findings and conclusions indicate why no action should be taken with respect to this market.

The Class III–A proposal was supported for Order 131 by a witness from UDA. The proponent cooperative represents about 88 percent of the milk marketed by dairy farmers under the order.

The UDA witness advanced essentially the same arguments made by the other proponents and testified that the M–W price, which is used to price milk used to produce butter and NFDM under Order 131, should be replaced with the proposed product price formula. He claimed that market returns from the sale of these dairy products are not closely related to the M–W price level, which is heavily influenced by cheese values. The market prices for such products do not always move up or down at the same time, in the same direction, or with the same magnitude as the price changes reflected by the M–W price or the cheese market.

The UDA witness testified that the cooperative sells its butter and powder at the market prices prevailing in the Western region. Such prices are heavily influenced by the prices established for milk used to produce such products under the California State program, which averaged $1.72 per hundredweight lower than the M–W prices in 1990. Because of this, UDA supported the modification proposed by the Western cooperatives whereby the powder price for the Western area would be used in the formula rather

than the price for the Central States production area.

He contended that the order's current pricing situation is extremely costly to the dairy farmer members of UDA. He further claimed that when the cooperative accounts for its milk at the artificially high Class III price, it ends up subsidizing through the pool the nonmembers who represent 12 percent of this market. Such pricing, in effect, penalizes UDA members who have assumed the responsibility for disposing of the market's reserve milk supplies, the cooperative's spokesman claimed.

UDA supplies much of its milk to fluid milk plants regulated under Order 131. The cooperative maintains a processing facility for converting the market's reserve milk supplies into butter and NFDM to assure a market for all of the market's producer milk when production exceeds the needs of customers. The handler's butter/powder plant is located at Tempe, Arizona.

The UDA spokesman testified that with the exception of a cheese plant which is also located at Tempe, there are no viable alternative outlets for the market's reserve milk supplies. The nearest manufacturing plants are located in California and these plants are normally operating at capacity at the same time Order 131 handlers have excess milk.

The record shows that UDA used about 130 million pounds of milk to process NFDM at its Tempe plant during 1990. This represented about 8 percent of the market's total producer milk that year. While this was a significant portion of the market's milk in 1990, there are other factors which must be considered in determining whether special pricing of skim milk used to make NFDM is essential for this market.

First, the record indicates that Schreiber Foods, Inc., operates the only cheese plant in Arizona at Tempe. UDA negotiated a ten-year contract with such cheese plant operator about 4 or 5 years ago. The terms of the contract allow UDA to ship a fixed monthly amount of milk to the cheese plant over the length of the contract. The amount of milk the cooperative could ship to the cheese plant could be increased only if Schreiber decided to increase the plant's capacity.

The Tempe cheese plant capacity was to be increased in September 1991. The UDA spokesman could not provide specific information about the extent of the expansion at the time of the hearing. However, the expansion will give UDA additional flexibility in disposing of their reserve milk supplies in the future by providing an opportunity for the cooperative to get more of its milk into cheese when cheese processing is favorable relative to butter/NFDM manufacturing and vice-versa.

Market information shows that UDA processed only 20 percent of the powder it made during 1990 in the last half of that year. During this time of year, the market's Class I demand generally is up and milk production is seasonally lower. Also, these months are normally when the disparities are greatest between M–W prices, which are driven up by prices for cheese, and the values of milk used to make butter and NFDM. In view of the fact that in the months when such disparities are most severe, UDA's powder operations are rather limited, the resulting impact on the cooperative will be minimized.

Since nearly all of the market's producers belong to UDA and UDA operates the only NFDM plant in the market, any change to Class III–A pricing in this market would have virtually no impact on the net returns to the cooperative. Thus, there is no significant basis for adopting the amendment in this market.

Orders 5 (Carolina), 7 (Georgia), 11 (Tennessee Valley), 46 (Louisville-Lexington-Evansville), 93 (Alabama-West Florida), 94 (New Orleans-Mississippi), 96 (Greater Louisiana), 98 (Nashville), and 99 (Paducah) marketing areas. The nine Southeast orders should not be amended to incorporate the special class price for producer skim milk used to make NFDM. It is not essential to provide this pricing change for these orders to maintain orderly marketing in the region. The ensuing findings identify the reasons to support such conclusion.

DI supported the adoption of the Class III–A proposal for the Southeast orders. The DI witness endorsed the overall reasoning advanced on behalf of the 12 proponent cooperatives concerning the difference between the M–W price, which is the Class III price for milk in these markets, and the marketplace value of butter and NFDM made from such milk. He confined his testimony and evidence in support of the proposal essentially to the marketing conditions prevailing in the nine Southeast markets where his cooperative has member milk pooled.

The DI witness contended that the adoption of the Class III–A price proposed will promote orderly marketing throughout the Southeast by facilitating the disposition of the markets' reserve milk supplies. By providing for uniform returns to producers from the sales of both the high-valued Class I milk as well as the lower-valued dairy products manufactured from milk supplies that are not needed for fluid purposes, the amended orders will carry out the intent of the enabling legislation, in the cooperative's opinion.

The market data covering the production of NFDM for these markets are very limited because there are so few handlers processing this product under the Southeast orders. The information does show, however, that no NFDM was produced during 1990 by handlers regulated under the following five Southeast orders: Carolina, Tennessee Valley, Louisiana-Lexington-Evansville, Greater Louisiana and Nashville. Thus, there is no reason to provide the Class III–A price in these markets.

In each of the other four Southeast markets (Georgia, Alabama-West Florida, New Orleans-Mississippi and Paducah) involved in this proceeding and for the three Florida markets, the data are restricted because fewer than three handlers are involved in processing NFDM. Although the record identifies five plants processing nonfat dry milk in the Southeast, the primary outlets to dispose of the reserve milk supplies in this region are the DI plants at Franklinton, Louisiana; Lewisburg, Tennessee; and Louisville, Kentucky.

The receipts of milk at such plants vary widely. For instance, during the months of July-October 1990, no milk was received at any of the three DI plants. For the most part, these plants are used regularly to clear the markets' reserve milk supplies during the months of March-June when milk supplies tend to be more plentiful relative to the Class I demand.

At its three manufacturing plants, DI receives milk from a wide geographic area, including Florida. Most of the milk is regulated under the Southeast orders. Milk of four other cooperatives (Associated Dairy Farmers, Tampa Independent Dairy Farmers, Southern Milk Sales, and Gulf Coast Dairymen) is regularly processed at such plants. Occasionally, regulated milk from nonmember producers and dairy farmers located in other regions is also processed in addition to some milk that is not regulated.

Marketing conditions in the Southeast differ considerably from other regions of the country. For instance, in the South Atlantic and East South Central regions, which cover the Southeast markets, the 1990 Class I use averaged 85 and 80 percent, respectively. In the other regions of the country, Class I utilizations were as follows: North Atlantic, 47 percent; East North Central, 34 percent; West North Central, 25 percent; West South Central, 54 percent;

Mountain, 44 percent; and Pacific, 36 percent.

The Southeast region is a deficit milk production area. Milk must be imported regularly from the Midwest to supply the needs of Southeast fluid milk plants in the months of July-October when milk production is seasonally lower and Class I demand is higher. Typically, these are the months when the disparities between the M–W prices and the butter/powder market values are most severe. Normally, no NFDM is processed in this region during these months.

DI used 243 million pounds of skim milk to make NFDM in the months of June 1990–May 1991. This represents less than 2 percent of the deliveries by producers under the Southeast orders during that 12-month period. Furthermore, two-thirds of the skim milk used to produce NFDM at DI's plants was accounted for during the months of February–May when the disparities between Class III prices and marketplace values for butter and powder normally are not as significant.

Handlers regulated under the Southeast orders used 306 million pounds of milk to make cheese in 1990. This represented about 2.5 percent of the deliveries by producers in such markets. However, it reflected a 52 percent increase from 1987 in cheese manufacturing by such handlers.

When DI has milk which exceeds the needs of Southeast fluid milk plants, the cooperative channels such milk to its cheese plant at Glasgow, Kentucky. Although there are numerous other cheese facilities located throughout the region, the cooperative tends to rely on its own plant to the extent possible because the other processors only pay about 8½ times the barrel cheese price, which is below the M–W price for the milk. Because most of the milk in this region is used for fluid purposes, the limiting factor on cheese production may be the availability of milk rather than the capacity available at existing plants. Hence, if a severe misalignment existed, DI possibly could limit its losses by marketing excess milk to cheese plants operated by others. Certainly, in months when demand for cheese in the Midwest is driving up the M–W price it would seem that cheese processors in the Southeast would also be willing to pay higher prices to attract milk supplies.

Also, some of the NFDM manufactured by DI is reused in higher-valued products in connection with the cooperative's other processing operations. For instance, some of the powder it makes is used to fortify the cooperative's finished products and some is used to reconstitute Class I and Class II products. The cooperative also uses NFDM to make ice cream and cottage cheese. Although the record is not specific about how much of DI's powder is reprocessed or converted into other milk products, certainly some of it is so used.

In view of marketing conditions in the Southeast, DI should be able to avoid most if not all of the adverse impacts resulting from the differences between regulated prices for milk used to make butter and powder and the returns from the sales of such products in the marketplace.

Orders 40 (Southern Michigan) and 44 (Michigan Upper Peninsula) marketing areas. The Special Class III–A price should not be provided in the two Michigan markets. Orderly marketing can be preserved in these markets without providing the special class and price for producer skim milk used to make NFDM.

The proposed changes for the Southern Michigan market were supported by a witness representing the two Michigan proponent cooperatives (MMPA and ICMPA). These cooperatives account for about 80 percent of the milk pooled under Order 40.

The MMPA spokesman endorsed the position of the 12 proponent cooperatives concerning the M–W price, which is the price for Class III milk under Order 40. In that regard, he contended that the M–W price does not always properly reflect the value of milk used to manufacture butter and NFDM. He testified specifically about why, in his opinion, this pricing change should be provided in the Southern Michigan market and cited the marketing conditions which he believed would justify the adoption of the Class III–A price formula in Order 40.

The Order 40 proponent cooperatives operate four butter/powder plants located in Michigan. These are the only butter/powder operations in the State. Three of the plants located at Adrian, Constantine and Ovid, are operated by MMPA while the ICMPA butter/powder facility is located at Kalamazoo. These plants function on a standby basis to dispose of any reserve milk supplies associated with the Southern Michigan market.

Proponents' witness stated that there has been a considerable reduction in the volume of producer milk accounted for in butter and NFDM in this market because a new cheese plant has opened in that area. However, there are still occasions when not all of the cooperatives' milk can be directed to cheese plants and these residual supplies end up at the butter/powder plants of MMPA and ICMPA.

Market data for Order 40 show that milk used by such handlers to produce cheese in 1982 represented 12 percent of the market's producer milk and in 1990 such processing accounted for 31 percent of the pooled deliveries by dairy farmers. Conversely, milk used to make NFDM by such handlers represented 23 percent of producer milk in 1982 compared with less than 4 percent in 1990. This indicates a dramatic shift to cheese processing and away from NFDM production by Order 40 handlers.

The record indicates that 107 million pounds of cream was used to produce butter and 184 million pounds of skim milk was used to make NFDM. Such data do not reflect true butter/powder operations where such products are being made from producer milk because, if that were the case, the ratio of the pounds of skim milk used to produce NFDM would be about 10 times greater than the pounds of cream used to produce butter. This compares with less than a 2 to 1 ratio for the Order 40 market in 1990.

This seems to indicate that a large portion of the butter processed by Order 40 handlers most likely was represented by cream transfers from fluid plants supplied by the cooperatives. It likely is explained by the difference between the average butterfat test of producer milk and the distributing plant handlers' Class I finished products. As indicated, the cream and butterfat problems of handlers were corrected when the uniform butterfat differential was adopted for Federal orders on the basis of a national hearing in 1990.

There are three substantial cheese operations in Michigan. Kraft operates a plant at Pinconning and Leprino operates plants at Allendale and Remus. MMPA has negotiated annual contracts with these two large national cheese companies. Under the terms of the contracts, MMPA furnishes minimum volumes of milk, which vary from month to month, to the cheese plants. In setting these minimum supply requirements, the cooperative attempts to recognize its seasonal milk production patterns and Class I demands. If on a given day, MMPA has extra milk, which is above the agreed-upon minimums, it may try to sell the additional milk to Kraft and/or Leprino. However, the cheese plant operators are under no obligation to buy such milk.

Normally, M–W prices tend to be most seriously misaligned with the market values for butter and NFDM when milk supplies trend seasonally lower (July–November). In such months,

cheese plants bid up milk prices to assure sufficient supplies in response to the strong consumer demand for cheese. In view of these marketing circumstances, the Michigan cheese plants should be anxious to buy any extra milk of the cooperatives. Also, during these months far less milk was used to produce butter and nonfat dry milk by Order 40 handlers in 1990. For instance, only about one-third of the milk used to produce butter and powder was accounted for in such months.

The previous findings indicate that the cooperatives' problems associated with the use of cream to make butter were ameliorated with the butterfat differential change. The NFDM processing does not appear to be of such magnitude that the special pricing formula is warranted and no action is taken with respect to Order 40.

The Michigan Upper Peninsula order was included in the list of markets involved in this processing. When the MMPA witness finished testifying about marketing conditions in the Southern Michigan market, he stated that his cooperative did not intend to offer any evidence to support the change for Order 44. He also indicated that since Order 44 provides individual handler pooling, no purpose would be served by including this type of pricing provision in that order and no action is taken.

Orders 33 (Ohio Valley), 36 (Eastern Ohio-Western Pennsylvania) and 49 (Indiana) marketing areas. No pricing changes for milk used to produce NFDM should be made in the three Ohio-Indiana orders on the basis of this hearing record.

A witness from MMI testified in support of the Class III–A proposal for these three markets on behalf of MMI and the Hoosier Milk Marketing Agency (Hoosier), which is comprised of MMI and AMPI. MMI represents about 70 percent of the milk pooled on Order 33 and 40 percent of the Order 36 producer milk deliveries. Hoosier represents a majority of the Order 49 milk.

The MMI witness for the proponent cooperatives supported the general statement on the Class III–A price formula presented on behalf of the 12 proponent cooperatives and contended that for the same reasons the special pricing should be provided in the three Ohio-Indiana markets where MMI and Hoosier market milk. He argued that butter/powder processing represents the final usage of milk. He testified that the proposed pricing change is needed to assure an order price for milk used to make butter and NFDM which represents the value of the products made from such milk.

In support of the special price for milk used to make butter and NFDM, the witness for proponents testified that the M–W price, which is the price for Class III milk under these three orders, is not a good indicator of a market-clearing price. In proponents' opinion, the proposed product price formula would more properly reflect the price with such function. He testified that the production of cheese depends on the amount demanded by consumers while the production of butter and NFDM depends on the amount of milk that is not needed for fluid purposes or to make dairy products demanded by consumers.

MMI operates two butter/powder plants in connection with its supply function for these three markets. The plant at Orville, Ohio, is an Order 36 pool plant while the Goshen, Indiana, plant is not pooled. The cooperative receives milk at Goshen that is primarily associated with Order 49 but also receives producer milk that is diverted from Order 33 distributing plants.

To justify this pricing change in these three markets, MMI presented a table showing the receipts of milk at its Goshen and Orville Plants. There were wide fluctuations in the amount of milk received at such plants. Such receipts varied seasonally as well as on weekends and holidays.

While the table presented a detailed daily breakdown of the receipts at such plants, there was no information provided by proponents regarding how the milk received at such plants was utilized. In the absence of such specific use data, the total market information numbers must be relied upon to demonstrate the amount of skim milk used to make NFDM in these three markets.

Market data indicate that the amount of NFDM processed by handlers regulated under the three orders was not extensive. Order 33 handlers used no skim milk to make NFDM in 1990.

Record information shows that Indiana handlers used about 26 million pounds of milk and cream to produce butter and NFDM during 1990. Since Order 49 handlers used 24 million pounds of cream to produce butter, only 2 million pounds of skim milk could have been used to make NFDM.

The market data for Order 36 show that 132 million pounds of milk and cream were used to produce butter and NFDM during 1990. The butterfat content of the milk used to manufacture these two products averaged about 16 percent. They also show that 77 million pounds of skim milk were used to produce NFDM and 55 million pounds of cream were used to make butter. This is a ratio of less than 2 to 1. In a butter/powder operation where such products are being made from producer milk, the ratio would be almost 10 pounds of skim milk to each pound of cream.

The butterfat content of the market's producer milk in 1990 averaged 3.68 percent, while the butterfat content of the market's fluid milk products averaged 2.14 percent. The foregoing analysis indicates that Order 36 handlers processing butter in many instances were receiving separated cream (and no skim) that exceeded the fluid milk needs of distributing plants.

For the most part, there has been a decrease in NFDM processing coupled with an increase in cheese production in these three markets. In 1982, cheese processing by Order 33 handlers represented 5 percent of producer milk and NFDM processing reflected 19 percent of such milk deliveries. In 1990, cheese production accounted for 7 percent of producer milk and NFDM was zero. In 1982, cheese processing by Order 36 handlers represented 19 percent of producer milk and NFDM production accounted for 9 percent. In 1990, cheese production represented 35 percent while NFDM accounted for only 2 percent.

While 1990 cheese production by Order 49 handlers was lower than in 1982, NFDM processing is rather limited because the Indiana market is a deficit milk production area. For instance, Indiana is included in the East North Central region. While the region's average Class I utilization for 1990 was 33.9 percent, Order 49 averaged 60.2 percent. The Indiana Class I use that year was higher for each of the other seven markets except one included in that region. The Class I use percentages ranged from a low of 16 percent for the Chicago Regional market to 70 percent for the Louisville-Lexington-Evansville market. In the months when milk supplies are seasonally lower, milk from outside sources must be imported to fulfill the Class I demand of Indiana distributing plants. Consequently, there is normally very little milk which needs to be processed into the residual dairy products of butter and NFDM.

In addition to its two butter/powder plants, MMI operates a cheese plant at New Wilmington, Pennsylvania, and a Class II operation consisting primarily of condensed and condensed blends at New Bremen, Ohio. These plants are also available to dispose of the reserve milk supplies associated with these three markets. At the time of the hearing, even though cheese prices were more favorable than butter/powder prices, these plants were operating at only 70 to 80 percent of capacity. The

availability of such plants to process the reserve supplies of these three markets gives MMI the flexibility of shifting its excess milk supplies around among the plants in its system and thereby benefit from any gains it can achieve by so doing. Although transportation could be a limiting factor in maximizing the benefits it realizes from redirecting its supplies, the opportunity to do this certainly presents an advantage to the cooperative.

One additional change in marketing conditions relating to these three markets must not be overlooked. Beatrice Foods Company owned and operated the County Line Cheese plant located at Auburn, Indiana. In connection with the cheese plant, Beatrice was operating a reload facility located nearby at Shipshewana that qualified as a pool supply plant. Both plants are located in northeastern Indiana and they are about 50 miles east of Goshen and 150 miles north of Indianapolis. The supply plant was purchased recently by Hoosier. MMI hopes to become the marketing agent on the 15 to 18 million pounds of milk per month received at the supply plant in addition to the Grade B shippers associated with the cheese plant.

As a part of the purchase agreement, Hoosier agreed to close the cheese plant and not use the plant to manufacture any dairy product for three years. The sale terms agreed to by AMPI and MMI seem to indicate that the cooperatives have no concern about the capacity available to make cheese versus butter/powder in this 3-market area. In view of the foregoing, no action is taken in the three Ohio-Indiana markets.

Orders 97 (Memphis), 106 (Southwest Plains), 108 (Central Arkansas), 120 (Lubbock-Plainview, Texas), 126 (Texas), 132 (Texas Panhandle) and 138 (Rio Grande Valley) marketing areas. The special Class III–A price should not be provided for the 7 Southwest markets on the basis of this record. Orderly marketing can be preserved under these orders without providing this pricing change for skim milk that is used to make NFDM.

A witness from AMPI's Southern Region testified in support of this pricing change for the 7 Southwest markets. Such cooperative represents a majority of the milk pooled on each of these markets with the exception of the Southwest Plains market. In Southwest Plains, AMPI shares the market with Mid-America Dairymen, Inc. (Mid-Am), and these two cooperatives represent a majority of the milk on that market.

The AMPI witness endorsed the product price formula submitted on behalf of the 12 proponent cooperatives that requested the hearing. He testified that the pricing change should be made in the Southwest orders generally for the same reasons it was proposed for the other markets; i.e., to establish order prices for milk used to make butter and NFDM which more appropriately reflect the market value of such products.

In support of the proposal for the Southwest markets, AMPI presented data which showed the estimated impact of this proposal on the uniform prices under such orders. AMPI relied exclusively on this information to demonstrate the need to change the pricing for milk used to make butter and NFDM.

The Southern Region of AMPI operates in these 7 Southwest markets in much the same way that DI operates in the two Southeast regions. In disposing of its reserve milk supplies associated with these markets, AMPI operates five cheese plants in the region. They are located at Mountain View and Mansfield, Missouri; Hillsboro, Kansas, and Muenster and Stephenville, Texas. AMPI operates three butter/NFDM plants to serve such purposes. They are located at El Paso, Texas; and Oklahoma City and Tulsa, Oklahoma. In Sulphur Springs, Texas, AMPI operates a large specialty milk plant which produces butter, butter blends and condensed products plus a small amount of NFDM. During the months of heavy seasonal milk production the last two years, the cooperative used the dryers at the Stephenville, and Muenster cheese plants to make NFDM.

AMPI provides no information regarding the receipts and/or utilization of milk at such plants. The only information concerning receipts and utilization of milk in the record is the product totals for each market. Much of that data is not published because less than three handlers are involved.

Record data show that no NFDM was processed by handlers regulated under the Memphis order (Order 97), which provides for individual handler pooling. This type of pooling arrangement would not allow AMPI or any other handler to share with all of the market's dairy farmers any losses associated with manufacturing NFDM. Thus, no purpose would be served by making such a pricing change in Order 97 and no action is taken with respect to that market.

The notice for this proceeding indicated that proposed amendments to the Lubbock-Plainview, Texas order (Order 120), the Texas Panhandle order (Order 132) and the Rio Grande Valley order (Order 138) would be considered at the hearing. Effective December 1, 1991, these three orders were merged into a new single order which was designated as the "New Mexico-West Texas" marketing area. (Official notice is taken of the Department's final decision issued on August 14, 1991 (56 FR 42240) for such merged markets.

A paragraph from that decision is quoted herein because it provides appropriate insights into marketing conditions under the merged order as they relate to the pricing changes proposed herein.

"Associated Milk Producers, Inc. (AMPI) proposed the marketing area merger and expansion that is adopted herein. AMPI operates a manufacturing plant at El Paso that is pooled under Order 138 and represents virtually all of the dairy farmers who would be producers under the merged order. AMPI also supplies all of the plants operating in the area that would be regulated under the merged order."

Since AMPI represents almost all of the milk pooled under the merged order, the cooperative would be unable to share its gains or losses from processing NFDM with other dairy farmers. No purpose would be served by providing the special Class III–A pricing for milk used to make NFDM in such cases. No action is needed for the merged market.

Additionally, information in the record shows that about 164 million pounds of milk was disposed of at butter/powder plants during 1990 under the three individual orders which were merged on December 1, 1991. It also shows that AMPI hopes to open a new cheese plant at Roswell, New Mexico, by May 1, 1992. That plant is expected to be able to process about 50 million pounds of milk per month or 600 million pounds per year. This additional capacity to make cheese in the Southwest should give AMPI the necessary flexibility to move its milk supplies between cheese and butter/powder manufacturing when market prices favor one over the other.

Similarly, AMPI producers supply all of the milk priced under the Central Arkansas order (Order 108). No NFDM was processed by Order 108 handlers in 1990. For the reasons previously indicated, no action is taken in 5 of the 7 Southwest markets which were noticed for hearing and are either totally supplied by AMPI or so nearly so that the benefits accruing to the proponent cooperative would be insignificant if the proposed pricing change were adopted.

Three cooperative associations provide milk for the Texas market. AMPI represents about 70 percent of the milk pooled under that order. Mid-Am and Southern Milk Sales, Inc. (SMS) have producers whose milk is pooled in the Texas market also. These two

producer groups did not take a position on the Class III–A proposal for the Texas market.

Market data show that Order 126 handlers used 131 million pounds of skim milk to make NFDM during 1990. This represented only about 2 percent of the market's producer milk deliveries in that year. They also show that Order 126 handlers used 9 times more milk to make cheese than they did to make NFDM.

Also, over the past few years Texas handlers have shifted their milk manufacturing operations from NFDM to cheese. For instance, in 1982 NFDM processing by Texas handlers represented almost 5 percent of producer milk compared with 2 percent in 1990. On the other hand, cheese manufacturing by Texas handlers represented 13 percent of the market's producer deliveries in 1982 compared with 20 percent in 1990.

Information in the record shows that during 1990 about 557 million pounds of milk and cream were disposed of by Texas handlers to make butter and powder or transferred or diverted to plants processing such products. Since Texas handlers only accounted for about 173 million pounds of that manufacturing, a significant portion of the Texas market's reserve milk supplies was processed by other than Texas handlers. Although the record is not specific in this regard, a considerable portion of that milk most likely was processed at the Oklahoma butter/powder plants of AMPI. The cooperative was planning to replace one of its Oklahoma plants with a new butter/powder facility at Winsboro, Texas, to eliminate hauling its excess milk supplies out of Texas in the future. Such new plant will be able to process about 50 million pounds of milk per month. This plant was expected to be operational by the end of 1991.

As previously indicated, AMPI expects to open a new cheese facility in Roswell, New Mexico, by May of 1992. This plant also has a 50-million pound per-month capacity. When these two new AMPI plants are operational, it will give the cooperative 100 million pounds of additional manufacturing capacity each month. The butter/powder plant is located in east Texas and the cheese plant will be located in eastern New Mexico. These new facilities will give AMPI considerably more flexibility in directing its regional milk supplies to cheese plants when the pricing is tilted in favor of cheese and to butter/powder plants when the pricing favors butter/NFDM processing.

Also, the current Texas order provides a credit for handlers to move milk to distant manufacturing plants for processing. Thus, when order pricing favors cheese over butter/powder processing Texas handlers are able to recoup at least part of the transportation costs to haul the excess milk to a cheese plant. It appears that AMPI and other handlers have adequate opportunity to minimize any adverse impacts resulting from the disparities between M–W prices and market values for butter and powder in connection with the Texas market.

AMPI represents about 40 percent of the milk pooled under the Southwest Plains order. The market's other cooperative, Mid-Am, which supplies more milk than AMPI for Order 106, took no position on the Class III–A proposal for this market. The two associations supply more than three-fourths of the market's milk and operate under a common marketing agreement whereby the cooperatives function in concert in supplying the milk needs of handlers regulated under the Southwest Plains order.

During 1990, Order 106 handlers used 38 percent more milk to make cheese than they did in 1987. Cheese production by such handlers has increased almost seven times since 1982. In that year, such processing represented 12 percent of producer deliveries compared with 31 percent for 1990.

As previously indicated, AMPI operates two cheese plants in Southwest Missouri. One is located at Mansfield and the other is located at Mountain View. Mid-Am also operates two cheese plants in that area. One is situated at Monett and the other is located at Mount Vernon.

The major milk production area for the Southwest Plains market is in Southwest Missouri. During 1988 more than 39 percent of the milk pooled under Order 106 originated in that area. (Official notice is taken of Sources of Milk for Federal Order Markets by State and County Issued in May 1990 by USDA–AMS.) The production area surrounds the four cheese plants operated by AMPI and Mid-Am. Milk used by Order 106 handlers to make cheese has been increasing each year and there is nothing in this record to indicate that there is insufficient capacity for this trend to continue in the future.

There are three drying plants in the Order 106 marketing area. AMPI has two drying plants in Oklahoma at Oklahoma City and Tulsa and Mid-Am has a plant at Springfield, Missouri. Since the individual market data for skim milk powder are restricted for Order 106, because less than three handlers are involved in such processing, the best record data available for analyzing marketing conditions are the processing numbers for the West South Central region which includes most of the orders that AMPI proposed to be amended. Since a considerable portion of the excess milk associated with these markets is transferred and/or diverted to manufacturing plants that are regulated under other orders, use of the monthly regional numbers will avoid the possibility of counting the milk as used to produce twice (the order from which the milk was transferred or diverted as well as in the order where the milk was actually processed).

The Southwest region is similar to the Southeast in that a considerable portion of the area's milk supplies is used to meet the fluid needs of distributing plants. Other than for the two Southeast regions, the West South Central area had the next highest Class I use during 1990 at 57 percent. This compares with the following Class I uses in the other regions; North Atlantic, 49 percent; Mountain, 47 percent; Pacific, 38 percent; East North Central, 35 percent; and West North Central, 25 percent.

On a regional basis, during 1990 Southwest order handlers used only 3 percent of their producer milk to make NFDM whereas they used 21 percent of such deliveries to make cheese. In some months, almost no milk was used by Southwest handlers to make NFDM. Such processing was especially light in the months of August-November. As indicated in prior findings, these are the months when the disparity between M–W prices and market values for butter/powder are normally greatest.

Based on the foregoing marketing circumstances in the Southwest, it is difficult to conclude that AMPI's NFDM processing in the future will cause the cooperative severe economic problems. Accordingly, no action is taken in these 7 markets.

Chicago Regional (Order 30) marketing area. The special Class III–A price should not be provided for the Chicago market. The reasons for such conclusion are set forth in the following findings.

The pricing change advanced by the 12 proponent cooperatives for 27 Federal order markets was supported by Wisconsin Dairies for the Chicago market. The proponent cooperative represents only about 10 percent of the dairy farmers and the milk pooled under Order 30.

The proposed amendments for the Chicago order were opposed by five cooperative associations. They were Mid-America Dairymen Inc.; National

Farmers Organization; Alto Dairy Cooperative; Swiss Valley Farms; and Farmers Union Milk Marketing Cooperative, Inc. Hence, the Class III–A proposal lacks widespread support among producers supplying the Chicago market.

In support of the Class III–A proposal, the witness from Wisconsin Dairies testified that the estimated impact on the Order 30 blend prices resulting from the proposed amendments generally are overstated. He claimed that this happens because of the procedure used by the market administrator to establish the classification of milk which is transferred or diverted from the cooperative's pool supply plants to nonpool plants. At the time handlers file their reports of receipts and utilization in connection with the computation of uniform prices, the classification of such milk is unknown. Since the nonpool plants are not required to file reports, the market administrator must rely on percentages developed on the basis of an audit conducted to verify the classified use of pooled milk at such plants in an earlier month.

To support this conclusion, the witness for the proponent cooperative compared the actual amounts of NFDM produced at its plants at Reedsburg and Sauk City, Wisconsin, with the amounts resulting from use of the percentages. In 1990, about 49 percent of the skim milk reported to have been used to make NFDM at the handler's Reedsburg plant was actually so used. At Sauk City only about 41 percent of the milk reported as used to make NFDM was so disposed of for such purposes. For the first six months of 1991, the percentages were 32 and 27 percent, respectively.

For the most part, the opposing cooperatives objected to the adoption of the proposed pricing formula under any order. However, Mid-Am specifically testified in opposition to the change for the Chicago market. Mid-Am's witness stated that there is a difference in returns from butter/powder sales versus the M–W price. He claimed that this disparity is not new. The same situation existed in the early 70's. In response to that signal, Mid-Am invested large amounts of its members' money converting its butter/powder manufacturing operations to cheese. He contended that it would be unfair to ask Mid-Am's producers to take lower blend prices now after the cooperative spent its money to convert its manufacturing operations to cheese.

The Mid-Am witness testified that there is sufficient cheese capacity available to accommodate the Order 30 reserve milk supplies that are used to produce butter and NFDM. To demonstrate this fact, the witness introduced an exhibit comparing the unused cheese plant capacity in Wisconsin with the amount of Order 30 milk used to make butter/NFDM. He estimated that there was almost six times as much capacity available at Wisconsin cheese plants in 1990 as there was Order 30 milk used to make butter/powder.

As Mid-Am and the other opponents contended, Chicago handlers rely heavily on cheese processing to dispose of the market's reserve milk supplies. Order 30 handlers used 33 times as much milk to produce cheese as they did to make NFDM during 1990. For example, Order 30 handlers used what amounted to 75 percent of the market's producer milk to make cheese whereas only 2 percent of such deliveries were represented by NFDM processing. Similarly, for the fiscal year ended March 31, 1991, Wisconsin Dairies used about 78 percent of its pooled milk to make cheese and less than 4 percent to produce NFDM.

In 1982, cheese processing by Order 30 handlers reflected 65 percent of milk deliveries by dairy farmers and NFDM processing represented 6 percent. In 1990, Order 30 handlers used 54 percent more milk to make cheese than they did in 1982. On the other hand, they used 44 percent less milk in 1990 than they did in 1982 to make NFDM. These numbers indicate that in the last 10 years there has been a dramatic shift from NFDM processing by Order 30 handlers to cheese production.

Class I use by Order 30 handlers averaged only 16 percent in 1990. Thus, there is not much difference between the order's blend prices and the M–W price, which is the market's Class III price. For example, the market's blend prices averaged only about 53 cents higher than the M–W for 1990. In the outlying areas where proponent cooperative has its supply plants at Reedsburg and Sauk City, Wisconsin, the difference between the blend price at those plant locations and the M–W price is less than the minus location adjustment applicable at such plants in some months. In such cases, the cooperative could elect not to pool the plant, which the handler did for its Reedsburg plant in June 1990. This procedure gives Wisconsin Dairies an opportunity to avoid accounting to the pool for Class III milk at the cheese-driven M–W price and receiving lower returns from the marketplace from the sales of the butter and NFDM made from such milk.

Additional Opposing Arguments. At the hearing, Kraft contended that during 1991 Agri-Mark took contradictory positions on the matter of pricing milk used to make butter and powder. At a New York State hearing in May 1991, Agri-Mark supported a proposal to increase the price of milk used to make such products and now was asking the Secretary to lower the price of milk to make butter/NFDM under Federal Orders 1 and 2, counsel argued.

Agri-Mark responded to these accusations by testifying that the main objective of the New York State proposal on behalf of 20,000 dairy farmers was to raise fluid milk prices statewide. The cooperative's representative stated that Agri-Mark attempted to exempt milk used to make surplus dairy products from the price increase but was not successful. Rather than jeopardize the entire proposal, Agri-Mark agreed to higher prices for milk used to make butter and powder which is not sold to the government. The record testimony on this matter suggests that the primary thrust of the New York State proposal concerned price increases for Class I milk. This hearing involves the pricing of milk which is excess to the needs of handlers. The cooperative's position is understandable in view of the circumstances.

Dietrich's Milk Products, Inc., opposed the proposal to establish a special class and price for nonfat dry milk because whole milk powder would not be classified and priced similarly. A witness for the proprietary handler contended that all types of dried milk products should be classified and priced alike. The handler's witness testified that in the past whole milk powder and nonfat dry milk have been consistently classified and priced the same under Federal orders. Changing that relationship by pricing whole milk powder at the M–W price level while pricing nonfat dry milk on the basis of a product formula will seriously disadvantage manufacturers such as Dietrich who process whole milk powder, he claimed.

In an attempt to maintain the two dry milk products in the same class and subject to the same price, at the hearing Dietrich asked that the cooperatives' proposal be modified to include whole milk powder in the new Class III–A. Such modification was ruled to be outside the scope of the hearing by the Administrative Law Judge. Since Dietrich did not file a brief in this proceeding no further action on this issue is needed in this decision.

As indicated, there was considerable opposition to the adoption of this proposal for any market. Many of the arguments raised by the opposition were recognized as a basis for limiting the

applicability of the Class III–A price formula adopted herein.

The two most prevalent objections to the proposal, which were aired by most all of the opponents, were: Adoption of the proposal would lower blend prices; and the disparity between order prices for Class III milk and the value of the butter/powder made from such milk is not a new situation. The matter of the impact on producer pay prices was addressed in the three markets where the modified Class III–A price will apply.

The contention of opponents that these disparities have existed in the past is true. However, it is the magnitude of the fluctuations in the product prices in recent years which requires immediate remedial action. The decision highlights the wide range of market prices for powder and cheese during the past four years. Such fluctuations were not prevalent in prior years.

Another comment raised by opponents claimed that since butter, NFDM and cheese are marketed nationally, the milk used to make such products should be in the same class and priced uniformly. This decision finds that the net returns from the sales of butter and powder differ significantly from the returns from sales of cheese. If the returns from the sales of these three major Class III dairy products were in reasonable balance in terms of value, then pricing of Class III milk could remain uniformly priced. Forcing cooperatives performing market-clearing functions to account to the pool at the cheese-driven M–W price for milk they are using to manufacture butter and powder, places the dairy farmer organizations in dire economic situations in some months. In markets where handlers are engaged in extensive powder manufacturing to clear the markets' excess milk supplies and there is little or no opportunity for such persons to divert such milk to cheese, the orders must be amended to recognize the value of milk used to produce nonfat dry milk both when it is higher and when it is lower than the Class III price.

Opponents also argued that this hearing should not have been called because the subject matter of this proceeding should be part of a larger issue which has become known as the "Reform of the Minnesota-Wisconsin Price Series". The entire issue of surplus milk pricing under Federal orders may be further explored next year at the national hearing. However, in view of the wide disparities in the net returns from butter-powder versus cheese, affected handlers should not be expected to wait for corrective action until the completion of a hearing, which has not been scheduled.

Several opponents argued that it is inappropriate to consider changes in Department policy on an emergency basis. Such argument is contrary to the Department's rules of practice and procedure, which clearly recognize the need for emergency rulemaking methods.

Cheesemakers argued that they are facing the same situations as butter/powder manufacturers. This contention cannot be substantiated from the information in this record. The decision estimates the net returns from cheese and butter/powder processing and compares such returns with M–W prices during the last four years. The data show that cheese values have exceeded M–W prices while butter/powder values generally have been below such prices. They also indicate that the disparity has been severe for butter/powder processors in the last two years.

Opponents claimed that the losses from butter/powder processing experienced by the proponent cooperatives represent costs that are associated with balancing the fluid market. They contended that the cooperatives should recover such shortfalls by increasing service charges on fluid milk plants. This proposal was not advanced by proponents as a method to recover the cost of balancing the fluid market but rather as a pricing problem under the orders. This decision relates the order price for milk used to make NFDM with the prices paid for such product in the marketplace. This is accomplished by establishing the Class III–A price directly from the market price for NFDM.

Opponents also argued that the losses claimed by proponents were overstated because revenues from closely related operations at the butter/powder plants were not considered. Several interested parties contended that gains from the following sources: Service charges collected from fluid handlers; by-product cream sales; and condensed operations; should be included in the cooperative's overall profit and loss picture. They insisted that the Secretary should analyze a handler's entire operation (offset any gains against any losses) in determining whether such person had incurred a loss. The change adopted herein is not being made because of the overall financial position of the proponent cooperatives. It is made because the order price for milk is not adequately reflecting the value of the products made from such milk. Even those who opposed the proposal conceptually agreed with that objective.

Several hearing participants argued that adoption of this proposal would damage the market for condensed milk because the manufacturers of Class II products (soft dairy products such as ice cream, etc.) are likely to substitute dry ingredients for condensed milk if this change is made. A very important consideration of soft dairy products manufacturers is maintaining the quality of their products. This is usually accomplished by developing standard product formulas. Once established, processors are reluctant to change the formula or the ingredients used to manufacture such products. The formula provided herein for NFDM will not assure processors of order prices for NFDM which are below the Class II milk price. Rather, it ties the order prices for NFDM directly to the marketplace values of such product. They will move up and down together. The product formula is not expected to provide pricing advantages for NFDM, relative to Class II milk prices of such magnitude or duration that they will encourage handlers to shift to dry ingredients in making Class II products.

Implementation of the Amendments. For the purpose of implementing these amendments, the market administrator will continue to follow the current provisions of the orders to classify producer milk. In addition, the market administrator shall determine the quantity of such producer milk to be priced in Class III–A by prorating receipts from various sources to Class III–A use on the basis of the quantity of receipts of bulk fluid milk products allocated to Class III use at the plant.

2. The Need for Emergency Action With Respect to Issue 1

The hearing notice indicated that evidence would be taken at the hearing to determine whether emergency marketing conditions exist to such an extent that omission of a recommended decision and the opportunity to file exceptions thereto under the rules of practice and procedure is warranted.

All of the proponents asked that this matter be dealt with expeditiously by the Department. They wanted the amendments resulting from the hearing to be completed as soon as possible.

On the other hand, the opponents considered this issue to be too important to be dealt with on an emergency basis, without the opportunity to comment on the Department's findings and conclusions.

The procedure followed herein whereby a tentative decision is being issued accommodates the wishes of both the proponents and the opponents

of the proposal. This method will enable the amendments to become effective on an interim basis if they are favored by producers supplying the three markets. In addition, it provides an opportunity for interested parties to file their comments regarding the Department's findings and conclusions before a final decision is issued.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when each of the aforesaid orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to each of the aforesaid interim marketing agreements and orders:

(a) The interim marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the interim marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The interim marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Interim Marketing Agreement and Interim Order Amending the Orders

Annexed hereto and made a part hereof are two documents, an Interim Marketing Agreement regulating the handling of milk, and an Interim Order amending the orders regulating the handling of milk in the aforesaid marketing areas, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire tentative decision and the interim order and the interim marketing agreement annexed hereto be published in the **Federal Register.**

Determination of Producer Approval and Representative Period

September 1991 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the orders, as amended and as hereby proposed to be amended, regulating the handling of milk in the New England, Middle Atlantic and Pacific Northwest marketing areas is approved or favored by producers, as defined under the terms of each of the orders (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the aforesaid marketing areas.

List of Subjects in 7 CFR Parts 1001, 1004, 1124

Milk.

Signed at Washington, DC, on: December 10, 1991.

Jo Ann R. Smith,

Assistant Secretary, Marketing and Inspection Services.

Interim Order Amending the Orders Regulating the Handling of Milk in Certain Specified Marketing Areas

This interim order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings. A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the aforesaid marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing areas; and the minimum prices specified in the orders as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders as hereby amended regulate the handling of milk in the same manner as, and are applicable only to persons in the respective classes of industrial or commercial activity specified in, marketing agreements upon which a hearing has been held.

Order Relative to Handling

It is therefore ordered that on and after the effective date hereof, the handling of milk in the New England, Middle Atlantic and Pacific Northwest marketing areas shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The authority citation for 7 CFR parts 1001, 1004 and 1124 continues to read as follows:

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

PART 1001—MILK IN THE NEW ENGLAND MARKETING AREA

1. Section 1001.40 is amended by revising paragraph (c)(1)(iii) and adding a new paragraph (d) to read as follows:

§ 1001.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk.

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1001.43 is amended by adding a new paragraph (f) to read as folows:

§ 1001.43 General classification rules.

* * * * *

(f) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1001.50 is amended by adding a new paragraph (d) to read as follows:

§ 1001.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Central States Extra Grade nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times 9, plus the butterfat differential times 35 and rounded to the nearest cent, and subject to the adjustment set forth in paragraph (c) of this section for the applicable month.

4. Section 1001.54 is revised to read as follows:

§ 1001.54 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1001.50(b).

PART 1004—MILK IN MIDDLE ATLANTIC MARKETING AREA

1. Section 1004.40 is amended by revising paragraph (c)(1)(iii) and adding a new paragraph (d) to read as follows:

§ 1004.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk.

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1004.43 is amended by adding a new paragraph (d) to read as follows:

§ 1004.43 General classification rules.

* * * * *

(d) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III use at the plant.

3. Section 1004.50 is amended by revising the section heading and by adding a new paragraph (g) to read as follows:

§ 1004.50 Class and component prices.

* * * * *

(g) *Class III–A price.* The Class III–A price for the month shall be the average Central States Extra Grade nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times 9, plus the butterfat differential value per hundredweight of 3.5 percent milk and rounded to the nearest cent, and subject to the adjustments set forth in paragraph (c) of this section for the applicable month.

4. Section 1004.53 is amended by revising paragraph (a)(2) to read as follows:

§ 1004.53 Announcement of class prices and component prices.

* * * * *

(a) * * *

(2) The Class III and Class III–A prices for the preceding month; and

* * * * *

5. Section 1004.60 is amended by adding a new paragraph (k) to read as follows:

§ 1004.60 Handler's value of milk for computing uniform prices.

* * * * *

(k) Effective January 1, 1992, for producer milk in Class III–A, add or subtract as appropriate an amount per hundredweight that the Class III–A price is more or less, respectively, than the Class III price.

6. Amended § 1004.71(b)(2) by changing the reference "§ 1004.62" to "§ 1004.61".

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

1. Section 1124.40 is amended by revising paragraph (c)(1)(iii) and adding a new paragraph (d) to read as follows:

§ 1124.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk.

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1124.43 is amended by adding a new paragraph (e) to read as follows:

§ 1124.43 General classification rules.

* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III use at the plant.

3. Section 1124.50 is amended by revising paragraph (c) and adding a new paragraph (d) to read as follows:

§ 1124.50 Class prices.

* * * * *

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

(d) *Class III–A price.* The Class III–A price for the month shall be the average Western Grade A nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times 9, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1124.53 is revised to read as follows:

§ 1124.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1124.50(b).

Interim Marketing Agreement Regulating the Handling of Milk in Certain Marketing Areas

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ [1] to , all

[1] First and last sections of orders.

inclusive, of the order regulating the handling of milk in the New England and certain other marketing areas (7 CFR part [2]) which is annexed hereto; and

II. The following provisions:

§ [3] Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he handled during the month of September 1991, hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

§ [3] Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with § 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

(Signature)

(Seal)

By (Name)

(Title)

(Address)

Attest

[FR Doc. 91-29999 Filed 12-18-91; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1139
[DA-91-019]

Milk in the Great Basin Marketing Area; Revision of Allowable Diversion Limitation Percentages for Cooperative Association Handlers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Revision of rule.

SUMMARY: This action increases the allowable percentage of a cooperative association's milk supply that may be moved directly from farms to manufacturing plants. This change was requested by Magic Valley Quality Milk Producers, Inc. (MVQMP), a cooperative that represents some producers supplying milk for the Great Basin marketing area. As a result of this action, milk regularly associated with the Great Basin order may be pooled without MVQMP having to incur uneconomic costs for hauling and handling the milk.

EFFECTIVE DATE: December 19, 1991.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, 202-720-4829.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Notice of Proposed Revision of Allowable Diversion Limitation Percentages for Cooperative Association Handlers: Issued November 5, 1991; published November 8, 1991 (56 FR 57298).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. Such action will lessen the regulatory impact of the order on certain milk handlers and will tend to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

This revision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the provisions of § 1139.13(d)(4) of the Great Basin order.

Notice of proposed rulemaking was published in the **Federal Register** (56 FR 57298) concerning the proposed revision of allowable diversion limitation percentages for cooperative association handlers. The public was afforded the opportunity to comment on the proposed notice by submitting written data, views, and arguments by November 23, 1991.

Statement of Consideration

Magic Valley Quality Milk Producers, Inc (MVQMP), requested that the percentages of milk that may be diverted by a cooperative association pursuant to § 1139.13(d)(2) of the Great Basin order be increased. Presently, a cooperative association may divert 60 percent of its milk supply in April through August and 50 percent in other months. MVQMP requested that these percentages be increased to 70 percent for April through August and 60 percent in the remaining months.

Within the Great Basin order, § 1139.13(d)(4) provides that the Director may increase or decrease the diversion limitations by up to 10 percentage points if necessary to obtain needed shipments or to prevent uneconomic shipments. The diversion allowances for handlers other than cooperative associations were relaxed under this provision on June 1, 1989.

One letter in opposition to the proposed revision of diversion limitations was received from Western Dairymen Cooperative, Inc. (WDCI). WDCI opposed the proposal on the basis that approval of the request would enable MCQMP to increase both the quantity of producer milk and the quantity of Class III utilization under the Great Basin order. WDCI asserts that the resulting reduction in the uniform price will cause economic distress for its membership. WDCI further maintains that the proposed revision is not necessary to obtain needed supplies or to prevent uneconomic shipments. No other views were received concerning the proposal.

MVQMP is a qualified cooperative association. Until recently, it operated a pool manufacturing plant, which allowed the cooperative to pool all or nearly all of its milk. MVQMP no longer operates the plant, and the diversion limits are not adequate to allow continued pooling of the milk that previously was pooled.

In response to the opposition by WDCI, if the change adversely affects the uniform price, it is because MVQMP has been unable to pool some of its milk for only a few months. If all or most of MVQMP's milk had been pooled in those months, as it was in prior months, then any impact on the uniform price would likely be minimal.

WDCI's letter further states that the milk of MVQMP is not needed to provide an adequate supply of milk for the market, noting that Class I utilization of producer milk for a recent month was only 44.5 percent.

Whether MVQMP's milk was needed or not, the Order in the past has accommodated pooling the milk. The only circumstance that has changed, so far as we can ascertain, is that the cooperative ceased operation of a pool manufacturing plant. Thus, the only other means available for MVQMP to pool the milk would be to first ship it to a pool plant and then transfer it to a nonpool plant for manufacturing. It is a safe assumption, we believe, that to pool the milk in this manner would involve

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[2] Appropriate Part Number.

[3] Next consecutive Section Number.

costs incurred solely to maintain pool status. Given the history of pool status for the milk involved, such costs surely would result from uneconomic shipments and handling of milk. Moreover, whether MVQMP's milk moves directly from the farm to a nonpool plant or from the farm to a pool plant and is then transferred to a nonpool plant will have little effect on the uniform price, because the milk would be Class III in any case.

After reviewing all the information available, we can find no basis to conclude that MVQMP will pool any more milk than what had previously been associated with the Great Basin order.

Therefore good cause exists for increasing the percentages of milk that may be diverted by a cooperative association in this market. This will prevent the uneconomic shipments of milk for the purpose of fulfilling current limitation.

After consideration of all relevant material, including the proposal set forth in the aforesaid notice, and other available information, it is hereby found and determined that the diversion limitation percentage set forth in § 1139.13(d)(2) should be increased from the present 60 percent in the months of April through August and 50 percent in other months, to 70 percent in the months of April through August and 60 percent in other months.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(a) This revision is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area;

(b) This revision does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of the proposed revision was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning this revision. One letter in opposition was filed.

Therefore, good cause exists for making this revision effective upon publication of this notice in the Federal Register.

List of Subjects in 7 CFR Part 1139

Milk marketing orders.

It is therefore ordered, that part 1139 of title 7 of the CFR is amended as follows:

PART 1139—MILK IN THE GREAT BASIN MARKETING AREA

1. The authority for 7 CFR part 1139 continues to read as follows:

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

§ 1139.13 [Amended]

2. In § 1139.13(d)(2), the second sentence is amended by revising the words "60 percent in the months of April through August and 50 percent in other months" to read "70 percent in the months of April through August and 60 percent in other months".

Signed at Washington, DC, on: December 12, 1991.

Richard M. McKee,

Acting Director, Dairy Division.

[FR Doc. 91–30138 Filed 12–18–91; 8:45 am]

BILLING CODE 3410–02–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 101

Administration

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) is hereby amending its delegation of authority to grant general loan approval authority to various field offices for the purpose of simplication and clarification, for direct and guaranteed business loans, for loans to State and Local Development Companies, for guaranties of section 503 or section 504 debentures issued by certified development companies, and for guaranteeing sureties against a portion of the losses resulting from the breach of bid, payment, or performance bonds on contracts. The amendment further provides that the SBA, through notice to the public published in the Federal Register, will increase, decrease, or establish the authority of individual SBA field employees on a case by case basis.

EFFECTIVE DATE: This rule is effective December 19, 1991.

FOR FURTHER INFORMATION CONTACT: Charles R. Hertzberg, Assistant Administrator for Financial Assistance, (202) 205–6490.

SUPPLEMENTARY INFORMATION: SBA sets forth the delegation of authority, in 13 CFR 101.3–2, for direct and guaranty business loan approval, for the approval of loans to State and Local Development Companies, for the approval of guaranties of section 503 or section 504 debentures issued by certified development companies, and for approval of guaranties of sureties against a portion of the losses resulting from the breach of bid, payment, or performance bonds on contracts by officials in SBA regional, district, or branch offices. SBA is amending this delegation of authority for the purpose of simplication and clarification.

This action delineates the standard delegation of direct and immediate participation business loan approval authority by SBA officials, under section 7(a) of the Small Business Act (15 U.S.C. 636(a)), except loans made pursuant to section 7(a)(13), at $350,000 for a Regional Administrator, Deputy Regional Administrator, Assistant Regional Administrator/Finance & Investment (F&I), District Director, Deputy District Director, Assistant District Director/F&I, and Chief, Financing, District Office (D/O). The standard delegation of authority for a Supervisory Loan Specialist, Financing, D/O and Branch Manager is set at $250,000. In this final rule, SBA reserves the right to publish, by notice in the Federal Register, the level of direct or immediate participation loan approval authority for SBA employees in regional, district, or branch offices, based on their education, training, or experience.

The same procedure is used in this final rule to state the delegation of 7(a) guaranty loan approval authority of SBA officers in the regional, district, and branch offices. The standard delegation of guaranty loan approval authority for a Regional Administrator, Deputy Regional Administrator, Assistant Regional Administrator/F&I, District Director, Deputy District Director, Assistant District Director/F&I, and Chief, Financing, D/O is $750,000. The standard delegation of loan approval authority for a Supervisory Loan Specialist, Financing, D/O and Branch Manager is $250,000. SBA reserves the right to publish, by notice in the Federal Register, the level of 7(a) guaranty loan approval authority for SBA employees in regional, district, or branch offices, based on their education, training, or experience.

The above described procedure will be used for amending the delegation of authority for SBA's share of projects to be undertaken by State and Local Development Companies, as well. A Regional Administrator, under this final rule, has unlimited loan approval authority for loans to State Development Companies. The standard delegation of loan approval authority, for loans to State Development Companies, for a Deputy Regional Administrator, Assistant Regional Administrator/F&I,

District Director, Deputy District Director, Assistant District Director for F&I, and Chief, Financing, D/O is $750,000. SBA reserves the right to publish, by notice in the **Federal Register**, the level of loan approval authority, for loans to State Development Companies, for individual SBA employees in regional, district, or branch offices based on their education, training, or experience.

Under this final rule, the standard delegation of loan approval authority for a Regional Administrator, with regard to loans to Local Development Companies, is $1,000,000, with unlimited project cost. The standard delegation of loan approval authority, for loans to Local Development Companies, for an Assistant Regional Administrator/F&I, District Director, Deputy District Director, and Assistant District Director/F&I is $1,000,000, with a project cost not to exceed $2,500,000. The standard delegation of loan approval authority, for loans to Local Development Companies, for a Branch Manager is $750,000, with a project cost not to exceed $2,500,000. The standard delegation of loan approval authority, for loans to Local Development Companies, for a Chief, Financing, D/O is $1,000,000, with a project cost not to exceed $1,000,000. SBA reserves the right to publish, by notice in the **Federal Register**, the level of loan approval authority, for loans to Local Development Companies, for SBA employees in regional, district, or branch offices, based on their education, training or experience.

The procedure delineated above will also be used to amend the delegation of authority for SBA officials in regional, district, or branch offices to approve or decline guarantees of section 503 or section 504 debentures issued by certified development companies. The standard delegation of approval authority for a Regional Administrator, for guarantees of section 503 or section 504 debentures issued by certified development companies, is $1,000,000, with unlimited project cost. The standard delegation of approval authority, for guarantees of section 503 or section 504 of debentures issued by certified development companies, for an Assistant Regional Administrator/F&I, District Director, Deputy District Director, Assistant District Director/F&I is $1,000,000, with a project cost not to exceed $3,000,000. The standard delegation of approval authority for a Branch Manager, with regard to guarantees of section 503 or section 504 debentures issued by certified development companies, is $750,000, with a project cost not to exceed $3,000,000. The standard delegation of approval authority for a Chief, Financing, D/O, for guaranties of section 503 or section 504 debentures issued by certified development companies, is $750,000, with a project cost not to exceed $1,500,000. The standard delegation of approval authority for an Assistant Branch Manager/F&I, for guaranties of section 503 or 504 debentures issued by certified development companies, is $600,000, with a project cost not to exceed $1,500,000. In this final rule, SBA reserves the right to publish, by notice in the **Federal Register**, the level of guaranty approval authority in this area for SBA employees in regional, district, or branch offices, based on their education, training, or experience.

The same procedure will be used to establish the delegation of authority for SBA employees in regional, district, or branch offices to guarantee sureties against a portion of the losses resulting from the breach of bid, payment, or performance bonds on contracts. The standard delegation of authority for a Regional Administrator and a Deputy Regional Administrator, to guarantee sureties against a portion of the losses resulting from the breach of bid, payment, or performance bonds on contracts, is $1,250,000. The standard delegation, to guarantee sureties against a portion of the losses resulting from the breach of bid, payment, or performance bonds on contracts, for a Senior Surety Bond Guarantee Specialist and a Surety Bond Officer is $500,000. SBA reserves the right to publish, by notice in the **Federal Register**, the level of guaranty approval authority in this area for SBA employees in regional, district, or branch offices, based on their education, training, or experience.

Because this final rule governs matters of agency organization, management and personnel and makes no substantive change to the current regulation, SBA is not required to determine if these changes constitute a major rule for purposes of Executive Order 12291, to determine if they have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to do a Federalism assessment pursuant to Executive Order 12612. Finally, SBA certifies that these changes will not impose an annual recordkeeping or reporting requirement on 10 or more persons under the Paperwork Reduction Act (44 U.S.C. ch. 35).

SBA is publishing this regulation governing agency organization, procedure and practice as a final rule without opportunity for public comment pursuant to 5 U.S.C. 553(b)(A).

List of Subjects in 13 CFR Part 101

Administrative practice and procedure,
Authority delegations (Government Agencies),
Investigations,
Organization and functions (Government Agencies),
Reporting and recordkeeping requirements.

For the reasons set out in the preamble, part 101 of title 13, Code of Federal Regulations is amended as follows:

PART 101—ADMINISTRATION

1. The authority citation for part 101 continues to read as follows:

Authority: Secs. 4 and 5, Pub. L. 85–536, 72 Stat. 384 and 385 (15 U.S.C. 633 and 634, as amended); sec. 308, Pub. L. 85–699, 72 Stat. 694 (15 U.S.C. 687, as amended); sec. 5(b)(11), Pub. 93–386 (Aug. 23, 1974); and 5 U.S.C. 552.

2. Section 101.3–2 is amended by revising parts I and III to read as follows:

§ 101.3–2 Delegations of authority to conduct program activities in field offices.

* * * * *

Part I—Financing Program

Section A—Loan Approval Authority

1. Business Loans (Small Business Act) (SBAct).

a. To approve or decline direct and immediate participation section 7(a) business loans (except loans made pursuant to section 7(a)(13)) not exceeding the following amounts (SBA share):

	Approval ($)	Decline ($)
(1) Regional Administrator	350,000	350,000
(2) Deputy Regional Administrator	350,000	350,000
(3) Assistant Regional Administrator/F&I	350,000	350,000
(4) District Director	350,000	350,000
(5) Deputy District Director	350,000	350,000
(6) Assistant District Director	350,000	350,000
(7) Chief, Financing, D/O	350,000	350,000
(8) Supervisory Loan Specialist, Financing, D/O	250,000	350,000
(9) Branch Manager	250,000	350,000

SBA may, as it deems appropriate, increase, decrease, or set the level of authority of an individual SBA employee of a regional, district, or branch office, based on education, training, or experience, by publishing a notice, in

the **Federal Register**, of any such delegation.

b. *Guaranty loans.* 7(a) business loans (except loans made pursuant to sections 7(a)(12), 7(a)(13), and 7(a)(16)):

	Approve ($)	Decline ($)
(1) Regional Administrator	750,000	750,000
(2) Deputy Regional Administrator	750,000	750,000
(3) Assistant Regional Administrator/ F&I	750,000	750,000
(4) District Director	750,000	750,000
(5) Deputy District Director	750,000	750,000
(6) Assistant District Director/ F&I	750,000	750,000
(7) Chief, Financing Division, D/O	750,000	750,000
(8) Supervisory Loan Specialist, Financing Division, D/O	250,000	750,000
(9) Branch Manager	250,000	750,000

All the listed officials with approval of decline authority of $750,000 shall have the authority to approve or decline pollution control loans up to and including $1,000,000 made under section 7(a)(12) and international trade loans up to and including $1,250,000 made under section 7(a)(16).

SBA may, as it deems appropriate, increase, decrease, or set the level of authority of an individual SBA employee of a regional, district, or branch office, based on education, training, or experience, by publishing a notice, in the **Federal Register**, of any such delegation.

Section B—Other Financing Authority

For all types of loans contained in Section A above, (except loans made pursuant to section 7(a)(13)):

1. Loan Participation Agreements. To enter into individual and blanket loan participation agreements with bank lenders and savings and loan associations:

a. Regional Administrator.
b. Deputy Regional Administrator.
c. Assistant Regional Administrator/ F&I.
d. District Director.
e. Deputy District Director.
f. Assistant District Director for F&I.
g. Chief, Financing, D/O.
h. Supervisory Loan Specialist, Financing, D/O.
i. Branch Manager.

SBA may, as it deems appropriate, by published notice in the **Federal Register**, grant to or remove from any individual SBA employee in a regional, district, or branch office, based on education, training, or experience, the authority to enter into individual and blanket loan participation agreements with bank lenders and savings and loan associations.

2. To cancel, reinstate, modify, and amend authorizations:

a. Regional Administrator.
b. Deputy Regional Administrator.
c. Assistant Regional Administrator/ F&I.
d. District Director.
e. Deputy District Director.
f. Assistant District Director for F&I.
g. Chief, Financing, D/O (on fully disbursed loans).
h. Supervisory Loan Specialist, Financing, D/O (on fully undisbursed loans).
i. Branch Manager.

SBA may, as it deems appropriate, by published notice in the **Federal Register**, grant to or remove from any individual SBA employee in a regional, district, or branch office, based on education, training, or experience, the authority to cancel, reinstate, modify, and amend authorizations.

3. Disbursement Period Extension. To extend disbursement periods:

a. Without limitations:
(1) Regional Administrator.
(2) Deputy Regional Administrator.
(3) Assistant Regional Administrator/ F&I.
(4) District Director.
(5) Deputy District Director.
(6) Assistant District Director for F&I.
(7) Chief, Financing, D/O (on fully disbursed loans).
(8) Branch Manager.

b. For a cumulative total not to exceed six (6) months:
(1) Supervisory Loan Specialist, Financing, D/O (on fully undisbursed loans).

SBA may, as it deems appropriate, by a notice published in the **Federal Register**, grant to or remove from any individual SBA employee in a regional, district, or branch office, based on education, training, or experience, the authority to extend disbursement periods.

4. Service Charges: To approve service charges by participating lenders not to exceed two (2) percent per annum on the outstanding principal balance of construction loans and loans involving accounts receivable and inventory financing:

a. Regional Administrator.
b. Deputy Regional Administrator.
c. Assistant Regional Administrator/ F&I.
d. District Director.
e. Deputy District Director.
f. Assistant District Director for F&I.
g. Chief, Financing, D/O (on fully undisbused loans).
h. Supervisory Loan Specialist, D/O (on fully undisbursed loans).

SBA may, as it deems appropriate, by published notice in the **Federal Register**, grant to or remove from any individual SBA employee in a regional, district, or branch office, based on education, training, or experience, the authority to approve service charges by participating lenders, according to the above paragraph.

Section C—Section 7(a)(13) Loan Approval Authority

1. Loans to a State Development Company (Small Business Investment Act) (SBI Act). To approve or decline loans to a state development company not exceeding the following amounts (SBA share):

	Dollars
a. Regional Administrator	(1)
b. Deputy Regional Administrator	(1)
With concurrence in at least one prior recommendation:	
c. Assistant Regional Administrator/F&I	750,000
d. District Director	750,000
e. Deputy District Director for F&I	750,000
f. Assistant District Director for F&I	750,000
g. Chief, Financing, D/O	750,000

[1] Unlimited.

SBA may, as it deems appropriate, increase, decrease, or set the level of authority to approve or decline loans to state development companies for any individual SBA employee in a regional, district, or branch office, based on education, training, or experience, by published notice in the **Federal Register**.

2. Loans to a Local Development Company (SBI Act). To approve or decline loans to a local development company not exceeding the following amounts (SBA share) for each small business concern being assisted, within the project cost limitations shown below:

Note: Project cost applies to the cumulative SBA assistance to a small business concern and its affiliates and not to the additional assistance on which the action is being taken.

	Dollars
a. Unlimited project cost:	
(1) Regional Administrator	1,000,000
b. Overall project cost not exceeding $2,500,000:	
(2) Assistant Regional Administrator/ F&I	1,000,000
(3) District Director	1,000,000
(4) Deputy District Director	1,000,000
(5) Assistant District Director/F&I	1,000,000
(6) Chief, Financing, D/O	1,000,000
(7) Branch Manager	750,000

SBA may, as it deems appropriate, increase, decrease, or set the level of authority to approve or decline loans to local development companies for any individual SBA employee of a regional, district, or branch office, based on

education, training, or experience, by published notice in the **Federal Register**.

* * * * *

Part III—Other Financial and Guaranty Programs

Section A—Section 503/504 Debenture Guaranty Approval Authority (Small Business Investment Act)

1. Section 503/504 Certified Development Company Debenture Guaranty Approval Authority (SBI Act). To approve or decline guaranties of section 503 or section 504 debentures issued by certified development companies not exceeding the following amount (SBA share) for each small business being assisted, within the project cost limitations shown below:

Note: Project cost, as used in this part, means the sum of all financial assistance to the small business concern and its affiliates for the construction project under consideration, not just that portion on which the 503/504 debenture guaranty action is being taken.

	Dollars
a. Unlimited project cost:	
(1) Regional Administrator	Unlimited
b. Overall project cost not exceeding $3,000,000:	
(2) ARA/F&I	1,000,000
(3) District Director	1,000,000
(4) Deputy District Director	1,000,000
(5) ADA/F&I	1,000,000
(6) Branch Managers	750,000
c. Overall project cost not exceeding $1,500,000:	
(7) Chief, Financing, D/O	750,000
(8) Assistant Branch Managers/F&I	600,000

SBA may, as it deems appropriate, increase, decrease, or set the level of authority to approve or decline guaranties of section 503 or section 504 debentures issued by certified development companies for any individual SBA employee in a regional, district, or branch office, based on education, training, or experience, by published notice in the **Federal Register**.

Section B—Other 503 Authority

1. Participation Agreements. To decline to enter into participation agreements with lenders:

a. Regional Administrator.

b. Deputy Regional Administrator.

c. Assistant Regional Administrator/F&I.

d. District Director.

e. Deputy District Director.

f. Assistant District Director/F&I.

2. Loan Authorizations.

a. To execute written loan authorizations:

(1) Regional Administrator.

(2) Deputy Regional Administrator.

(3) Assistant Regional Administrator/F&I.

(4) District Director.

(5) Deputy District Director.

(6) Assistant District Director/F&I.

(7) Chief, Financing, D/O.

(8) Branch Managers.

(9) Assistant Branch Managers/F&I.

SBA may, as it deems appropriate, grant to or remove from any SBA employee in a regional, district, or branch office, based upon education, training, or experience, the authority to execute written loan authorizations, by notice published in the **Federal Register**.

b. To cancel, reinstate, modify, and amend authorizations:

(1) Regional Administrator.

(2) Deputy Regional Administrator.

(3) Assistant Regional Administrator/F&I.

(4) District Director.

(5) Deputy District Director.

(6) Assistant District Director/F&I.

(7) Chief, Financing, D/O (before initial disbursement).

(8) Branch Managers.

(9) Assistant Branch Managers/F&I.

SBA may, as it deems appropriate, grant to or remove from any individual SBA employee in a regional, district, or branch office, based upon education, training, or experience, the authority to cancel, reinstate, modify, and amend authorizations, by published notice in the **Federal Register**.

3. Disbursement Period Extensions. To extend disbursement periods:

a. Regional Administrator.

b. Deputy Regional Administrator.

c. Assistant Regional Administrator/F&I.

d. District Director.

e. Deputy District Director.

f. Assistant District Director/F&I.

g. Chief, CED, D/O (on wholly undisbursed loans).

h. Chief, Financing, D/O (on wholly undisbursed loans).

i. Branch Managers.

j. Assistant Branch Managers/F&I.

SBA may, as it deems appropriate, by published notice in the **Federal Register**, grant to or remove from any individual SBA employee in a regional, district, or branch office, based upon education, training, or experience, the authority to extend disbursement periods.

Section C—Surety Guaranty

1. To guarantee sureties against a portion of the losses resulting from the breach of bid, payment, or performance bonds on contracts, not to exceed the following amounts:

	($)
a. Regional Administrator	1,250,000
b. Deputy Regional Administrator	1,250,000
c. Senior Surety Bond Guarantee Specialist	500,000
d. Surety Bond Officer	500,000

SBA may, as it deems appropriate, grant to or remove from any individual SBA employee in a regional, district, or branch office, based on education, training, or experience, the authority to guarantee sureties against a portion of the losses resulting from the breach of bid, payment, or performance bonds on contracts, by notice published in the **Federal Register**.

* * * * *

Dated: December 11, 1991.

Patricia Saiki,

Administrator.

[FR Doc. 91-30208 Filed 12-18-91; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-CE-26-AD; Amdt. 39-8125; AD 92-01-02]

Airworthiness Directives; Fairchild Aircraft SA226 and SA227 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Fairchild Aircraft SA226 and SA227 series airplanes. This action requires a modification to the parking brake system and recurring inspections of certain landing gear brake system components. Wheel brake system malfunctions have occurred on several of the affected airplanes where regular brake system maintenance had been performed. The actions specified by this AD are intended to prevent wheel brake system malfunctions that could result in a fire in the brake area or possible airplane collision during landing.

DATES: Effective January 16, 1992. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 16, 1992.

ADDRESSES: Fairchild Aircraft Service Bulletin (SB) No. 227-32-017 and SB No. 226-32-049, both dated November 14, 1984, and B.F. Goodrich Service Letter (SL) No. 1498, dated October 26, 1989,

that are discussed in this AD may be obtained from the Fairchild Aircraft Corporation, P.O. Box 790490, San Antonio, Texas 78279–0490 and B.F. Goodrich Aircraft Wheels and Brakes, P.O. Box 340, Troy, Ohio 45373. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Werner Koch, Aerospace Engineer, Fort Worth Airplane Certification Office, Fort Worth, Texas 76193–0150; Telephone (817) 624–5163.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that is applicable to certain Fairchild SA226 and SA227 series airplanes was published in the **Federal Register** on May 24, 1991 (56 FR 23817). The action proposed a modification to the parking brake system and recurring inspections of certain landing gear brake system components in accordance with the instructions and criteria in Fairchild Service Bulletin (SB) No. 227–32–017 or Fairchild SB No. 226–32–049, both dated November 14, 1984, whichever is applicable, and B.F. Goodrich Service Letter No. 1498, dated October 26, 1989. .

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the four comments received.

One of the commenters feels that aviation safety would be enhanced by the implementation of the actions of the proposed AD.

Two of the four commenters state that the FAA's determination of 1 hour to perform the proposed AD is underestimated. The manufacturer (Fairchild) estimates that it would realistically take 6 hours to complete the proposed action. The FAA concurs and has rewritten the cost information paragraph in the preamble of the AD accordingly. The actual AD remains unchanged based on this comment.

Three of the four commenters feel that the 50-hour time-in-service (TIS) compliance time to modify the parking brake system is unrealistic and will inadvertently ground a number of the affected airplanes because of the utilization rates of the fleet. For example, an owner may operate 10 of the affected airplanes with an average daily utilization rate of 7 hours TIS a day. Using the revised cost information specified above and the example presented, the operator could bring only 7 of the 10 airplanes in compliance with the proposed AD if he found a maintenance shop that worked seven days a week. In this scenario, three of the airplanes would be grounded until compliance was obtained. The FAA concurs that the compliance time is unrealistic and has determined that 90 calendar days would allow all owners to modify the parking brake without inadvertently grounding their airplanes while still maintaining the same level of safety. The AD has been rewritten accordingly.

Two of the four commenters state that neither the initial nor the repetitive inspections for brake wear on airplanes that are equipped with B.F. Goodrich brakes, part number 2–1203–3, should be covered by this AD action because it would be covered through an operators continuous airworthiness maintenance program. The FAA does not concur and has determined that the inspections are necessary because of the unique design and characteristics of the Goodrich brake assembly. It is common for the brake lining to warp inward or upward toward the brake rotor at the leading and training edges relative to the direction of the rotation of the rotor. This warping is the result of the force caused by the pistons on both ends of the carriers during braking. Warping induces wear at the forward and aft ends of the brake lining pads that is not easily detected through regulator maintenance procedures. As the forward and aft edges of the lining wear very thin, the piston insulators do not emerge straight from the piston cylinders. When the brakes are released, the pistons, which have become cocked in the cylinders, will not relax back into the cylinders and dragging or locked brake condition occurs. In order to avoid this situation, strict adherence to B.F. Goodrich Service Letter (SL) No. 1498, dated October 26, 1989, must be followed. B.F. Goodrich SL No. 1498 identifies specific measurement locations and amplitudes that are not covered through general maintenance. The FAA has determined that the initial inspection can be relieved from 50 hours TIS to 100 hours TIS and the repetitive inspection interval can be relieved from 200 hours TIS to 250 hours TIS to allow maximum flexibility for the operators to accomplish these inspections at other regularly scheduled inspections. The FAA has determined that the same level of aviation safety will be obtained by this change. The AD has been rewritten accordingly.

After reviewing all available information and careful consideration of the comments described above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the changes described above as a result of the comments and minor editorial corrections. These minor changes and corrections will not change the intended meaning of the AD nor add any additional burden upon the public than was already proposed.

It is estimated that 330 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 6 hours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $500 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $273,900.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

92-01-02 **Fairchild Aircraft** (formerly Swearingen): Amendment 39-8125; Docket No. 91-CE-26-AD.

Applicability: Model SA226-T airplanes (Serial numbers (S/N) T201 through T275, and T277 through T291), Model SA226-T(B) airplanes (S/N T(B)276, and T(B)292 through T(B)417), Model SA226-AT airplanes (S/N AT001 through AT074), Model SA226-TC airplanes (S/N TC201 through TC419), Model SA227-TT airplanes (S/N TT421 through TT555), Model SA227-AT airplanes (S/N AT423 through AT599), and Model SA227-AC airplanes (S/N AC406, AC415, AC416, and AC420 through AC599), certificated in any category.

Compliance: Required as indicated, unless already accomplished.

To prevent brake system malfunctions that could result in a fire in the brake area or possible airplane collision during landing, accomplish the following:

(a) Within the next 90 calendar days after the effective date of this AD, modify the parking brake system in accordance with the instructions in Fairchild Aircraft Service Bulletin (SB) No. 227-32-017 and SB No. 226-32-049, both dated November 14, 1984, as applicable.

(b) On airplanes equipped with B.F. Goodrich brakes, part number 2-1203-3, within the next 100 hours TIS after the effective date of this AD, and thereafter at intervals not to exceed 250 hours TIS, inspect and conduct measurements in accordance with the instructions in B.F. Goodrich Service Letter No. 1498, dated October 26, 1989. If wear measure exceeds the maximum allowed in accordance with the criteria in B.F. Goodrich Service Letter No. 1498, dated October 26, 1989, prior to further flight, overhaul or replace the brakes in accordance with the instructions in the applicable maintenance manual.

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

(d) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Fort Worth Airplane Certification Office, Fort Worth, Texas 76193-0150. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth Airplane Certification Office.

(e) The inspections and modifications required by this AD shall be in accordance with Fairchild Aircraft Service Bulletin (SB) No. 227-32-017 and SB No. 226-32-049, both dated November 14, 1984, and B.F. Goodrich Service Letter (SL) No. 1498, dated October 26, 1989. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fairchild Aircraft Corporation, P.O. Box 790490, San Antonio, Texas 78279-0490 and B.F. Goodrich Aircraft Wheels and Brakes, P.O. Box 340, Troy, Ohio 45373. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 1100 L Street, NW.; room 8401, Washington, DC.

(f) This amendment (39-8125) becomes effective on January 16, 1992.

Issued in Kansas City, Missouri, on December 12, 1991.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-30251 Filed 12-18-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 91-AEA-14]

Revocation of Transition Area; Stone Harbor, NJ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the final rule describing the base of the Stone Harbor, NJ, Transition Area which is being revoked. The final rule was published in the **Federal Register** on October 23, 1991 (56 FR 54784), Airspace Docket No. 91-AEA-14.

EFFECTIVE DATE: 0901 U.T.C. December 19, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Airspace Specialist, System Management Branch, AEA-530, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553-0857.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 91-25546, Airspace Docket No. 91-AEA-14, published on October 23, 1991 (56 FR 54784), revoked the 700 foot Transition Area at Stone Harbor, NJ. An error was discovered in the base of the airspace being revoked. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the base of the transition area being revoked at Stone Harbor, NJ, as published in the **Federal Register** on October 23, 1991 (Federal Register Document 91-25546; page 54784, columns 2 and 3), is corrected as follows: Replace all occurrences of "700 foot Transition Area" with "1,200 foot Transition Area".

Issued in Jamaica, New York, on November 5, 1991.

Gary W. Tucker,

Manager, Air Traffic Division.

[FR Doc. 91-30271 Filed 12-18-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-NM-129-AD; Amdt. 39-8114; AD 91-26-03]

Airworthiness Directives; Airbus Industrie Model A300, A310, and A300-600 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A300, A310, and A300-600 series airplanes, which requires a one-time visual inspection of BF Goodrich slides and slide raft lanyard assemblies, and replacement of release pin lanyards, if necessary. This amendment is prompted by recent reports of breakage of a release pin lanyard, an unauthorized modification of a release pin assembly, and incorrect installation of release pins. The actions specified in this AD are intended to prevent non-deployment of the emergency evacuation slides and/or slide rafts during an emergency evacuation.

DATES: Effective January 27, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 27, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2140; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an

airworthiness directive (AD) that is applicable to certain Airbus Industrie Model A300, A310, and A300–600 series airplanes, was published in the **Federal Register** on July 22, 1991 (56 FR 33396). That action proposed to require a one-time visual inspection of BF Goodrich slides and slide raft lanyard assemblies, and replacement of release pin lanyards, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Both commenters supported the proposal.

The manufacturer, Airbus Industrie, in its comments to the proposal, clarified that the incident involving the incorrect installation of release pins, which was addressed in the preamble to the proposal, had occurred during maintenance.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 113 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $6,215.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

91–26–03. **Airbus Industrie:** Amendment 39–8114. Docket No. 91–NM–129–AD.

Applicability: Model A300, A310, and A300–600 series airplanes equipped with BF Goodrich emergency evacuation slides and/or slide rafts, certificated in any category.

Compliance: Required as indicated, unless previously accomplished. To prevent non-deployment of the emergency evacuation slides and/or slide rafts during an emergency evacuation, accomplish the following:

(a) Within 120 days after the effective date of this AD, accomplish the following in accordance with Airbus Service Bulletins A300–25–434 (for Model A300 series airplanes), A300–25–6028 (for Model A300–600 series airplanes), and A310–25–2054 (for Model A310 series airplanes), all dated October 22, 1990, as applicable:

Note: These service bulletins reference BF Goodrich Service Bulletin 25–230, dated July 20, 1990, for additional instructions.

(1) Perform a visual inspection of release pin lanyard assemblies for release pins in the early configuration, unauthorized modifications, and incorrect installation and operation. Prior to further flight, replace release pin lanyards in the early configuration, unauthorized modifications, or incorrectly installed or damaged release pin lanyards, if found.

(2) Perform a visual inspection of lanyard cables for evidence of fraying. If frayed lanyards are found, replace the lanyards prior to further flight.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

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

(d) The inspections and replacements required by this AD shall be done in accordance with Airbus Service Bulletins A300–25–434 (for Model A300 series airplanes), A300–25–6028 (for Model A300–600 series airplanes), and A310–25–2054 (for Model A310 series airplanes), all dated October 22, 1990. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(e) This amendment (39–8114), AD 91–26–03, becomes effective January 27, 1992.

Issued in Renton, Washington, on December 2, 1991.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–30338 Filed 12–18–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–NM–243–AD; Amendment 39–8117; AD 91–26–06]

Airworthiness Directives; Airbus Industrie Model A320 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Airbus Industrie Model A320 series airplanes. This action requires replacement of a certain relay, which cuts off the power supply to the SEC 2 computer and one of the motors for the trimmable horizontal stabilizer (THS) if a discrepancy exists between the commanded trim position and the position calculated by the SEC 2 computer. This amendment is prompted by an incident in which the relay froze in the energized position. The actions specified in this AD are intended to prevent reduced controllability of the airplane due to freezing of the relay in the energized state which, when coupled with an erroneous command from the SEC 2 computer, could result in a runaway of the THS.

DATES: Effective January 3, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 3, 1992.

Comments for inclusion in the Rules Docket must be received on or before February 18, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-243-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Aerospace Engineer, Standardization Branch, ANM-113; FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2140; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority of France, recently notified the FAA that an unsafe condition may exist on certain Airbus Industrie Model A320 series airplanes. The French DGAC advises that, on a Model A320 series airplane, relay 36 CE 3 froze in the energized position. When both ELAC 1 and ELAC 2 computers are deactivated from the pitch mode, this relay energizes the SEC 2 computer in the pitch mode and supplies power to motor 3 of the trimmable horizontal stabilizer (THS). If a discrepancy exists between the commanded trim position and the position calculated by the SEC 2 computer, the SEC 2 computer deenergizes relay 36 CE 3 and cuts off the power supply to motor 3 of the THS. Should the relay 36 CE 3 freeze in the energized position, the power supply could no longer be cut off which could subsequently result in a runaway stabilizer. This condition, if not corrected, could result in reduced controllability of the airplane due to freezing of relay 36 CE 3 in the energized state which, when coupled with an erroneous command from the SEC 2 computer, could result in the disconnection of ELAC 1 and ELAC 2 computers and a runaway of the THS.

Airbus Industrie has issued All Operator Telex (AOT) 27-03, Revision 3, dated June 12, 1991, which describes procedures for the replacement of relay 36 CE 2, which cuts off the power supply to motor 3 of the THS. The procedures described relate only to airplanes through manufacturer's serial number 109; the manufacturer has installed a redesigned electrical control for motor 3 of the THS that precludes uncommanded trim movements on airplanes with manufacturer's serial numbers 110 and subsequent. The French DGAC has classified this AOT as mandatory and has issued French Airworthiness Directive 91-119-017(B)R1 in order to assure the airworthiness of these airplanes in France.

This airplane model is manufactured in France and type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to a bilateral airworthiness agreement, the French DGAC has kept the FAA totally informed of the above situation. The FAA has examined the findings of the French DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent loss of controllability of the airplane due to freezing of relay 36 CE 3 in the energized state which, when coupled with an erroneous command from the SEC 2 computer, could result in the disconnection of ELAC 1 and ELAC 2 computers and a runaway of the THS. This AD requires the replacement of relay 36 CE 3, which cuts off the power supply to motor 3 of the THS. The required actions are to be accomplished in accordance with the All Operator Telex previously described.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "**ADDRESSES.**" All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-NM-243-AD." The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

91–26–06. **Airbus Industrie:** Amendment 39–8117. Docket 91–NM–243–AD.

Applicability: Model A320 series airplanes through manufacturer's serial number 109 on which Modification 21659 (specified in Airbus Industrie Service Bulletin A320–27–1012, Revision 2, dated September 23, 1991) has not been accomplished, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced controllability of the airplane, due to freezing of relay 36 CE 3 in the energized state which, when coupled with an erroneous command from the SEC 2 computer could result in the disconnection of ELAC 1 and ELAC 2 computers and a runaway of the trimmable horizontal stabilizer (THS), accomplish the following:

(a) Install a new STP1 relay (P/N D0003002100100) having a date code newer than or equal to 88/41 A, in accordance with Airbus Industrie All Operator Telex 27–03, Revision 3, dated June 12, 1991, at the applicable time indicated in subparagraph (a)(1), (a)(2), or (a)(3) of this AD.

(1) For airplanes that have accumulated more than 1,400 landings since retrofitted with SEC part number (P/N) B372ABM0606/B372BAM0404: Within 200 landings after the effective date of this AD.

(2) For airplanes that have accumulated at least 800 landings but not more than 1,400 landings since retrofitted with SEC P/N B372ABM0606/B372BAM0404: Prior to the accumulation of 1,600 total landings since retrofitted with SEC P/N B372ABM0606/B372BAM0404.

(3) For airplanes that have accumulated less than 800 landings since retrofitted with SEC P/N B372ABM0606/B372BAM0404: Within 800 landings after the effective date of this AD.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113. The request shall be forwarded through an FAA Principal Avionics Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

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

(d) The installation required by this AD shall be done in accordance with Airbus Industrie All Operator Telex 27–03, Revision 3, dated June 12, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(e) This amendment (39–8117), AD 91–26–06, becomes effective January 3, 1992.

Issued in Renton, Washington, on December 3, 1991.

Jim Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–30339 Filed 12–18–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–NM–140–AD; Amendment 39–8115; AD 91–26–04]

Airworthiness Directives; British Aerospace Model ATP Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model ATP series airplanes, which requires an initial modification and repetitive applications of corrosion inhibitor to the nose landing gear (NLG) main fitting, and an eventual final modification of the NLG. This amendment is prompted by recent reports of corrosion found on the NLG main fitting, under the steering cuff upper bearing bush. The actions specified by this AD are intended to prevent reduced structural integrity of the NLG.

DATES: Effective January 27, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 27, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041–0414. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain British Aerospace Model ATP series airplanes, was published in the **Federal Register** on August 30, 1991 (56 FR 42964). That action proposed to require an initial modification and repetitive applications of corrosion inhibitor to the nose landing gear (NLG) main fitting, and an eventual final modification of the NLG.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supported the rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 6 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,640.

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

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will

not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

91-26-04. **British Aerospace:** Amendment 39-8115. Docket No. 91-NM-140-AD.

Applicability: Model ATP series airplanes, equipped with nose landing gear (NLG) part number 201049001 or 201278001/002, pre Dowty Aerospace Gloucester modification (c)AC11432 standard, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent reduced structural integrity of the NLG, accomplish the following:

(a) Within 60 days after the effective date of this AD, modify the NLG, treat the main fitting of the NLG with corrosion inhibitor, and externally seal the cover sub-assembly in accordance with British Aerospace Service Bulletin ATP-32-33, dated March 1, 1991.

Note: The British Aerospace Service Bulletin references Dowty Aerospace Gloucester Service Bulletin 200-32-143, dated February 20, 1991.

(b) Repeat the application of corrosion inhibitor at intervals not to exceed 6 months from the previous application, in accordance with British Aerospace Service Bulletin ATP-32-33, dated March 1, 1991.

(c) Install Dowty Aerospace Gloucester modification (c)AC11432 on all pre-modification (c)AC11432 NLG's in accordance with British Aerospace Service Bulletin ATP-32-33, dated March 1, 1991, at the later of the times specified in subparagraphs (c)(1) and (c)(2), below:

(1) Prior to the accumulation of 6,000 landings on the NLG since new, or within 3 years from the first flight on the NLG, whichever occurs first; or

(2) Within 12 months after the effective date of this AD.

Note: The British Aerospace Service Bulletin references Dowty Aerospace Gloucester Service Bulletin 200-32-144, dated February 20, 1991, which describes modification (c)AC11432.

(d) Installation of Dowty Aerospace Gloucester modification (c)AC11432 constitutes terminating action for the repetitive applications of corrosion inhibitor required by paragraphs (a) and (b) of this AD.

(e) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch.

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

(g) The modifications and application of corrosion inhibitor required by this AD shall be done in accordance with British Aerospace Service Bulletin ATP-32-33, dated March 1, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(h) This amendment (39-8115), AD 91-26-04, becomes effective January 27, 1992.

Issued in Renton, Washington, on December 2, 1991.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-30340 Filed 12-18-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR PART 71

[Airspace Docket No. 91-AGL-7]

Transition Area Establishment; Cook Municipal Airport, Cook, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to establish the Cook, MN, transition area to accommodate a new nondirectional radio beacon (NDB) Runway 31 Standard Instrument Approach Procedure (SIAP) to Cook Municipal Airport. The SIAP is predicated on a non-federal NDB located on the airport. This action lowers the base of controlled airspace from 1200 to 700 feet above the surface in the vicinity of Cook Municipal Airport. Concurrent with the SIAP publication, the operating status of the airport will change from Visual Flight Rules (VFR) to Instrument Flight Rules (IFR). The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

EFFECTIVE DATE: 0901 UTC, March 5, 1992.

FOR FURTHER INFORMATION CONTACT: Douglas F. Powers, Air Traffic Division, System Management Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018; telephone (312) 694-7568.

SUPPLEMENTARY INFORMATION:

History

On Friday, August 16, 1991, the Federal Aviation Administration (FAA) proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a transition area near Cook Municipal Airport, Cook, MN (56 FR 40814).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes a transition area near Cook, MN. The transition area is being established to accommodate a new NDB runway 31 SIAP to Cook Municipal Airport, Cook, MN. The SIAP is predicated on a non-federal NDB located on the airport. This action lowers the base of controlled airspace from 1200 to 700 feet above the surface in the vicinity of Cook Municipal Airport. Concurrent with the SIAP publication, the operating status of the airport will change from VFR to IFR.

The development of a new SIAP requires that the FAA establish the designated airspace to ensure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace

Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Cook, MN [New]

That airspace extending upward from 700 feet above the surface within a 8.5 mile radius of Cook Municipal Airport (lat. 47°49'30" N., long. 92°41'30" W.), Cook, MN.

Issued in Des Plaines, Illinois on November 22, 1991.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 91–30267 Filed 12–18–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 91–AGL–9]

Transition Area Establishment; Belle Fourche, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to establish the Belle Fourche, SD, transition area to accommodate a new Nondirectional Radio Beacon (NDB) runway 32 Standard Instrument Approach Procedure (SIAP) to Belle Fourche Municipal Airport. The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

EFFECTIVE DATE: 0901 UTC, March 5, 1992.

FOR FURTHER INFORMATION CONTACT: Douglas F. Powers, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018; telephone (312) 694–7568.

SUPPLEMENTARY INFORMATION:

History

On Thursday, September 26, 1991, the Federal Aviation Administration (FAA) proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a transition area airspace near Belle Fourche, SD (56 FR 48768).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes a transition area airspace near Belle Fourche, SD, to accommodate a new NDB runway 32 SIAP to Belle Fourche Municipal Airport. The SIAP is predicated on a non-federal NDB located on the airport. This action lowers the base of controlled airspace to 1200 and 700 feet above the surface within the vicinity of Belle Fourche Municipal Airport. Concurrent with the SIAP publication, the operating status of the airport will change from Visual Flight Rules (VFR) to Instrument Flight Rules (IFR).

The development of a SIAP requires that the FAA establish the designated airspace to ensure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Belle Fourche, SD [New]

That airspace extending upward from 700 feet above the surface within a 9.5 mile radius of Belle Fourche Municipal Airport (lat. 44°44'28" N., long. 103°51'40" W.) and that airspace extending upward from 1,200 feet above the surface within a 13 mile radius of Belle Fourche Municipal Airport; excluding the portion which overlies the Spearfish, SD, 700 foot transition area and the portion which overlies the Rapid City, SD, 1,200 foot transition area.

Issued in Des Plaines, Illinois on November 22, 1991.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 91–30268 Filed 12–18–91; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 26708; Amdt. No. 1470]

Standard Instrument Approach Procedures: Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The Provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPs criteria were applied to only these specific conditions existing at the affected airports.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the US Standard for Terminal Instrument Approach Procedures (TERPs). Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather.

Issued in Washington, DC on December 6, 1991.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

NFDC TRANSMITTAL LETTER

Effective	State	City	Airport	FDC No.	SIAP
11/13/91	NM	Taos	Taos Muni	FDC 1/5629	NDB Rwy 4 Orig.
11/13/91	NM	Taos	Taos Muni	FDC 1/5630	VOR/DME-B Amdt. 2.
11/19/91	MO	Excelsior Springs	Excelsior Springs Memi	FDC 1/5984	VOR Rwy 19, Orig.
11/21/91	AZ	Yuma Proving Ground/Yuma	Laguna AAF	FDC 1/5814	COPTER NDB 070 Amdt 1.
11/21/91	AZ	Yuma Proving Ground/Yuma	Laguna AAF	FDC 1/5815	NDB-A Amdt. 1.
11/21/91	AZ	Yuma Proving Ground/Yuma	Laguna AAF	FDC 1/5816	VOR Rwy 6 Amdt. 3.
11/25/91	NY	Buffalo	Greater Buffalo Intl	FDC 1/5845	NDB Rwy 5 Amdt. 10.
11/25/91	NY	Buffalo	Greater Buffalo Intl	FDC 1/5846	ILS Rwy 5 Amdt 13.
11/25/91	NY	Buffalo	Greater Buffalo Intl	FDC 1/5847	ILS Rwy 23 Amdt 28.
11/27/91	WA	Yakima	Yakima Air Terminal	FDC 1/5961	ILS Rwy 27 Amdt 26.

[FR Doc. 91-30265 Filed 12-18-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

15 CFR Part 400

[Order No. 530; Docket No. 21222-1208]

RIN 0625-AA04

Foreign-Trade Zones in the United States; Correction

AGENCY: Foreign-Trade Zones Board, Commerce.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to the final regulations, which were published Tuesday, October 8, 1991 (56 FR 50790). The regulations related to the authorization and regulation of foreign-trade zones and zone activity in the United States.

EFFECTIVE DATE: November 7, 1991.

FOR FURTHER INFORMATION CONTACT: John J. Da Ponte, Jr., Executive Secretary, Foreign-Trade Zones Board, room 3716, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections, are comprehensive and constitute a complete revision, replacing the present version of 15 CFR part 400.

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 on October 8, 1991 of the final regulations, which were the subject of FR Doc. 91-24130, is corrected as follows.

§ 400.28 [Corrected]

1. On page 50804, in the third column, in § 400.28, paragraph (a)(8), line three, the number "7" is corrected to read "17".

2. On page 50804, in the third column, in § 400.28, paragraph (a)(8), line seventeen, the number "7" is corrected to read "17".

Dated: December 13, 1991.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 91-30358 Filed 12-18-91; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

Animal Drugs, Feeds, and Related Products; Change of Sponsor Name and Address

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor name and address from Biomed Laboratories to Med-Pharmex, Inc., Biomed Laboratories, 325 East Arrow Hwy., suite 502, San Dimas, CA 91773.

EFFECTIVE DATE: December 19, 1991.

FOR FURTHER INFORMATION CONTACT: Benjamin Puyot, Center for Veterinary Medicine (HFV-130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8646.

SUPPLEMENTARY INFORMATION: Biomed Laboratories, 438 West Arrow Hwy., Unit 30, San Dimas, CA 91773, has advised FDA of a change of sponsor name and address from Biomed Laboratories to Med-Pharmex, Inc., Biomed Laboratories, 325 East Arrow Hwy., suite 502, San Dimas, CA 91773. The agency is amending the regulations in 21 CFR 510.600 (c)(1) and (c)(2) to reflect this change.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

2. Section 510.600 is amended in the table in paragraph (c)(1) by removing the entry for "Biomed Laboratories," and by alphabetically adding a new entry "Med-Pharmex, Inc., Biomed Laboratories," and in the table in paragraph (c)(2) in the entry for "051259" by revising the sponsor name and address to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Med-Pharmex, Inc., Biomed laboratories, 325 East Arrow Hwy., suite 502, San Dimas, CA 91773	051259
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
051259	Med-Pharmex, Inc., Biomed Laboratories, 325 East Arrow Hwy., Suite 502, San Dimas, CA 91773.
* * * * *	

Dated: December 13, 1991.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation Center for Veterinary Medicine.

[FR Doc. 91–30263 Filed 12–18–91; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 223

Sale and Disposal of National Forest System Timber; Log Export and Substitution Restriction Exceptions

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: On August 20, 1990, the President signed into law the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*) ("Act"). The Act directs the Secretary of Agriculture to prescribe new regulations to implement this Act on National Forest System Lands. The provisions in this rulemaking concern NFS lands west of the 100th meridian in the contiguous 48 states. This rulemaking implements certain provisions of the Act. This rule continues the existing reporting procedures applicable to timber sale contracts awarded prior to August 20, 1990; amends existing rules for sourcing area disapproval and review procedures; and establishes application procedures for persons applying for a share of the limited amount of unprocessed timber originating from National Forest System lands in the State of Washington that is exempted from the prohibition against indirect substitution.

EFFECTIVE DATE: This rule is effective December 19, 1991.

FOR FURTHER INFORMATION CONTACT: Ronald D. Lewis, Timber Management Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090. (202) 475–3755.

SUPPLEMENTARY INFORMATION:

Background

The Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*) ("Act") was enacted on August 20, 1990. The Department published an interim rule on November 20, 1990 (55 FR 48572) to implement portions of the Act required to be implemented before notice and comment could occur. The interim rule outlined the sourcing area application and approval procedures, detailed the certification procedures for non-manufacturers, sourcing area applicants, and persons with historic export quotas, extended the current surplus species determinations until new determinations can be made, and included definitions pertaining to the provisions in the interim rule. The interim rule asked for comments. The comment period for the interim rule closed on December 20, 1990. On January 29, 1991, the Department published two proposed rules, a comprehensive rule (56 FR 3354) and a rule of more limited scope to implement provisions required to be implemented before the statutory deadline for the comprehensive rule (56 FR 3375). The comment period for the comprehensive rule closed March 15, 1991. The final comprehensive rule will include all regulations published pertaining to the Act.

The comment period for the rule that is more limited in scope closed on February 28, 1991. This rulemaking finalizes the proposed rule of limited scope. This rulemaking:

1. Continues the timber export and substitution reporting procedures required under contracts awarded prior to August 20, 1990;

2. Establishes revised procedures for the disapproval of sourcing area applications and the review of sourcing areas; and

3. Establishes procedures for a person who exports private timber to acquire a limited amount of unprocessed timber originating from National Forest System lands within the State of Washington.

Comments received on the proposed rule of limited scope (56 FR 3375) have been given full consideration. Comments received on the interim rule pertinent to the subjects in this rule were also given full consideration. The Department has made changes to the rule, as proposed, as a result of some of the comments.

Eleven comments were received on the proposed rule and four comments were received on the interim rule that pertain to this proposed rule. Twelve comments were from timber purchasers or timber industry representatives, one comment was from an individual, and two comments were from public interest groups. All responses came from the West—ten from Washington, three from Idaho, and two from Montana.

The following summarizes the relevant comments and suggestions received and the Department's response to these in the final rule.

Comments and Responses by Section of the Proposed Rule

Section 223.48 Restrictions on Export and Substitution of Unprocessed Timber

The proposed rule proposed to amend paragraph (a) of § 223.48 to clarify that contracts awarded prior to August 20, 1990, the date of enactment, remain subject to the timber export and substitution rules at subpart D of part 223. The timber export and substitution reporting procedures required under these contracts remained the same, but paragraphs (a)–(c) were proposed to be redesignated. The proposed rule proposed to add a new paragraph (b) to direct that all contracts awarded on or after August 20, 1990, include a provision making such contracts subject to the new Act. The proposed rule also proposed to add a new paragraph (c) regarding the OMB clearance number for the information collection requirement contained in the rule.

Comment. One respondent expressed concern that contracts awarded prior to August 20, 1990, may incur additional reporting requirements over and above those required by the provisions of these contracts. This respondent suggested that those contract holders be compensated if additional reporting requirements are imposed by this rule. Another respondent stated that the rules in § 223.48 are redundant in that they

are already required in all existing contracts.

Response. Contracts awarded prior to August 20, 1990, will continue to be subject only to the annual reporting requirements of the rules under subpart D, pursuant to section 497 of the Act. Section 223.48 of the proposed rule simply repeated the present reporting and recordkeeping requirements of prior contracts and proposed a new paragraph (b) to clarify that contracts awarded on or after August 20, 1990, shall be subject to the reporting and recordkeeping requirements of the new Act, pursuant to section 494 of the Act. Revised § 223.48 of the proposed rule was specifically written to maintain the distinction between contracts awarded prior to enactment of this Act and those awarded on or after enactment.

Comment. Two respondents stated that the regulations (both interim and proposed) provide that all contracts awarded on or after August 20, 1990, are subject to the Act, yet the Act provides that the old substitution rules govern until the regulations regarding substitution are finalized.

Response. Section 494 of the Act states that, unless otherwise stated, the Act is effective upon enactment. Subsection (a)(2)(A) of section 490 of the Act provides, with regard to direct substitution, that contracts entered into on or after August 20, 1990, but before the regulations implementing the Act are issued, are governed by the substitution rules in effect before the new regulations are issued (36 CFR part 223, subpart D). Subsection (b)(2)(D) of section 490 states, with regard to indirect substitution, that contracts entered into for timber from NFS lands in Washington State are governed by the substitution rules in effect before the new regulations are issued. Read together, sections 494 and 490 clearly indicate that the Act's provisions apply to contracts entered into on or after August 20, 1990, except with regard to the substitution provisions; with regard to direct substitution, contracts entered into between August 20, 1990, and the date that final regulations are issued are governed by the substitution rules in effect prior to issuance of the new regulations. Likewise, with regard to indirect substitution, contracts for timber on NFS lands in Washington State that are entered into between August 20, 1990, and the date that final regulations are issued are governed by the substitution rules in effect prior to issuance of the new regulations.

Comment. One respondent commented that timber sale contracts should be governed by rules which applied at the auction date, rather than the award date, because bidders presumably are familiar with and rely on rules in effect on the auction date. The respondent also stated that inequities might occur if new rules are adopted between the bid and award dates, particularly where there is a significant delay between the auction and award, or where new rules contain significant departures from prior rules.

Response. As noted above, subsection (a)(2)(A) of section 490 of the Act states that the old rules governing substitution apply to "a contract entered into between the purchaser and the Secretary" before the date final rules regarding substitution are issued. Subsection (b)(2)(D) of section 490 states that the old rules governing substitution apply to a "a contract entered into between the purchaser and the Secretary" concerning the Forest Service timber purchased in Washington State before the date that final rules regarding indirect substitution are issued. A bid is not a "contract entered into between a purchaser and the Secretary." Rather, a bid is an offer by the purchaser, which may be accepted or rejected by the Secretary. A contract is "entered into" when the Secretary accepts the bid in the award letter. Therefore, in accordance with the statutory language, the award date remains the date on which the new rules regarding substitution apply. For example, if a purchaser bid on a timber sale prior to August 20, 1990, but was not awarded the sale until after that date, the sale would be governed by the rules in effect after August 20, 1990.

Having considered the comments, the Department is adopting § 223.48 as proposed.

Section 223.191 Sourcing Area Disapproval and Review Procedures

General comments. Section 490(c) of the Act provides a limited exemption from the prohibitions against substitution for owners or operators of manufacturing facilities. If a person has a sourcing area approved by the Secretary, it is possible to purchase Federal timber from within the sourcing area and export private timber originating from outside of the sourcing area without violating the prohibitions against substitution. The procedures for submitting sourcing area applications are outlined in § 223.190 of the interim rule, published November 20, 1990 (55 FR 48579). Section 223.191 of the interim rule outlined the disapproval and review procedures (55 FR 48580). The proposed rule proposed to amend § 223.191 of the interim rule to provide more detail in the disapproval and review process for sourcing areas (56 FR 3376).

Comment: One respondent stated that there is confusion as to what constitutes a sourcing area. The respondent suggested that no sourcing area applications be acted upon until after the final rule is published and that the period for comment be extended until a clear meaning is published in a public notice.

Response. The definition of a sourcing area is found in § 490(c) of the Act. Section 223.190 of the interim rule (55 FR 48579) provided additional guidance with regard to the definition of a sourcing area. The Department believes that these provisions adequately address what constitutes a sourcing area.

Comment: One respondent expressed some confusion over the options available to an applicant whose applications has been disapproved. This respondent asked that these options be more clearly stated.

Response. The proposed rule provided an applicant whose sourcing area has been disapproved for failure to meet the geographically and economically separate test with the following phase out options: (1) Cease purchasing Federal timber from within the area disapproved within 15 months of the disapproval notice, as provided in the Act, and continue private log exporting from west of the 100th meridian; or (2) cease exporting private timber from within the sourcing area that would have been approved and continue purchasing Federal timber from within the area that was disapproved, subject to the 125 percent volume limitations provided by the Act during the first 15 months following the disapproval decision. An applicant whose sourcing area is disapproved, who chooses the second option, may begin purchasing Federal timber within the area when the choice is documented by a signed certification as described in paragraph (a)(2)(i).

In the final rule, paragraphs (a) and (b) of § 223.191 of the proposed rule have been consolidated into paragraphs (a) (1) and (2) and edited slightly to clarify these options. Paragraphs (a) (1) and (2) have been modified slightly from that in § 223.191 in the proposed rule to clarify the requirements for the phase-out of private timber exporting. Paragraph (a)(2)(i) is discussed later under "Certifications." Paragraphs (c) (1) and (2) of § 223.191 of the proposed rule have been redesignated as paragraphs (b)(1) (i) and (ii).

The interim rule (55 FR 48572), published November 20, 1990, and the proposed rule addressed in general the disposition of disapproved applications

for sourcing areas that are submitted after December 20, 1990, or the disapproval upon review of previously disapproved applications. It is clear that section 490(c) of the Act is intended to provide for a reasonable transition period for persons purchasing unprocessed timber originating from Federal lands and also exporting unprocessed timber originating from private lands to modify their business practices to conform with the Act. Several statutory procedures tied to specific dates support this conclusion. Section 490(c) of the Act states that the prohibition against substitution shall not apply within a sourcing area approved by the Secretary if either a person has not exported unprocessed private timber from within the sourcing area in the previous 24 months or the 24-month requirement is waived by the Secretary based on certification by the person that export from within the area would cease by February 20, 1991. Section 490(c)(1) requires that the certification be submitted by November 20, 1990. The Act also states that the general prohibition against direct substitution during the application process does not apply to a person submitting an application within one month after the Secretary prescribed the procedures, or, by December 20, 1990. In other words, the exemptions from the prohibition against substitution apply only to initial applicants.

The choice for disapproved applicants provided in § 490(c)(4), either to export private timber and phase out of Federal timber purchasing, or to purchase Federal timber and phase out of exporting private timber from within the sourcing area that the Secretary would approve, flows from the initial exemptions from substitution. Because the exemptions from substitution do not apply to future applicants, neither would the phase-out process. With regard to the phase out of purchasing Federal timber, future applicants would not be exempted from the general prohibition against direct substitution, and so they would be in violation of the prohibition against substitution if phased out were granted. With regard to the phase out of exporting private timber within the area that would have been approved, not only would applicants not be exempted from the general prohibition against direct substitution, but also they could not receive a waiver from the prohibition against exporting in the sourcing area in the previous 24 months. These applicants would be in violation of both the general substitution provision and the provision prohibiting export within the sourcing area in the previous 24 months if a phase out period were granted. To allow either phase-out option to continue after the initial application period would contradict the express language of the Act to prohibit substitution. Phase-out options also will not be available to persons requesting review of a disapproved sourcing area. Providing a phase out in this instance also contradicts the intent of the Act and could result in a person attempting to extend the 15-month phase-out period by requesting a review of the disapproval. Accordingly, a new paragraph (a)(3) has been added to § 223.191 of the final rule to reflect this clarification. Future applicants or applicants for a sourcing area review will not be provided with an area that would have been approved by the Secretary. The determination of an area that would have been approved is included in the phase-out process in section 490(c)(4)(B) of the Act. Since the phase-out process does not apply to future applicants for a sourcing area or applicants requesting a review of a sourcing area, as explained previously, neither does the determination to the area that would have been approved.

Comment. One respondent asked that the rule clearly state that the deciding official must present the applicant with a map showing the area that would have been approved.

Response. The Department agrees. A new paragraph (c) has been added to § 223.191 of the final rule which states that the area determined by the deciding official which would have been approved shall be drawn on a map and presented to the applicant by the deciding official with the notice of disapproval of the area requested in the application.

Certifications. Subsection (c)(4) of section 490 of the Act permits a person whose sourcing area application has been disapproved, to phase out purchases of unprocessed Federal timber. Subsection (c)(4) also provides procedures for avoiding such purchasing phase-out if a person certifies that he/she will cease exporting private timber originating from within the sourcing area that would have been approved by the Secretary. Accordingly, the applicant has 90 days after receipt of the disapproved application to submit the certificate to cease exporting private timber in order to avoid the required phase-out of Federal timber purchases, pursuant to subsection (c)(4) of section 490 of the Act. The format for the certificate was presented in the proposed rule. In addition, paragraphs (b) (2) and (3) of § 223.191 of the proposed rule proposed to amend § 223.191 of subpart F, published in the interim rule on November 20, 1990 (55 FR 48572), to provide a detailed process for submission of the certificate. These paragraphs have been redesignated as (a)(2) (ii) and (iii) in the final rule.

Comment. Several respondents commented that the certification language should be modified to reflect that the individual signing the certification on behalf of a corporation is doing so in the capacity as an officer or agent of that corporation, not in a personal capacity. In addition, several respondents commented that a corporation's chief executive officer (CEO) should not necessarily be required to sign the certification, since the CEO may have limited detailed knowledge concerning the operation's acquisition and disposition of unprocessed timber. These respondents suggested that an officer or agent of the corporation delegated such authority be permitted to sign the certification on behalf of the corporation, within his or her official capacity.

Response. The certification language does not mean that the corporate officer signing the certification may be held personally liable for violations of the certification. The corporate officer, signing in his or her corporate capacity, would be held liable in that capacity and in accordance with the applicable laws and regulations governing liability of corporate officers.

The certificate must be signed by someone with authority to bind the corporation. Rather than consider a variety of delegations of authority, the Department prefers to have the signature of the official with clear authority to bind the corporation, the CEO. The Department believes that the assurance and administrative convenience of requiring the CEO's signature outweigh the possible inconvenience of obtaining that signature. This requirement is similar to the requirement in 36 CFR 223.171(b)(6) (1990), issued pursuant to the Federal Timber Contract Payment Modification Act (16 U.S.C. 618) (also known as the "Buy Out Act"), with which participating timber purchasers complied. In that regulation, the CEO was required to sign a statement for a corporation certifying to the accuracy of information submitted. The signatory may not have personal knowledge of the information to which he or she is certifying. The signatory must ascertain, however, that the information is true, complete, and accurate to the best of his or her knowledge and belief. The Department has added a statement to the certification to paragraph (a)(2)(i)

(A) and (B) of § 223.191 of the final rule to reflect this clarification.

The certification has been revised to include the agreement to maintain records of all transactions involving acquisition and disposal of unprocessed logs from both private and Federal lands within the area involved in the certification, for 3 years and to make such records available for inspection upon the request of the Regional Forester, or other official to whom such authority has been delegated. The proposed rule provided for this agreement in paragraph (b)(4) of § 223.191 which will not be retained in the final rule.

The certification also has been revised to provide specific notice that the signatory is signing under penalty of perjury pursuant to the False Statements Act (18 U.S.C. 1001).

Comment. Several respondents questioned the priority of disapproved applicants being able to both purchase Federal timber and export private timber from the same area during the phase-out process.

Response. Section 490(c) of the Act specifically provides for a person to purchase Federal timber and to export private timber simultaneously during a transition period. Paragraph (c)(2) provides for an exemption from substitution for initial applicants until the Secretary approves or disapproves the application. Paragraph (c)(4)(B) provides a 15-month period to cease export of unprocessed timber originating from private lands from the geographic area determined by the Secretary for which the application would have been approved. Section 223.191(a) of the final rule provides for this phase-out process.

Comment. One respondent asked how the certification to cease exporting from within the sourcing area in six months (in return for the waiver of the 24-month prohibition against exporting) squares with the certification for disapproved applicants to cease exporting from within the sourcing area that would have been approved in 15 months.

Response. The statutory language and Congressional intent to prevent substitution indicate that the certification to cease exporting from within the sourcing area applies both when the sourcing area is approved and when the applicant whose sourcing area is disapproved participates in the phase-out process.

Section 490(c)(1) of the Act requires the applicant to cease exporting unprocessed private timber originating from private lands "within the sourcing area" for not less than three years in order to be exempt from the 24-month prohibition against exporting from within the sourcing area. This language most likely refers to the sourcing area requested, since the Act requires the certificate to have been submitted before the sourcing areas were adjudicated. If the sourcing area requested is also approved, the certificate becomes redundant because exporting of private timber originating from within an approved sourcing area is prohibited by 490(c)(1)(B) of the Act. The certificate is also inconsistent with the intent of the Act after the sourcing area is approved, since the certificate lasts for three years, whereas a sourcing area (and the attendant prohibition against exporting from within it) may be valid for up to five years before a review.

Paragraph (b)(2) of § 223.191 clarifies that the prohibition against exporting private timber originating from the approved sourcing area shall be in effect as long as the sourcing area remains approved.

The certificate to cease exporting from within the requested sourcing area also applies to a requested sourcing area that is disapproved and whose applicant is participating in either phase-out process. If the certificate did not apply during the phase-out process, the applicant could export private timber and purchase Federal timber that originates from the same area (the requested sourcing area). Congressional intent expressed throughout the Act is to prohibit a person from purchasing Federal timber and exporting private timber from within the same area. Therefore, the prior certification remains in full force and effect through the 15-month phase-out process described in paragraphs (a) and (b) of § 223.191. In the final rule, paragraph (d) has been added to § 223.191 to clarify this point.

If an applicant whose sourcing area is disapproved chooses to phase out of Federal timber purchasing, pursuant to Section 490(c)(4)(A) of the Act, the person may submit a request to rescind the certificate after the 15-month phase-out period elapses. The certificate is necessary during the 15-month period in order to comply with Congressional intent to prevent substitution. After the 15 month phase-out period, the applicant will no longer be purchasing Federal timber within the requested sourcing area.

If an applicant chooses to phase out of exporting, pursuant to Section 490(c)(4)(B) of the Act, the certificate applies as written. The certification for disapproved applicants who choose to phase out of exporting requires a phase-out of exporting in 15 months in the area that would have been approved. Often this area will include all or a portion of the sourcing area requested in the application. Rules of statutory construction require that each part of the statute be given meaning. When the certifications are read together, the three-year prohibition against exporting, which begins six months after enactment, applies to the sourcing area requested in the application. Further, the certificate is necessary during the 15-month period in order to prevent purchasing of Federal timber and exporting of private timber from within the same area (the requested sourcing area). The certification concerning the phase-out of exporting in the area that would have been approved applies to the sourcing area that would have been approved, excluding the area requested in the application. Therefore, the certifications and the phase-out process are retained in the final rule.

Sourcing areas that would have been approved. It became apparent during the analysis of the comments received that several respondents were unclear as to the status of the area that would have been approved if the disapproved applicant elected to phase-out of exporting from that area.

Section 490(c)(4) of the Act provides for a person whose application has been disapproved to phase out of exporting from the area that would have been approved and to continue purchasing Federal timber from the area requested in the application, subject to stated volume limitations, during the export phase-out period.

The Act is silent regarding the fate of the sourcing areas that would have been approved after the phase-out period. The Department intends to give meaning to the Act's requirement that the Secretary determine which area would have been approved and to the phase-out provisions of Section 490(c)(4). In deciding to choose the export phase-out option, the applicant has chosen to accept the area that the deciding official stated would have been approved as the person's approved sourcing area. If an applicant whose sourcing area is disapproved does not wish to accept the Secretary's sourcing area that would have been approved and does not phase out of Federal timber purchases, the applicant is in the same position as someone who did not apply for a sourcing area.

The certification to cease exporting in the sourcing area requested will not be approved in this instance. Therefore, in the final rule, paragraph (a)(2)(iv) has been added to § 223.191, stating that when an applicant whose sourcing area has been disapproved submits the certificate to cease exporting within the

sourcing area in the 15-month phaseout period, the sourcing area that would have been approved becomes an approved sourcing area. Upon certification, the person may begin purchasing Federal timber within the approved sourcing area.

The prohibition against exporting private timber originating from within the area shall be in full force and effect until the area is disapproved through the review process set forth in paragraph (e) of this section.

Disapproval Process

Comment. Several respondents questioned whether the phase out of exporting private timber in the disapproval process (§ 223.191(b) of the proposed rule) applies to someone who has not exported from the area that would have been approved by the Secretary. One of the respondents also asked whether such a person could reapply for a sourcing area that would have been approved if the export phase-out period is inapplicable.

Response. Section 490(c)(4)(B) of the Act provides for a phase out of exporting of unprocessed private timber, "from the geographic area determined by the Secretary for which the application would have been approved." Therefore, the phase out of exporting from the area that the Secretary would have approved does not apply to persons who have not exported from that area.

However, persons who have purchased Federal timber west of the 100th meridian in the 48 contiguous states, but have not exported from the area that would have been approved by the Secretary will be allowed to have the sourcing area that the Secretary would have approved.

Section 490 of the Act is clear that a person who has exported unprocessed timber originating from private lands west of the 100th meridian in the contiguous 48 states must have a sourcing area approved by the Secretary in order to purchase timber originating from Federal lands west of the 100th meridian in the contiguous 48 states. Paragraph (a) of section 490 exempts only sourcing areas from the prohibition against direct substitution. Paragraph (b) prohibits the indirect purchase of Federal timber by persons who are prohibited from purchasing Federal timber directly.

Section 490(c)(4), through the phase out of exporting within the sourcing area, provides a transition for persons who have been exporting private timber and purchasing Federal timber west of the 100th meridian in the contiguous 48 states, as discussed previously. Within this phase out provision is the provision regarding the Secretary's determination of the sourcing area that would have been approved. Since the sourcing area applicants who have been exporting outside of a sourcing area must have a sourcing area to continue purchasing Federal timber, it would be inconsistent to deny such applicants a sourcing area that would have been approved in this transition period.

Section 490(c)(4)(B) also requires persons who have exported from within the sourcing area that would have been approved by the Secretary to sign a certification to cease exporting from within that area. It would not be appropriate for persons who have not exported from that area to sign the certificate, since exporting from that area has not occurred.

Section 223.191(a)(2)(i) has been rewritten in the final rule to provide a process whereby an applicant may continue to purchase unprocessed timber originating from Federal lands within the disapproved sourcing area by certifying that he or she will cease exporting unprocessed timber from private lands located within the area that would have been approved (§ 223.191(a)(2)(i)(A) in the final rule); or by certifying that he or she accepts the area that the Secretary would have approved as his or her sourcing area (§ 223.191(a)(2)(i)(B) in the final rule).

Comment. One respondent objected to the requirement that applicants whose applications are disapproved must maintain records of all transactions of both Federal and private timber for three years following receipt of the disapproval notice. The respondent stated that the Act does not have such a requirement, and that this requirement creates unnecessary paperwork.

Response. The maintenance of acquisition and disposition records is necessary for the Department to fulfill its responsibilities to implement and enforce the Act with regard to National Forest System lands. Timber is traded over a several-year period. Time is also needed to track the timber when monitoring for compliance. Given the amount of time that may accrue while timber is traded and being monitored, the Department requested and was granted the maximum amount of time for requiring recordkeeping. The Act provides for the Secretary to draft such regulations as may be necessary to implement the Act. In the final rule, proposed paragraph (b)(4) of § 223.191 has been added to the certification statement in § 223.191(a)(2)(i)(A), maintaining this recordkeeping requirement for those applicants who have been disapproved and choose one of the phase-out options. For those disapproved applicants who do not choose one of the phase-out options, the maintenance of records requirement does not apply.

Review of sourcing areas. Subsection 490(c)(5) of the Act requires that review of approved sourcing areas will occur not less often than every 5 years. Section 223.191(d) of the proposed rule outlined the procedures for review of approved sourcing areas. These proposed procedures for review provided that a tentative date for review would be included in the approval notice. The proposed rule stated that 60 days prior to the tentative review date, the Regional Forester would notify the person of the pending review. The proposed rule also stated that the person must request the review in writing to the Regional Forester not less than 30 days prior to the tentative review date. If the person did not request a review of the sourcing area in accordance with the procedures proposed in § 223.191(d), the sourcing area would terminate on the review date. In addition, the proposed rule stated that the Department would reserve the right to schedule a review at any time during the 5-year period, with 60 days notice.

Comment. Some respondents objected to the termination of an approved sourcing area if the person failed to request a review within 30 days of the tentative review date listed in the approval notice. Several respondents stated that the sourcing area should remain in effect until a review determined otherwise.

Response. The Department agrees with the comments and has eliminated the automatic sourcing area termination provision in the final rule. Paragraph (d) of § 223.191 of the proposed rule has been redesignated as paragraph (e) in the final rule and revised to eliminate the requirement that purchasers must request a review within 30 days of the tentative review date. The purpose of this procedure was to eliminate review of a sourcing area no longer being used without resorting to a formalized review process. The Department has instituted an informal process before the formal review, which is discussed later in this document, so there is no longer any reason for the automatic termination. The final rule provides that sourcing areas being reviewed will continue in full force and effect pending the final review determination.

Comment. One respondent recommended that the Forest Service simply publish notice of the sourcing areas coming up for review and invite

comments from persons (including the applicant) who believe that the existing sourcing area should be reapproved, modified, or revoked. Several respondents asked about the timeframe for the review and about the criteria that would be used.

Response. In the final rule, a new paragraph (e)(1) has been added to § 223.191 establishing an informal review procedure that will help expedite review decisions while keeping the public informed of the status of a particular sourcing area.

Subsection 490(c)(5) of the Act requires a review of sourcing areas "in accordance with the procedures prescribed in this title." The relevant procedures in the title are the sourcing area procedures. These procedures envision a formal decision, made "on the record and after an opportunity for a hearing." A formal adjudicatory process normally requires a case or controversy that is ripe for review. If there is no change in the sourcing area, or no disagreement among the parties regarding changes to be made, there is no case or controversy. Therefore, the Forest Service will utilize an informal process unless the parties cannot reach a consensus.

The informal system adopted in § 223.191(e)(1) requires the Regional Forester or other such reviewing official to notify parties of the review date by publication in newspapers of general circulation within the sourcing area. The Forest Service shall review the sourcing area record and provide comment to the reviewing official within the 30-day period following publication of the notice of review. All interested parties may review the sourcing area record and comment within the 30-day period. For 10 working days after the review period, any person submitting comments and the person holding the sourcing area may review the comments. If there is disagreement among those who comment regarding the proper sourcing area, the Forest Service will hold a meeting convenient to the parties that all interested parties may attend. If there is still no agreement among the parties as to the proper sourcing area, then a formal adjudicatory process will occur, in accordance with 5 U.S.C. 554 of the Administrative Procedure Act. Upon institution of a formal adjudicatory process, all written comments submitted in the 30 day period for comments shall become part of the administrative record.

Comment. One respondent said that for long-term planning, the review at less than five years should be for good cause only.

Response. The Act places no restriction on the Department as to when the review will occur; it simply requires a review at least every five years. Likewise, the Act places no standard, such as "good cause," on the occurrence of a review. To assure that sourcing areas accurately reflect purchasing patterns, pursuant to the Act, the Department needs the flexibility to review sourcing areas at any time due to changed circumstances. A new paragraph (e)(3) has been added to § 223.191 in the final rule to clarify that the Department may review a sourcing area at any time prior to the tentative review date at the request of the Forest Service or the person holding the sourcing area. This provision was included as a part of paragraph (d) of § 223.191 in the proposed rule.

Comment. One respondent stated that there should be a presumption in favor of the earlier decision regarding a sourcing area.

Response. There is nothing in the Act regarding a presumption that the current sourcing area remains in effect; in fact, since the Act requires the sourcing area review procedures to be in accordance with the procedures in the Act that were utilized in the initial determination, the statutory language indicates that the review is a *de novo* review (i.e., the review would be conducted as if no prior proceedings has been conducted and evidence in addition to the existing record would be allowed). Therefore, the Department will treat the sourcing area review as a *de novo* review in which all of the elements of a sourcing area must be established.

Comment. Several respondents asked if disapproved sourcing area applications would also be reviewed.

Response. The Act provides only for review of approved sourcing areas pursuant to section 490(c)(5). Paragraph (5) refers to paragraph (3), entitled, Grant of Approval, which discusses the factors used by the Secretary in approving sourcing areas. Therefore, the review will involve all approved sourcing areas and those areas that would have been approved that become approved sourcing areas through the applicant's certification to cease exporting from within that area or certification accepting the area that would have been approved as their sourcing area.

Paragraph (e) of § 223.191 in the proposed rule stated that the reporting and recordkeeping procedures constitute information collection requirements as defined in 5 CFR part 1320 and that the requirements have been approved by the Office of Management and Budget. This information has been redesignated as paragraph (f) and included in the final rule without change. This is a structural change to improve clarity.

Section 223.203 Indirect Substitution Exception for National Forest System Timber From the State of Washington

Section 490 of the Act places limitations on the direct and indirect substitution of unprocessed Federal timber for unprocessed timber exported from private lands. Subsection (b)(2) of section 490 of the Act provides for a limited exception to the prohibition against indirect substitution for unprocessed timber originating from National Forest System lands in the State of Washington. Section 490(b)(2)(i) and (ii) of the Act provide that such limit shall equal:

(i) The amount of such timber acquired by such person, based on the higher of the applicant's actual timber purchasing receipts or the appropriate Federal Agency's records, during fiscal years 1988, 1989, and 1990, divided by three; or

(ii) 15 million board feet, whichever is less, except that such limit shall not exceed such person's proportionate share of 50 million board feet.

Proposed procedures for implementing section 490(b)(2) were set forth in paragraph (b) of 223.203 of the proposed rule, which addressed procedures for applying for a proportionate share of the 50 million board feet purchase limit. These procedures stated that any person who exceeds his/her share of these purchase rights, in any fiscal year, will be in violation of the substitution prohibitions of the Act.

Comments. One respondent objected to the language in the proposed rule that provided for annual renewal of the limited indirect substitution exception for National Forest System timber originating from within Washington State. This respondent stated that the Act and the Congressional Conference Committee Report are silent concerning the application of the limit, and, therefore, the Act must be interpreted to provide a one-time opportunity to phase out of indirect substitution, and not an annual, indirect substitution quota.

Response. Subsection (b)(2) of section 490 of the Act does not specifically address this issue. Therefore, in accordance with the rules of statutory construction, the Department reviewed the language in this provision of the Act to determine Congressional intent. The trading rights indicate an annual, rather than a one-time apportionment. Subsection (b)(2)(C) of section 490 of the

Act permits any person holding a portion of this limited exception to "sell, trade, or otherwise exchange with any other person" such limited rights, "except that such rights may not be sold, traded, or otherwise exchanged to persons already in possession of such rights obtained under subparagraph (A)." There would be no reason to provide for transfer of rights if they were a one-time opportunity. Thus, a one-time apportionment in the rule would render this trading provision nearly meaningless and of little value because of the small amount of timber volume involved. The general intent of the Act to grant persons trading rights for their proportionate shares of this exception supports the Department's interpretation that this is an annual exception. Therefore, the final rule retains this provision in the certification in 223.203.

Comment. Several timber purchasers commented that some of the specific data required to be submitted in the application for a proportionate share of these limited rights was either irrelevant or not readily available, would be very difficult to reconstruct, and would constitute an unreasonable paperwork burden because records of this type were not required to be kept under the prior rules in the detail being requested. For example, the respondents stated that from whom the Federal timber was acquired is unnecessary information and that it may be difficult to determine from which National Forest within Washington State that timber originated after the fact. These respondents maintained that much of their Federal timber purchases consisted of acquiring specific species and/or grades of logs in large batches or sorts intermixed with State and private logs and not accounted for separately by origin. One respondent suggested that because of the difficulty of reconstructing such records of origin, the applicants should be required to simply certify that, based on available records, it appears that they purchased at least the volumes so specified. Some of these respondents also asked that acquisition records be presented by calendar year instead of by fiscal year, as most businesses maintain their records by calendar year.

Response. The Department agrees with these respondents and has modified the information requested in the final rule to be used in determining proportionate shares of the limited rights. The Department believes that such modification will be adequate to meet the statutory requirements. Accordingly, the information requirements of paragraph (b)(5)(ii) of § 223.203 of the proposed rule will not be adopted in the final rule.

Subsection 490(b)(2)(i) of the Act requires that the Department establish a limited amount of unprocessed timber originating from National Forest System lands from within Washington State which equals the amount of such timber acquired by that person based on the higher of "actual timber purchase receipts" or government records. The Department will determine the applicant's proportionment based on government records. The final rule provides that a person may review the purchase records of the Forest Service prior to the deadline for submission of applications for the exemption. Applicants may voluntarily submit actual timber purchasing receipts if they believe that the actual purchase receipts will result in a higher amount than would result from using government records. The determination will then be based on the purchase receipts, if provided, or government records, whichever is higher. The Department agrees that the reconstruction of purchase records may be difficult. Accordingly, the Department will provide in the final rule that a person's actual timber receipts may be in the form of a certification by a certified public accountant that the records of the person reflect that the specified volumes are accurate. The volumes to report are harvest volumes, except where sales are still open. In the case of open sales, the volumes to report are advertised volumes.

In the final rule, paragraph (b)(5) of § 223.203 of the proposed rule has been redesignated as paragraph (b)(3) and revised to reflect these changes.

A new paragraph (b)(5) has been added to § 223.203 in the final rule, stating that purchasers may voluntarily submit, through verification by a certified public accountant, a summary of total volume and average volume for each of the three fiscal years (1988, 1989 and 1990). Paragraph (b)(5)(i)(C) has been added to provide for the certificate that the certified public accountant must sign to attest to the accuracy of the records reviewed. Paragraph (b)(5)(ii)(D) has been added to state that the accountant's certification must be notarized, must be on company letterhead, and must accompany the applicant's application. The certification in paragraph (b)(3)(ii) of § 223.203 must accompany the application regardless of the use of a certified public accountant to verify the records.

Subsection 490(b)(2)(i) of the Act specifically asks for the amount of timber "during fiscal years 1988, 1989, and 1990." Accordingly, the Department must retain the use of "fiscal year" in the final rule.

Comment. Two respondents questioned the need to provide "substantial evidence" that the prohibition against indirect substitution applies to them as a qualification for a proportionate share of this limited exception. These respondents felt that it should be sufficient for a company to certify that it has indirectly substituted within the three years by having exported timber originating from private lands located west of the 100th meridian in the 48 contiguous States and acquired timber originating from National Forest System lands within Washington State during the same period.

Response. After review of the Act, the Department has concluded that such substantial evidence is not necessary. Accordingly, § 223.203(b)(4) of the proposed rule is not adopted in the final rule. In lieu of substantial evidence, language has been added to the certification accompanying the application (§ 223.203(b)(3)(ii)) that requires an applicant to certify that the prohibition against substitution contained in section 490(b) of the Act applies to such applicant, and that the applicant has purchased NFS timber during fiscal years 1988, 1989 and/or 1990. The certification language also has been reviewed to provide for retaining records of all transactions involving the acquisition of unprocessed timber from Federal lands within the area and to make such records available for inspection upon request by appropriate officials. Further, the certification has been revised to provide specific notice to the signatory that false, incomplete, or incorrect certifications may subject the signatory to the penalty of perjury pursuant to the False Statements Act (18 U.S.C. 1001).

Comment. One respondent stated that the confidentiality of information submitted in an application should be determined in accordance with the Freedom of Information Act.

Response. All requests for information submitted pursuant to the Forest Resources Conservation and Shortage Relief Act of 1990, will be handled according to the Freedom of Information Act, as amended (5 U.S.C. 552), with full consideration of available exemptions from disclosure. The Freedom of Information Act is specific in describing the types of information exempt from public disclosure. Applicants need to be aware that some of the information submitted may be available to the public upon request. The language regarding the confidentiality of the application in

paragraph (b)(5) of § 223.203 of the proposed rule has been removed. Any public disclosure of the information provided in an application shall be governed by the provisions of the Freedom of Information Act, the Department's implementing regulations at 7 CFR 1.11, and Executive Order 12600 (June 23, 1987).

Comment. Several respondents voiced concerns on proposed §223.203, similar to those expressed on § 223.191, over the wording of the certification relating to personal liability of corporate officers and the requirement that it be signed only by the chief executive officer of the corporation.

Response. As noted in response to the comment concerning the certification required in § 223.191(a)(2)(i), corporate officers signing in a corporate capacity would be held liable in that capacity and in accordance with all other applicable laws or regulations governing liability of corporate officers. The signatory may not have personal knowledge of the information to which he or she is certifying. The signatory must ascertain, however, that the information is true, complete, and accurate to the best of his or her knowledge and belief. The Department has added a statement to the certification in paragraph (b)(3)(ii) of § 223.203 of the final rule to reflect this clarification. In addition, as at § 223.191(a)(2)(i), the certification language has been revised to provide specific notice of the possibility of the penalty of perjury under the False Statements Act (18 U.S.C. 1001).

Further, the provision of § 223.203(b)(5)(iv) of the proposed rule has been included as a part of the specific certification language in § 223.203(b)(3)(ii) that must be provided by the signatory.

Comment. One respondent urged the Agency to proceed rapidly to receive applications for indirect substitution of proportional shares not to exceed 50 million board feet, if the statutory deadline for limiting indirect substitution is to be met.

Response. Paragraph (b)(6) of § 223.203 of the proposed rule stated that there would be a 20-day period following publication of the final rule in the **Federal Register** for submitting applications. This requirement has been redesignated as § 223.203(b)(4), in the final rule. The Department believes that the 20-day period is the minimum amount of time needed to complete and submit an application. The Department will apportion the 50 million board feet of timber as soon as possible after receipt of the applications.

Comment. One respondent requested that the language of the proposed rule be revised to clarify that a person acquiring rights under this section from a person selling such rights need not submit an application to the Forest Service to acquire these rights.

Response. Subsection 490(b)(2)(C) of the Act requires that a person acquiring these rights may not already be in possession of such rights. Further, the Conference Report (page 252) states that the 15 million board feet limit applies to the acquiring party. The Department does not intend to require prospective purchasers of these rights to apply to the Forest Service for permission prior to making the acquisition. However, the Forest Service must be informed of such transactions in order to monitor compliance with the Act.

Pargaraph (b)(3) of § 223.203 of the proposed rule addressed the issue of acquiring this right. This paragraph has been redesignated in the final rule as § 223.203(c) and revised to include the following provision to address this issue: "Any person selling, trading, or exchanging any or all of the rights obtained under this rule shall advise the Regional Forester of the amount being traded and the name(s) of the person(s) acquiring such rights."

In the final rule, paragraph (c) of § 223.203 of the proposed rule has been redesignated as paragraph (d).

Comment. One respondent suggested the Forest Service maintain a cumulative record for each person holding a portion of this indirect substitution exception to assure that the person does not exceed the allotted shares and to notify the person when the remaining unused shares drop below 100 thousand board feet.

Response. The Department declines to adopt this suggestion. The responsibility to comply with provisions of this Act, including this limited indirect substitution exception, lies with the person holding such exception. The role of the Forest Service is to monitor compliance through the information provided and through regular field surveillance. The Department intends to monitor the transfer of such limited share rights for compliance with the Act.

Comment. One respondent asked whether the Forest Service intended to simply approve or disapprove applications, or whether the Forest Service would approve allocations of the exception which may be different from the amount requested.

Response. The Forest Service intends to apportion the 50 million board feet exception in relation to the amounts supported by the data provided in the applications and the agency's own records. No revision of the proposed rule is needed to address this comment.

General Comments

Comment. One respondent commented that no export of unprocessed timber originating from National Forest System lands within the State of Washington should be allowed.

Response. Except for the provision permitting the exporting of unprocessed Federal timber found to be surplus to domestic processing needs, the Act prohibits such exporting. No revision of the proposed rule is necessary to respond to this comment.

Comment. One respondent commented that the Department should undertake an Environmental Impact Statement to disclose the impact of log exports on forests and forest-dependent communities.

The respondent stated that, "[p]art of the growing demand for National Forest timber results from large corporations that export private timber and then compete against smaller mills for public timber." The respondent's example of this demand is a company competing for public timber on the Colville National Forest. The respondent further stated that timber demand is a factor in the allowable sale quantity in the Forest Service's Land and Resource Management Plan for the Colville National Forest. The respondent recommended that log exports be curtailed or the exporters forego the ability to export logs and purchase timber from NFS lands.

Response. With regard to the comment about increased competition, the intent of the National Environmental Policy Act (NEPA) is to require an analysis of the physical environment *Metropolitan Edison Co.* v. *People Aganist Nuclear Energy*, 460 U.S. 766, 772 (1983). The National Environmental Policy Act requires no particularized assessment of non-environmental factors *Public Utilities Commission of the State of California* v. *Federal Energy Regulatory Commission*, 900 F.2d 269, 282 (DC Cir. 1990), *citing* NEPA section 102, 42 U.S.C. 4332 "(requiring the agency to consider a variety of environmental, not economic factors)."

With regard to the comment about allowable sale quantity, even if these regulations affected public timber demand, projections for demand would be accounted for through long term monitoring and evaluation done as a part of Forest Plans. Further, the decision to sell timber and the assessment of the impacts of such decisions are made through Forest Plans

and project decisions, not in these regulations.

As noted later in this document, based on an environmental assessment, there is a Finding of No Significant Impact on the quality of the human environment, individually or cumulatively, as a result of these regulations. The environmental assessment is available as a separate document.

Comment. In relation to the regulatory impact of the rule, two respondents commented that the proposed rule imposes significant new requirements on small business timber sale purchasers and other entities.

Response. The proposed rule in and of itself does not impose significant new requirements. The Act establishes these requirements, and this rule is simply implementing the provisions of the Act. The Department has sought to minimize the impact wherever possible in the rules as evidenced by several changes made based on the comments received.

Summary

Having fully considered the comments received on the proposed rule, the Department is adopting a final rule, with the modifications previously described in response to the comments in the preceding paragraphs. This rule supercedes certain provisions of the interim rule published in the Federal Register on November 20, 1990, and supplements those sections still in effect.

This rule is effective upon publication. Rulemakings are exempt from the rulemaking procedures of the Administrative Procedures Act in certain circumstances, including matters relating to agency management public property, or contracts (5 U.S.C. 553(a)(2)). The Department did not waive this exemption with regard to the effective date of a rulemaking (36 FR 13894 (July 24, 1971)). This rulemaking relates to agency management, public property and contracts, and therefore is exempt from the 30-day delay between publication of a rule and its effective date. Further, a delayed effective date is not required if a rule is a substantive rule which grants or recognizes an exemption (5 U.S.C. 553(d)(1)). This rule provides certain exemptions from the restrictions on substitution, and therefore may be effective immediately. In addition, a delayed effective date is not required if good cause is found and published with the rule (5 U.S.C. 553(d)(3)). Good cause exists to make this rulemaking effective upon publication due to the many deadlines in the statute requiring monitoring and enforcement.

Environmental Impact

Based on both experience and environmental analysis, this final rule will have no significant effect on the quality of the human environment, individually or cumulatively, and the Forest Service has made a Finding of No Significant Impact (40 CFR 1508.27). This rule only establishes certain administrative procedures to limit the persons qualified to purchase unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States. It does not affect the amount of timber to be sold, where the sales will be located, when they will be operated, the contract period, the contract size, resource protection requirements, or any aspect of on-the-ground contract performance. This rule does not alter the requirement that each timber sale must be analyzed and documented in compliance with the National Environmental Policy Act and its implementing regulations. Copies of the Environmental Assessment and Finding of No Significant Impact may be obtained by writing or calling the person or office listed earlier in this document under **FOR FURTHER INFORMATION CONTACT.**

Controlling Paperwork Burdens on the Public

The application and reporting procedures in §§ 223.48, 223.191, and 223.203 of this rule contain new recordkeeping and reporting requirements as defined in 5 CFR part 1320 and, therefore, impose additional paperwork burdens on the affected public. The Office of Management and Budget (OMB) has approved these requirements for use through March 31, 1994, and assigned them Control Numbers 0596–0021 and 0596–0115.

Regulatory Impact

This rule has been reviewed under USDA procedures and Executive Order 12291. It has been determined that this is not a major rule. The rule will not have an annual effect of $100 million or more on the economy, substantially increase prices, costs for consumers, individual industries, Federal, State or local governments, or geographic regions. Furthermore, the rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This rule will not limit the amount of National Forest System timber to be offered for sale, restrict competition, or reduce market demand for such timber.

This rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it has been determined that the action will not have a significant economic impact on a substantial number of small entities. Economic impacts associated with implementation of this rule result directly from the Forest Resources Conservation and Shortage Relief Act and not from the rule itself. The rule imposes no additional requirements on small business timber sale purchasers or other small entities beyond that required by the Forest Resources Conservation and Shortage Relief Act of 1990.

This rule also has been analyzed in accordance with the principles and criteria contained in Executive Order 12630 and it has been determined that the rule does not pose the risk of a taking of constitutionally-protected private property.

List of Subjects in 36 CFR Part 223

Exports, Government contracts, National Forests, Reporting and recordkeeping requirements, and Timber sales.

Therefore, for the reasons set forth in the preamble, part 223 of Chapter II of title 36 of the Code of Federal Regulations is amended as follows:

PART 223—SALE AND DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER

1. The authority citation for part 223 is revised to read as follows:

Authority: 90 Stat. 2958, 16 U.S.C. 472a; 98 Stat. 2213, 16 U.S.C. 618, 104 stat. 714–726, 16 U.S.C. 620–620h, unless otherwise noted.

Subpart B—Timber Sale Contracts [Amended]

2. Revise § 223.48 to read as follows:

§ 223.48 Restrictions on export and substitution of unprocessed timber.

(a) Contracts for the sale of unprocessed timber from National Forest System lands located west of the 100th meridian in the contiguous 48 States and Alaska, awarded before August 20, 1990, shall include provisions implementing the Secretary's timber export and substitution regulations at subpart D of this part in effect prior to that data. Such contracts shall also require purchasers to:

(1) Submit annually, until all unprocessed timber is accounted for, a certified report on the disposition of any unprocessed timber harvested from the sale including a description of unprocessed timber which is sold,

exchanged or otherwise disposed of to another person and a description of the relationship with the other person;

(2) Submit annually, until all unprocessed timber from the sale is accounted for, a certified report on the sale of any unprocessed timber from private lands in the tributary area which is exported or sold for export; and

(3) Maintain records of all such transactions involving unprocessed timber and to make such records available for inspection and verification by the Forest Service for up to three (3) years after the sale is terminated.

(b) Contracts for the sale of unprocessed timber from National Forest System lands located west of the 100th meridian in the contiguous 48 States, awarded on or after August 20, 1990, shall include provisions implementing the requirements of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.).*

(c) The reporting and recordkeeping procedures in this section constitute information collection requirements as defined in 5 CFR part 1320. These requirements have been approved by the Office of Management and Budget and assigned clearance number 0596–0021.

Subpart F—The Forest Resources Conservation and Shortage Relief Act of 1990 Program [Amended]

3. Revise § 223.191 and add a new § 223.203 to read as follows:

§ 223.191 Sourcing area disapproval and review procedures.

(a) Notwithstanding any other provision of law, an applicant whose sourcing area application was submitted by December 20, 1990, and is disapproved may either phase out of purchasing Federal timber or phase out of exporting unprocessed timber originating from private lands within the sourcing area that would have been approved, as follows:

(1) *Phase-out of Federal timber purchasing.* The applicant may purchase, in the 9-month period after receiving the application disapproval, unprocessed timber originating from Federal lands in the disapproved sourcing area, in an amount not to exceed 75 percent of the annual average of such person's purchases of unprocessed Federal timber in such area during the 5 full fiscal years immediately prior to the date of submission of the application. In the 6-month period immediately following the 9-month period, such person may purchase not more than 25 percent of such annual average, after which time the prohibitions against direct substitution, set forth in § 223.189 of this subpart, shall apply; or

(2) *Phase-out of private timber exporting.* The applicant may continue to purchase unprocessed timber originating from Federal lands within the disapproved sourcing area without being subject to the phase-out of Federal timber purchasing procedures described in paragraph (a) of this section, if the following requirements are met:

(i) The applicant certifies to the Regional Forester or the approving official to whom such authority has been delegated, within 90 days after receiving the disapproval decision, as follows:

(A) An applicant that has exported unprocessed timber originating from private lands from the geographic area that would have been approved will provide a signed certification that reads as follows:

"I have engaged in the exporting of unprocessed private timber originating from private lands located within the geographic area the approving official would have approved as a sourcing area for my manufacturing facility. I desire to continue purchasing unprocessed Federal timber from within such area. I hereby certify that I will cease all exporting of unprocessed timber from private lands located within the area that would have been approved by [the applicant shall insert date 15 months from date of receipt of the disapproval decision]. I agree to retain records of all transactions involving acquisition and disposition of unprocessed timber from both private and Federal lands within the area involved in the certification, for a period of three (3) years beginning on the date of receipt of the disapproval notification, and to make such records available for inspection upon the request of the Regional Forester, or other official to whom such authority has been delegated. I make this certification with full knowledge and understanding of the requirements of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*) (Act) and do fully understand that failure to cease such exporting as certified will be a violation of the Act and may subject me to the penalties and remedies for such violation. Further, I fully understand that such violation may subject me to the penalty of perjury pursuant to the False Statements Act (18 U.S.C. 1001). I certify that the information in this certificate is true, complete, and accurate to the best of my knowledge and belief.";

or,

(B) An applicant who has not exported unprocessed timber originating from private lands from the geographic area that the Secretary would have approved will provide a signed certification that reads as follows:

"I have not exported timber originating from private lands within both the sourcing area that the Secretary would have approved and the disapproved sourcing area in the past 24 months, pursuant to the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*), and I am accepting the area that the Secretary would have approved as my sourcing area. I certify that the information in this certificate is true, complete, and accurate to the best of my knowledge and belief."

(ii) Each certification statement set forth in paragraph (a)(2)(i) of this section must be signed by the person making such certification or, in the case of a corporation, by its chief executive officer; must be on company letterhead; and must be notarized.

(iii) The person signing such certification set forth in paragraph (a)(2)(i)(A) must provide to the Regional Forester the annual volume of timber exported by that person during the five (5) full fiscal years immediately preceding submission of the application, originating from private lands in the geographic area for which the application would have been approved.

(iv) When the applicant submits the certificate, the area the Secretary would have approved, as shown on the sourcing area map provided by the Secretary, because an approved sourcing area. If the certificate is not submitted, the sourcing area that would have been approved does not become an approved sourcing area.

(3) The phase-out of Federal timber purchasing and the phase-out of private timber exporting procedures provided by paragraphs (a)(1) and (a)(2) do not apply to persons submitting sourcing area applications after December 20, 1990, or to persons requesting review of disapproved sourcing areas.

(b) *Limits on purchases and exports.* (1) During the 15-month period following disapproval of a sourcing area, a person who elects to phase-out of private timber exporting as described in paragraph (a)(2) of this section, may not:

(i) Purchase more than 125 percent of the person's annual average purchases of unprocessed timber originating from Federal lands within the person's disapproved sourcing area during the five (5) full fiscal years immediately prior to submission of the application; and,

(ii) Export unprocessed timber originating from private lands in the geographic area determined by the approving official for which the application would have been approved, in amounts that exceed 125 percent of the annual average of that person's exports of unprocessed timber from such private land during the five (5) full years

immediately prior to submission of the application.

(2) At the conclusion of the 15-month export phase-out period, the prohibition against exporting private timber originating from within the area shall be in full force and effect as long as the sourcing area remains approved, pursuant to subpart F of part 223.

(c) *Presentation of map to applicant whose sourcing area is disapproved.* The area determined by the deciding official that would have been approved shall be drawn on a map and presented to the applicant by the deciding official with the notice of disapproval of the application.

(d) *Effect of prior certification to cease exporting.* An applicant's previous certification to cease exporting beginning February 20, 1991, for a period of three (3) years from within the disapproved sourcing area pursuant to paragraphs (f) and (g) in § 223.189 of this subpart shall remain in full force and effect for persons with approved and disapproved sourcing areas.

(e) *Review process and frequency.* (1) Approved sourcing areas shall be reviewed not less often than every five (5) years. A tentative date for a review shall be included in the deciding official's determination or stated in writing by the Regional Forester following the determination. At least 60 days prior to the tentative review date, the Regional Forester or other such reviewing official shall notify the person holding the sourcing area of the pending review, publish notice of such review in newspapers of general circulation within the sourcing area, and invite comments, to be received no later than 30 days from date of notice, from all interested persons, including the person holding the sourcing area. For 10 working days following the comment period, any person submitting a written comment and the person with the sourcing area may review the comments. If there is disagreement among the persons who submitted written comments regarding the proper sourcing area, the reviewing official shall convene an informal meeting convenient to the persons that all interested persons may attend. If an agreement cannot be reached among the persons, formal administrative adjudication shall occur. The deciding official shall, on the record and after opportunity for a hearing, approve or disapprove the sourcing area being reviewed.

(2) Disapproved sourcing areas shall be reviewed using the process described in paragraph (e)(1) of this section upon resubmission of an application, provided the applicant has accepted the area the Secretary would have approved as a sourcing area pursuant to paragraph (a)(2) of this section.

(3) The Department reserves the right to schedule a review, at the request of the Forest Service or the person holding the sourcing area, at any time prior to the scheduled tentative review date, with 60 days notice.

(4) Sourcing areas being reviewed shall continue in full force and effect pending the final review determination.

(f) *Reporting and recordkeeping procedures.* The reporting and recordkeeping procedures in this section constitute information collection requirements as defined in 5 CFR part 1320. These requirements have been approved by the Office of Management and Budget and assigned clearance number 0596–0115.

§ 223.203 Indirect substitution exception for National Forest System timber from within Washington State.

(a) *Indirect substitution restrictions.* No person may purchase from any other person unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States if such person would be prohibited from purchasing such timber directly from a department or agency of the United States, pursuant to § 490(b) of the Forest Resources Conservation and Shortage Relief Act of 1990.

(b) *Indirect substitution exception for National Forest System timber from within Washington State.* A limited amount of unprocessed National Forest System timber originating from within Washington State may be acquired by a person otherwise covered by the prohibition against indirect substitution, pursuant to section 490(b) of the Act.

(1) The amount of such unprocessed timber shall be limited to whichever is less:

(i) The higher of the applicant's actual purchase receipts for unprocessed timber originating from National Forest System lands within Washington State or the Department's records, during fiscal years 1988, 1989, and 1990, divided by 3; or

(ii) 15 million board feet.

(2) Such limit shall not exceed such person's proportionate share of 50 million board feet; and

(3) To obtain a share of the 50 million board feet exempted from the prohibition against indirect substitution in § 490(b) of the Act, a person must submit an application. Applications shall include at least the following:

(i) The amount of volume exception being requested, in thousand board feet (MFB);

(ii) A signed certification that reads as follows:

"I certify that, except for an approved share of unprocessed Federal timber, in accordance with 36 CFR 223.203, the prohibition contained in section 490(b) of the Act (16 U.S.C. 620b) applies to me. I have exported unprocessed timber originating from private lands from west of the 100th meridian in the 48 contiguous States and have acquired unprocessed timber from National Forest System lands located within Washington State in 1988, 1989 and/or 1990. I certify that the information provided in support of this application is a true, accurate, current and complete statement, to the best of my knowledge and belief. I agree to retain records of all transactions involving the acquisition and disposition of unprocessed timber from Federal lands within the area involved in this application for a period of 3 years beginning on the date the application is approved, and to make such records available for inspection upon the request of the Regional Forester or other official to whom such authority has been delegated. I make this certification with full knowledge and understanding of the requirements of the Act and do fully understand that if this application is approved, the amount of exception granted under this approval may not be exceeded in any one fiscal year, and do fully understand that if such exception is exceeded I will be in violation of the Act (16 U.S.C. 620 *et seq.*), and I may be subject to the penalties and remedies provided for such violation. Further, I do fully understand that such violation may subject me to the penalty of perjury pursuant to the False Statements Act (18 U.S.C. 1001).";

and

(iii) The application listed under this section must be signed by the person making such application or, in the case of a corporation, by its chief executive officer. The application must be on the company's letterhead and must be notarized.

(4) The application made under this section must be mailed to the Regional Forester in Portland, Oregon, no later than January 8, 1992. The applicant will be notified of the approving official's decision by letter. If approved, the amount of the exception will become effective upon publication in the Federal Register.

(5) Prospective applicants may review Department records upon request prior to the deadline for submitting applications. An applicant may voluntarily submit information documenting the amount of purchases of unprocessed timber originating from National Forest System lands within Washington State. The Department will then determine which amount is higher, verified by either the Department's records or the applicant's records. The Department will then determine the applicant's portion of the 50 million

board feet by determining the lesser of the amount verified by the records or 15 million board feet. The applicant may submit the information documenting the amount of purchases in the following manner:

(i) Actual receipts for purchasing unprocessed timber from National Forest System lands within Washington State; or

(ii) A statement by a certified public accountant of:

(A) A summary by fiscal year for 1988, 1989 and 1990 of the applicant's acquisitions of timber originating from NFS lands in the State of Washington, listing total volume for each of the three fiscal years; and

(B) The average volume for the three fiscal years. The volumes to be reported are the harvest volumes, except in the case of open sales. Advertised volumes must be reported for open sales.

(C) The certified public accountant must certify to the following:

"I certify that under the penalties and remedies provided in § 492 of the Act (16 U.S.C. 620d) and the penalty of perjury provided in the False Statements Act (18 U.S.C. 1001) that the information provided in support of this application is, to the best of my knowledge and belief, a true, accurate, current, and complete statement of [applicant's company's name] National Forest System timber acquisitions originating from within the State of Washington for fiscal years 1988, 1989 and/or 1990."

(D) The certified public accountant's statement and certification must be on the accountant's company letterhead, must be notarized, and must accompany the applicant's application.

(c) The purchase limit right obtained under this rule may be sold, traded, or otherwise exchanged with any other person subject to the following conditions:

(1) Such rights may not be sold, traded, or otherwise exchanged to persons already in possession of such rights:

(2) Any person selling, trading, or exchanging any or all of the rights obtained under this rule shall advise the Regional Forester of the amount being traded and the name(s) of the person(s) acquiring such rights within 15 days of the transaction; and

(3) No person may have or acquire more than 15 million board feet in one fiscal year.

(d) The application procedures in this section constitute information collection requirements a defined in 5 CFR part 1320. These requirements have been approved by the Office of Management and Budget and assigned clearance number 0596–0115.

Dated: September 30, 1991.

James R. Moseley,

Assistant Secretary, Natural Resources and Environment.

[FR Doc. 91–30228 Filed 12–18–91; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AE42

Finality of Decisions

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its adjudication regulations on finality of decisions. The intended effect of the amendment is to define the point at which VA decisions become final and binding.

EFFECTIVE DATE: January 21, 1992.

FOR FURTHER INFORMATION CONTACT: John Bissett, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–3005.

SUPPLEMENTARY INFORMATION: VA published a proposal to amend 38 CFR 3.104(a) and 3.105(a) in the **Federal Register** of July 10, 1990 (55 FR 28234–5). Interested persons were invited to submit written comments, suggestions or objections on or before August 9, 1990. Comments were received from the American Legion, the National Veterans Legal Services Project on behalf of Vietnam Veterans of America, Inc., and a private individual.

One commenter noted that the proposed rule indicated decisions would be binding on all "VA offices", whereas the current rule specifies "VA field offices". He noted there was no explanation for dropping the word "field" from the new rule. The word was inadvertently omitted when the proposed rule was published and has been restored in the final regulation.

Another commenter felt that the regulations should require VA to fully advise the claimant of the decision as well as his or her due process rights, and a third suggested that the proposed regulation violates the provisions of 38 U.S.C. 5104 (formerly 3004) by implying that by granting a claim VA is absolved of its duty to send the claimant written notice. That commenter suggested that the phrase "or when such decision results in payment of monetary benefits" be deleted.

Section 115 of the Veterans' Benefits Amendments of 1989, Public Law 101–237, 103 STAT. 2062 (1989) added section 5104 to title 38, United States Code. That new section requires VA to provide notice to a claimant of any decision affecting provision of benefits; it further establishes certain requirements regarding the content of the notice. VA regulations at 38 CFR 3.103(f) require that VA notices contain certain elements, including notice of procedural and appellate rights. We believe that those provisions adequately address the concerns the commenters raised regarding the content of VA notices. The current rulemaking cannot, nor is it intended to, relieve VA of its statutory and regulatory obligations to advise claimants of its decisions.

The purpose of the current rulemaking is to establish by regulation the point at which a decision becomes final and binding upon all VA field offices. That point is reached when VA issues written notification on any issues for which it is required that VA provide notice to the claimant in accordance with 38 U.S.C. 5104. Once VA issues such notice, the decision may be changed only upon a showing of clear and unmistakeable error upon review by duly constituted appellate authorities.

Upon further consideration, VA believes that the language in the proposed rule concerning the content of the notification is unnecessary and that it could mislead anyone attempting to determine the point at which a VA decision is final and binding. Consequently, we have amended the rule by deleting any reference to the content of the written notice as well as the phrase "or when such decision results in payment of monetary benefits." We have substituted language which focuses on the moment that a VA decision becomes final rather than the content of the notice.

One commenter, noting that under VA regulations "sending" notification is synonymous with "receiving" it, and that the period during which the claimant must perfect a claim or challenge an adverse decision begins on the date that notice is sent, expressed concern that without some provision for mitigating circumstances related to delayed receipt or non-receipt of the notification, this regulation could be restrictively applied. VA does not concur with that assessment. The rules regarding time limits, extension of time limits and the computation of time limits are found at 38 CFR 3.109 and 3.110. We believe that amendments to those

regulations published in the **Federal Register** of April 11, 1990, pages 13522–9, provide adequate remedies and protection for the rights of claimants in the event that notification of a VA decision is not received or receipt is delayed.

The same commenter, concerned over the position taken by VA's General Counsel on an appeal filed with the United States Court of Veterans Appeals (COVA), asked whether sending notification of a decision to the claimant's representative constitutes notification to the claimant.

A claimant must file an appeal of a decision by the Board of Veterans Appeals (BVA) with COVA within 120 days of the BVA decision being appealed (38 U.S.C. 7266(a) (formerly 4066(a))). In the COVA case cited (No. 90–316), BVA mailed notice of an adverse decision to the veteran at a previous address, and at the same time mailed a copy to his representative. Several weeks later, the BVA decision was mailed to the veteran's correct address. The veteran filed an appeal with COVA more than 120 days after the notice was mailed to his old address, but within 120 days of the date it had been mailed to his correct address. VA's General Counsel moved to dismiss the appeal on the grounds that the Court lacked jurisdiction because the appeal was not timely filed. COVA, noting that 38 U.S.C. 7104(e) (formerly 4004(e)) requires BVA to "mail a copy of its written decision to the claimant and the claimant's authorized representative (if any) at the last known address" of each, ruled that the appeal was timely filed and dismissed General Counsel's motion. Since there is a similar statutory requirement at 38 U.S.C. 5104(a) concerning notice of VA decisions, sending notice of a VA decision to a claimant's representative does not constitute notice to the claimant.

It appears that the commenter's concern arise from what he perceives to be an uncompromising position adopted by VA in that court proceeding. VA would point out, however, that proceedings before VA and before a court are fundamentally different in concept. VA's procedures for handling benefit claims are, by tradition and regulation, non-adversarial; proceedings before any court are by nature and design adversarial. VA arguments presented in the COVA case cited addressed the issue of COVA's jurisdiction in a specific case based on the unique circumstances in that individual claim. Those arguments should not be construed as representing in any manner a position VA would adopt toward benefit claims in the nonadversarial environment of claims processing.

VA appreciates the comments and suggestions submitted in response to the proposed rule, which is now adopted with the amendments noted above.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulatory, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program numbers are 64.100, 64.101, 64.104, 64.105, 64.106, 64.109, 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pension, Veterans.

Approved: November 13, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

1. The authority citation for part 3, subpart A is revised to read as follows:

Authority: 72 Stat. 1114; 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.104, paragraph (a) is revised to read as follows:

§ 3.104 Finality of decisions.

(a) A decision of a duly constituted rating agency or other agency of original jurisdiction shall be final and binding on all field offices of the Department of Veterans Affairs as to conclusions based on the evidence on file at the time VA issues written notification in accordance with 38 U.S.C. 3004. A final and binding agency decision shall not be subject to revision on the same factual basis except by duly constituted appellate authorities or except as provided in § 3.105 of this part.

* * * * *

3. In § 3.105, the first sentence of paragraph (a) is revised to read as follows:

§ 3.105 Revisions of decisions.

(a) *Error.* Previous determinations which are final and binding, including decisions of service connection, degree of disability, age, marriage, relationship, service, dependency, line of duty, and other issues, will be accepted as correct in the absence of clear and unmistakable error. * * *

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[FR Doc. 91–30277 Filed 12–18–91; 8:45 am]

BILLING CODE 8320–01–M

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38 CFR Part 3

RIN 2900–AF25

Exclusions From Income

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its adjudication regulations concerning exclusions from countable income under the Improved Pension Program. This change is necessary because current regulations inappropriately exclude payments from a specific federal program from countable income for VA purposes. The intended effect of this change is to correct that error.

EFFECTIVE DATE: This amendment is effective January 21, 1992.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–3005.

SUPPLEMENTARY INFORMATION: VA published a proposal to amend 38 CFR 3.272(k) in the **Federal Register** of May 31, 1991 (56 FR 24764–5). Interested persons were invited to submit written comments, suggestions or objections on or before July 1, 1991. As no comments were received, the proposed amendment is adopted without change.

The Secretary hereby certifies that this regulatory amendment will not have

a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.105.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pension, Veterans.

Approved: November 13, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 72 Stat. 1114; 38 U.S.C. 501(a), unless otherwise noted.

§ 3.272 [Amended]

2. In § 3.272(k), introductory text, remove the words "and Older American Community Service Program".

[FR Doc. 91–30275 Filed 12–18–91; 8:45 am]

BILLING CODE 8320–01–M

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38 CFR Part 3

RIN 2900–AF05

Adjudication; Pension, Compensation, and Dependency and Indemnity Compensation Renouncement

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs has amended its adjudication regulations to establish a specific effective date of discontinuance when compensation, pension, or dependency and indemnity compensation benefits are renounced. This amendment is necessary because variations in workload between regional offices caused some claims to be processed less expeditiously than others, resulting, under the previous rules referring to termination as of date of last payment, in different termination dates. The intended effect of this amendment is to establish a uniform termination date when monetary benefits are renounced.

EFFECTIVE DATE: This amendment is effective January 21, 1992.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–3005.

SUPPLEMENTARY INFORMATION: VA published a proposal to amend 38 CFR 3.500(q) in the **Federal Register** of June 25, 1991 (56 FR 28849). Interested persons were invited to submit written comments, suggestions or objections on or before July 25, 1991. As no comments were received, the proposed amendment is adopted with a minor technical amendment.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program numbers are 64.104, 64.105, 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pension, Veterans.

Approved: November 13, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 is amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, is revised to read as follows:

Authority: 72 Stat. 1114; 38 U.S.C. 501(a), unless otherwise noted.

§ 3.500 [Amended]

2. In § 3.500(q), remove the words "Date of last payment." and add, in their place, the words "Last day of the month in which the renouncement is received."

[FR Doc. 91–30278 Filed 12–18–91; 8:45 am]

BILLING CODE 8320–01–M

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38 CFR Part 3

RIN 2900–AF42

Active Military Service Certified Under Section 401 of Public Law 95–202

AGENCY: Department of Veterans Affairs.

ACTION: Final regulation.

SUMMARY: The Department of Veterans Affairs (VA) has amended its regulations concerning persons who are included as having served on active duty. The need for this action results from recent decisions of the Secretary of the Air Force that the World War II service of members of the following two groups constitutes active military service in the Armed Forces of the United States for purposes of all laws administered by VA: "Civilian Crewmen of United States Coast and Geodetic Survey Vessels Who Performed Their Service in Areas of Immediate Military Hazard While Conducting Cooperative Operations with and for the United States Armed Forces Within a Time Frame of December 7, 1941, to August 15, 1945" and the "Honorably Discharged Members of the American

Volunteer Group (Flying Tigers) Who Served During the Period December 7, 1941 to July 18, 1942". The effect of this action is to confer veteran status for VA benefit purposes on former members of these groups who were discharged under honorable conditions.

DATES: The effective dates are April 8, 1991, for § 3.7(x)(20) and May 3, 1991, for § 3.7(x)(21), the respective dates on which the Secretary of the Air Force determined that such service constitutes active duty.

FOR FURTHER INFORMATION CONTACT: Steven Thornberry, Consultant, Regulations Staff (211B), Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 233-3005.

SUPPLEMENTARY INFORMATION: Section 401 of Public Law 95-202 authorized the Secretary of Defense to determine whether the service of members of civilian or contractual groups shall be considered active duty for the purposes of all laws administered by VA.

A notice of certification of the following group by the Secretary of the Air Force appeared in the **Federal Register** of May 20, 1991, page 23054: Civilian Crewmen of United States Coast and Geodetic Survey Vessels Who Performed Their Service in Areas of Immediate Military Hazard While Conducting Cooperative Operations with and for the United States Armed Forces Within a Time Frame of December 7, 1941, to August 15, 1945.

A notice of certification of the following group by the Secretary of the Air Force appeared in the **Federal Register** of June 6, 1991, page 26072: Honorably Discharged Members of the American Volunteer Group (Flying Tigers) Who Served During the Period December 7, 1941 to July 18, 1942.

VA is issuing a final rule to amend the provisions of 38 CFR 3.7(x). This change is necessary to expand the regulatory provisions in accordance with the April 8, 1991, and May 3, 1991, determinations of the Secretary of the Air Force, which are binding on VA. Because this amendment does not constitute a substantive change, publication as a proposal for public notice and comment is unnecessary.

Since a notice of proposed rulemaking is unnecessary and will not be published, this amendment is not a "rule" as defined in and made subject to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. This amendment will not directly affect any small entity.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more;

(2) It will not cause a major increase in costs or prices;

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

There is no affected Catalog of Federal Domestic Assistance program number.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: November 18, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 72 Stat. 1114; 38 U.S.C. 501(a).

2. In § 3.7, paragraphs (x) (20) and (21) are added and the authority citation at the end of § 3.7(x) is revised to read as follows:

§ 3.7 Persons included.

* * * * *

(x) *Active military service certified as such under section 401 of Pub. L. 95-202.*

* * *

(20) Civilian Crewmen of United States Coast and Geodetic Survey Vessels Who Performed Their Service in Areas of Immediate Military Hazard While Conducting Cooperative Operations with and for the United States Armed Forces Within a Time Frame of December 7, 1941, to August 15, 1945.

(21) Honorably Discharged Members of the American Volunteer Group (Flying Tigers) Who Served During the Period December 7, 1941 to July 18, 1942.

(Authority: Pub. L. 95-202, Sec. 401)

[FR Doc. 91-30276 Filed 12-18-91; 8:45 am]

BILLING CODE 8320-01-M

38 CFR Part 3

RIN 2900-AE92

Reduction Because of Hospitalization

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its adjudication regulations on reductions of pensions of certain veterans receiving institutional care. These amendments are based on recently enacted legislation and further consideration of previous legislation. The intended effect of these amendments is to minimize pension reductions when VA provides institutional care.

EFFECTIVE DATE: The amendments that pertain to Improved Pension rates for certain veterans receiving institutional care are effective February 1, 1990, the date provided by legislation. The amendments pertaining to veterans receiving Section 306 pension who are institutionalized are effective January 21, 1992.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-3005.

SUPPLEMENTARY INFORMATION: VA published a proposal to amend 38 CFR 3.454 and 3.551 in the **Federal Register** of February 25, 1991 (56 FR 7630-2). Interested persons were invited to submit written comments, suggestions or objections on or before March 27, 1991. As no comments were received, the proposed amendments are adopted with only minor technical changes. Additionally, 38 CFR 3.501(i), concerning the effective dates for reductions based on institutional care, is amended to provide effective dates for reduction upon readmission, and to conform with the newly adopted amendments to 38 CFR 3.551.

Since the publication of the proposed regulation, section 101 of Veterans' Benefits Programs Improvement Act of 1991, Public Law 102-86, amended 38 U.S.C. 5503 (formerly 3203) to provide for reduction of improved pension to $90 rather than $60 monthly for veterans without dependents effective the first of the month following readmission to a domiciliary or nursing home by VA or at VA expense when the readmission is within six months of a period during which there was a required reduction. This technical amendment to section 111

of the Veterans' Benefits Amendments of 1989, Public Law 101–237, is effective the same date as that legislation, February 1, 1990 (See 56 FR 7630–2). The proposed change to § 3.551(e)(2) has been amended to implement this new statutory provision. Because this amendment implements a statutory change, publication as a proposal for public notice and comment is unnecessary.

The Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that these regulatory amendments are non-major for the following reasons:

(1) They will not have an annual effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program number is 64.104.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pension, Veterans.

Approved: November 13, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 is amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, is revised to read as follows:

Authority: 72 Stat. 1114; 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.501, paragraphs (i)(3) and (4) are redesignated as paragraphs (6) and (7) respectively, new paragraphs (3), (4) and (5) are added, and paragraphs (1) and (2) are revised to read as follows:

§ 3.501 Veterans.

* * * * *

(i) *Hospitalization.* (1) *Section 3.551(b).* Last day of the sixth calendar month following admission if veteran without dependents.

(2) *Section 3.551(c).* (i) Last day of the second calendar month following admission to domiciliary care if veteran without spouse or child or, though married, is receiving pension at the rate provided for a veteran without dependents. (ii) Last day of the third calendar month following admission for hospital or nursing home care if veteran without spouse or child or, though married, is receiving pension at the rate provided for a veteran without dependents. (iii) Upon readmission to hospital, domiciliary, or nursing home care within 6 months of a period for which pension was reduced under § 3.551(c)(1), the last day of the month of such readmission.

(3) *Section 3.552(b)* Upon readmission to hospital care within 6 months of a period of hospital care for which pension was affected by the provisions of § 3.552(b)(1) and (2) or § 3.552(k) and discharge or release was against medical advice or was the result of disciplinary action, the day preceding the date of such readmission.

(4) *Section 3.551(d)* (i) Last day of the second calendar month following admission to domiciliary care if veteran without spouse or child or, though married, is receiving pension at the rate for a veteran without dependents. (ii) Last day of the third calendar month following admission for hospitalization or nursing home care if veteran without spouse or child or, though married, is receiving pension at the rate for a veteran without dependents.

(iii) Upon readmission to hospital, domiciliary, or nursing home care within 6 months of a period for which pension was reduced under § 3.551(d)(1) or (2), the last day of the month of such readmission.

(5) *Section 3.551(e)* (i) Last day of the third calendar month following admission to domiciliary or nursing home care if veteran without spouse or child or, though married, is receiving pension at the rate for a veteran without dependents. (ii) Upon readmission to domiciliary or nursing home care within 6 months of a period of domiciliary or nursing home care for which pension was reduced under § 3.551(e)(1), the last day of the month of such readmission.

* * * * *

3. In § 3.551 the heading of paragraph (b) is revised, the existing text in paragraph (b) is designated as paragraph (b)(1), and new paragraphs (b)(2) and (b)(3) are added to read as follows:

§ 3.551 Reduction because of hospitalization.

* * * * *

(b) *Old-law pension.* * * *

(2) *Readmission following regular discharge.* Where a veteran has been given an approved discharge or release, readmission the next day to the same or any other VA institution begins a new period of hospitalization, unless the veteran was released for purposes of admission to another VA institution.

(3) *Readmission following irregular discharge.* When a veteran whose award is subject to reduction under this paragraph has been discharged or released from a VA institution against medical advice or as a result of disciplinary action, reentry within 6 months from the date of previous admission constitutes a continuation of that period of hospitalization and the award will not be reduced prior to the first day of the seventh calendar month following the month of original admission, exclusive of authorized absences. Reentry 6 months or more after such discharge or release shall be considered a new admission.

* * * * *

4. In § 3.551 paragraphs (d), (f), and (g) are redesignated as (f), (g), and (h), respectively, a new paragraph (d) is added, paragraph (e) is revised, and the introductory text of redesignated paragraph (h)(1) is revised to read as follows:

§ 3.551 Reduction because of hospitalization.

* * * * *

(d) *Improved pension prior to February 1, 1990.* (1) Where any veteran having neither spouse nor child, or any veteran who is married or has a child and is receiving pension as a veteran without dependents, is being furnished domiciliary care by VA, no pension in excess of $60 monthly shall be paid to or for the veteran for any period after the end of the second full calendar month following the month of admission for such care. (38 U.S.C. 3203(a))

(2) Where any veteran having neither spouse nor child, or any veteran who is married or has a child and is receiving pension as a veteran without dependents, is furnished hospital or

nursing home care by VA, no pension in excess of $60 monthly shall be paid to or for the veteran for any period after the end of the third full calendar month following the month of admission for such care. (38 U.S.C. 3203(a))

(3) No pension in excess of $60 monthly shall be paid to or for a veteran having neither spouse nor child, or to a veteran who is married or has a child and is receiving pension as a veteran without dependents, for any period after the month in which the veteran is readmitted within 6 months of a period of care for which pension was reduced under paragraph (d)(1) or (2) of this section. (38 U.S.C. 3203(a))

(4) Where improved pension is being paid to a married veteran at the rate prescribed by 38 U.S.C. 521(b) all or any part of the rate payable under 38 U.S.C. 521(c) may be apportioned for a spouse as provided in § 3.454(b). (38 U.S.C. 3203(a))

(5) The provisions of paragraphs (d)(1), (2), and (3) of this section are not applicable to any veteran who has a child, but is receiving pension as a veteran without a dependent because it is reasonable that some part of the child's estate be consumed for the child's maintenance under 38 U.S.C. 522(b).

(6) For the purpose of paragraphs (d)(1), (2), and (3) of this section, if a veteran is furnished hospital or nursing home care by VA and then is transferred to VA-furnished domiciliary care, the period of hospital or nursing home care shall be considered as domiciliary care. Similarly, if a veteran is furnished domiciliary care by VA and then is transferred to VA-furnished hospital or nursing home care, the period of domiciliary care shall be considered hospital or nursing home care.

(e) *Improved pension after January 31, 1990.* (1) Where any veteran having neither spouse nor child, or any veteran who is married or has a child and is receiving pension as a veteran without dependents, is furnished domiciliary or nursing home care by VA, no pension in excess of $90 monthly shall be paid to or for the veteran for any period after the end of the third full calendar month following the month of admission for such care.

(Authority: 38 U.S.C. 3203(a))

(2) No pension in excess of $90 monthly shall be paid to a veteran having neither spouse nor child, or to a veteran who is married or has a child and is receiving pension as a veteran without dependents, for any period after the month in which the veteran is readmitted within six months of a period of domiciliary or nursing home care for which pension was reduced under paragraph (e)(1) of this section.

(3) Where improved pension is being paid to a married veteran at the rate prescribed by 38 U.S.C. 521(b) all or any part of the rate payable under 38 U.S.C. 521(c) may be apportioned for a spouse as provided in § 3.454(b).

(Authority: 38 U.S.C. 3203(a))

(4) For the purposes of paragraph (e)(1) of this section, if a veteran is furnished hospital care by VA and then is transferred to VA-furnished nursing home or domiciliary care, the period of hospital care shall not be considered as nursing home or domiciliary care. Transfers from VA-furnished nursing home or domiciliary care to VA-furnished hospital care then back to nursing home or domiciliary care shall be considered as continuous nursing home or domiciliary care provided the period of hospitalization does not exceed six months. Similarly, if a veteran is transferred from domiciliary or nursing home to a VA hospital and dies while so hospitalized, the entire period of VA care shall be considered as domiciliary or nursing home care. Nursing home or domiciliary care shall be considered as terminated effective the date of transfer to a VA hospital if the veteran is completely discharged from VA care following the period of hospitalization or if the period of hospitalization exceeds six months.

(5) Effective February 1, 1990, reductions of improved pension based on admissions or readmissions to VA hospitals or any hospital at VA expense shall no longer be made except when required under the provisions of 38 CFR 3.552.

(6) The provisions of paragraphs (e)(1) and (2) of this section are not applicable to any veteran who has a child, but is receiving pension as a veteran without a dependent because it is reasonable that some part of the child's estate be consumed for the child's maintenance under 38 U.S.C. 522(b).

* * * * *

(h) *Hospitalization.* (1) *General.* The reduction required by paragraphs (d) and (e), except as they refer to domiciliary care, shall not be made for up to three additional calendar months after the last day of the third month referred to in paragraphs (d)(2) or (e)(1) of this section, or after the last day of the month referred to in paragraphs (d)(3) or (e)(2) of this section, under the following conditions:

* * * * *

§ 3.551 [Amended]

5. In § 3.551(a) in the first sentence after the word "reduction" and before the word "when" add the words "as specified below".

§ 3.551 [Amended]

6. In newly redesignated § 3.551(b)(1) remove the phrase "*, and service pension based on entitlement prior to July 1, 1960*" from the heading.

§ 3.551 [Amended]

7. In the heading to § 3.551(c) remove the words "*, improved pension, and service pension based on entitlement after June 30, 1960*". In § 3.551(c)(1) after the word "furnished" and before the word "domiciliary" add the words "hospital, nursing home or", remove the dollar amount "$60" and add in its place the dollar amount "$50".

§ 3.551 [Amended]

8. In § 3.551 remove paragraphs (c)(2) and (4), (6) and (7), and redesignate paragraphs (c)(3) and (c)(5) as (c)(2) and (c)(3), respectively. In the newly redesignated paragraph (c)(2), remove the words "or (2)".

§ 3.551 [Amended]

9. In newly redesignated § 3.551(c)(2) and (c)(3) remove the dollar amount "$60" wherever it appears, and add in its place the dollar amount "$50".

§ 3.551 [Amended]

10. In newly redesignated § 3.551(h)(2) remove the paragraph designations "(c)(2)", "(c)(3)", and "(g)(1)" wherever they appear, and add, in their place, the paragraph designations "(d)", "(e)", and "(h)(1)", respectively.

§ 3.551 [Amended]

11. In newly redesignated § 3.551(h)(3) after the word "monthly" and before the word "payable" add the phrase "or $90, if reduction is under paragraph (e)(1)".

§ 3.454 [Amended]

12. In § 3.454(b)(1) and (c) remove the dollar amount "$60", wherever it appears, and add, in its place, the dollar amount "$50".

§ 3.454 [Amended]

13. In § 3.454(b)(2) and (d) remove "§ 3.551(c)" and add, in its place, "§ 3.551(d) or (e)(2)".

§ 3.454 [Amended]

14. In § 3.454(d) after the word "monthly" add the words "if reduction is under § 3.551(d) or (e)(2), or $90 monthly if reduction is under § 3.551(e)(1)".

15. In § 3.454 add paragraph (b)(3) and its authority citation to read as follows:

§ 3.454 Veterans disability pension.

* * * * *

(b) * * *

(3) Where the amount of improved pension payable to a married veteran under 38 U.S.C. 521(b) is reduced to $90 monthly under § 551(e)(1) an apportionment may be made to such veteran's spouse upon an affirmative showing of hardship. The amount of the apportionment generally will be the difference between $90 and the rate payable if pension was being paid under 38 U.S.C. 521(c) including the additional amount payable under 38 U.S.C. 521(e) if the veteran is so entitled.

(Authority: 38 U.S.C. 3203(a))

* * * * *

[FR Doc. 91-30274 Filed 12-18-91; 8:45 am]

BILLING CODE 8320-01-M

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38 CFR Part 3

RIN 2900-AE99

Headstone Allowance; Temporary Program of Vocational Training

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its adjudication regulations concerning payment of a monetary allowance in lieu of a government-furnished headstone or marker and eligibility for the temporary program of vocational training available to certain pension beneficiaries. These amendments are based on statutory changes which affect these programs. The intended effect of these changes is to expand and extend benefit eligibility.

EFFECTIVE DATE: The amendments are effective December 18, 1989, the date the legislation was signed into law.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-3005.

SUPPLEMENTARY INFORMATION: VA published a proposal to amend 38 CFR 3.342 and 3.1612 in the **Federal Register** of May 3, 1991 (56 FR 20394-5). Interested persons were invited to submit written comments, suggestions or objections on or before June 3, 1991. It should be noted that section 8041 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508, eliminated the payment of the monetary allowance in lieu of VA-provided headstone or marker for deaths occurring on or after November 1, 1990. As no comments were received, the proposed amendments are adopted with only minor technical amendments.

The Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that these regulatory amendments are non-major for the following reasons:

(1) They will not have an annual effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program numbers are 64.101 and 64.104.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pension, Veterans.

Approved: November 13, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3, subpart A is amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A is revised to read as follows:

Authority: 72 Stat. 1114; 38 U.S.C. 501(a).

2. In § 3.342, in paragraphs (c)(1) and (c)(2) remove the words "age 50" where they appear and add, in their place, the words "age 45"; the authority citation at the end of paragraph (c)(2) is removed; a new paragraph (c)(3) and a new authority citation are added to read as follows:

§ 3.342 Permanent and total disability ratings for pension purposes.

* * * * *

(c) * * *

(3) If a veteran secures employment within the scope of a vocational goal identified in his or her individualized written vocational rehabilitation plan, or in a related field which requires reasonably developed skills and the use of some or all of the training or services furnished the veteran under such plan, not later than one year after eligibility to counseling under § 21.6040(b)(1) of this chapter expires, the veteran's permanent and total evaluation for pension purposes shall not be terminated by reason of the veteran's capacity to engage in such employment until the veteran has maintained that employment for a period of not less than 12 consecutive months.

(Authority: 38 U.S.C. 1524(c))

3. In § 3.1612, paragraph (e)(3) is redesignated as paragraph (e)(4), and paragraph (e)(2)(iii) is redesignated as paragraph (e)(3); paragraphs (b)(3), (c), (e)(1) and (e)(2)(i) are revised and new authority citations are added at the end of those paragraphs to read as follows:

§ 3.1612 Monetary allowance in lieu of a Government-furnished headstone or marker.

* * * * *

(b) * * *

(3) The headstone or marker was purchased to mark the otherwise unmarked grave of the deceased veteran or, if death occurred prior to December 18, 1989, the veteran's identifying information was added to an existing headstone or marker.

(Authority: 38 U.S.C. 2306(d))

* * * * *

(c) *Person entitled to request a Government-furnished headstone or marker.* For purposes of this monetary allowance, the term "person entitled to request a headstone or marker" includes, but is not limited to, the person who purchased the headstone or marker (or if death occurred prior to December 18, 1989, the person who paid for adding the veteran's identifying information to an existing headstone or marker), or the executor, administrator or person representing the deceased's estate.

(Authority: 38 U.S.C. 2306(d))

* * * * *

(e) *Payment and amount of the allowance.*

(1) The monetary allowance is payable as reimbursement to the person entitled to request a Government-furnished headstone or marker If funds

of the deceased's estate were used to purchase the headstone or marker or, if death occurred prior to December 18, 1989, to have the deceased's identifying information added to an existing headstone or marker, and no executor or administrator has been appointed, payment may be made to a person who will make a distribution of this monetary allowance to the person or persons entitled under the laws governing the distribution of intestate estates in the State of the decedent's personal domicile.

(Authority: 38 U.S.C. 2306(d))

(2) * * *

(i) Actual cost of acquiring a non-Government headstone or marker or, if death occurred prior to December 18, 1989, the actual cost of adding the veteran's identifying information to an existing headstone or marker; or

(Authority: 38 U.S.C. 2306(d))

* * * * *

[FR Doc. 91-30280 Filed 12-18-91; 8:45 am]

BILLING CODE 8320-01-M

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38 CFR Parts 3 and 13

RIN 2900-AF07

Limitation on Compensation Benefits for Certain Incompetent Veterans; Computation of Estate

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its adjudication and fiduciary activities regulations concerning the payment of compensation benefits to or for certain incompetent veterans, and the computation of those veterans' estates. This amendment is necessary to implement recently enacted legislation. The intended effect of this amendment is to prohibit the payment of compensation to incompetent veterans without dependents whose estates exceed $25,000, and to clarify how VA will compute the value of the estates of these incompetent veterans.

EFFECTIVE DATE: This amendment is effective November 1, 1990, the date specified in the enacting legislation.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-3005.

SUPPLEMENTARY INFORMATION: VA published a proposal to add a new § 3.853 to 38 CFR and to amend §§ 3.501 and 13.109(d)(5) in the **Federal Register** of June 4, 1991 (56 FR 25399-400). Interested persons were invited to submit written comments, suggestions or objections on or before July 5, 1991. We received one comment from a private individual.

The commenter objected to the proposed regulatory amendments because he believes that, in effect, the statute they implement forces an affected veteran to purchase a home to avoid having his or her benefits terminated. The commenter feels that the regulations should delay termination of benefits until such time as the veteran or his or her fiduciary has exhausted the veteran's procedural due process and appellate rights, or the veteran has an opportunity to purchase a home.

VA does not concur. Section 8001 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508, added section 5505 (formerly 3205) to title 38, United States Code to prohibit the payment of compensation benefits to or for an incompetent veteran, having neither spouse, child nor dependent parent, whose estate, excluding the value of the veteran's home, exceeds $25,000 until the estate has been reduced to less than $10,000. By excluding the value of the veteran's home from the estate computation, Congress has expressed its intention that no veteran who owns a home should be forced to sell it in order to have sufficient available assets to meet living expenses until the estate has been reduced to less than $10,000. VA finds no sound basis, however, for inferring that Congress intended different effective dates of termination based on whether or not a veteran owns or purchases a home, whether or not, or to what extent, a veteran elects to exercise his or her procedural due process and appellate rights, or any other reason.

The provisions of 38 CFR 3.105(h)(1) specify that if a request for predetermination hearing is received by VA within 30 days from the date of the notice, benefit payments will continue at the previously established level pending a final determination. If the final determination is that the facts warrant the termination of benefit payments, however, the effective date of termination is governed by the applicable provisions of §§ 3.500 through 3.503. Terminating benefits on the last day of the month in which all factors requiring a statutory termination are present is consistent with VA's regulatory policy for other statutory purposes, e.g., incompetent veterans who are hospitalized, institutionalized or domiciled by the United States under the provisions of § 3.557.

The commenter also believes that these regulations should treat estates that exceed $25,000 by a large amount differently than those that exceed $25,000 by only a small amount since large estates will survive until September 30, 1992, the date that 38 U.S.C. 5505 (formerly 3205) expires, relatively intact.

VA does not concur. The Secretary has broad authority under 38 U.S.C. 501(a) (formerly 210(c)) to make all regulations necessary or appropriate to carry out the laws administered by VA, but only to the extent that these regulations are consistent with the governing statutes. Since 38 U.S.C. 5505 (formerly 3205) makes no distinction based on the amount by which estates exceed $25,000, it is beyond VA's authority to create such a distinction in the implementing regulations.

The proposed regulation (See 56 FR 25399-400), in error, referred to the resumption of compensation payments when the affected veteran's estate was reduced to $10,000. The statutory language is clear (See 38 U.S.C. 5505 (formerly 3205)). Compensation payments are to resume when the affected veteran's estate is reduced to less than $10,000. The final regulation has been appropriately amended.

VA appreciates the comment submitted in response to the proposed rule, which is now adopted with the amendment described above and other minor technical amendments.

The Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that these regulatory amendments are non-major for the following reasons:

(1) They will not have an annual effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity,

innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program number is 64.109.

List of Subjects

38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

38 CFR Part 13

Surety bonds, Trusts and trustees, Veterans.

Approved: November 13, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 and part 13 are amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, is revised to read as follows:

Authority: 72 Stat. 1114; 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.501, new paragraph (n) and its authority citation are added to read as follows:

§ 3.501 Veterans.

* * * * *

(n) *Section 3.853. Incompetents; estate over $25,000.* Incompetent veteran receiving compensation, without spouse, child, or dependent parent, whose estate exceeds $25,000: Last day of the first month in which the veteran's estate exceeds $25,000, but not earlier than November 1, 1990.

(Authority: 38 U.S.C. 5505)

3. The undesignated center heading preceding § 3.850 is revised to read as follows:

Incompetents, Guardianship and Institutional Awards

* * * * *

4. Section 3.853 is added to read as follows:

§ 3.853 Incompetents; estate over $25,000.

(a) Effective November 1, 1990, through September 30, 1992, where a veteran:

(1) Is rated incompetent by VA, and

(2) Has neither spouse, child, nor dependent parent, and

(3) Has an estate, excluding the value of the veteran's home, which exceeds $25,000, further payments of compensation shall not be made until the estate is reduced to less than $10,000. The value of the veteran's estate shall be computed under the provisions of § 13.109 of this chapter. Payment of compensation shall be discontinued the last day of the first month in which the veteran's estate exceeds $25,000.

(b) Where payment of compensation has been discontinued by reason of paragraph (a) of this section, it shall not be resumed for any period prior to October 1, 1992, until VA has received evidence showing the estate has been reduced to less than $10,000, or any criterion of paragraph (a) (1) or (2) of this section is no longer met. Payments shall not be made for any period prior to the date on which the estate was reduced to less than $10,000, or a criterion of paragraph (a) (1) or (2) of this section was no longer met.

(c) If a veteran denied payment of compensation under paragraph (a) of this section is subsequently rated competent for more than 90 days, the withheld compensation shall be paid to the veteran in a lump-sum. However, a lump-sum payment shall not be made to or on behalf of a veteran who, within such 90-day period, dies or is again rated incompetent.

(d) The compensation payments to an incompetent veteran who is hospitalized, institutionalized, or domiciled by the United States, or any political subdivision thereof, are subject to the provisions of § 3.557 of this part.

(Authority: 38 U.S.C. 5505)

PART 13—VETERANS BENEFITS ADMINISTRATION, FIDUCIARY ACTIVITIES

5. The authority citation for part 13 is revised to read as follows:

Authority: 72 Stat. 1114, 1232, as amended, 1237; 38 U.S.C. 501(a), 5502, 5503, 5711, unless otherwise noted.

6. Section 13.109 is amended by revising the section heading, paragraph (d)(5), and the authority citation appearing at the end of the section to read as follows:

§ 13.109 Determination of value of estate; 38 U.S.C. 5503(b)(1)(A) and 38 U.S.C. 5505.

* * * * *

(d) The following will not be included as assets:

* * * * *

(5)(i) *For purposes of determinations under 38 U.S.C. 5503(b)(1)(A).* The value of the veteran's home unless medical prognosis indicates that there is no reasonable likelihood that the veteran will again reside in the home. It may be presumed that there is no likelihood for return when the veteran is absent from the home for a continuous period of 12 months because of the need for care, and the prognosis is void of any expectation for a return to the home.

(ii) *For purposes of determinations under 38 U.S.C. 5505.* The value of the veteran's home.

* * * * *

(Authority: 38 U.S.C. 5505)

* * * * *

[FR Doc. 91-30281 Filed 12-18-91; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 431

[MB-32-N]

RIN 0938-AF36

Medicaid Program: Medicaid Eligibility Quality Control Program

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Response to comments on final rule.

SUMMARY: This document responds to public comments received by the Department on a final rule issued on May 31, 1990, relating to the Department's decision not to publish regulations on the basis of the results of congressionally mandated studies of the quality control systems for the Aid to Families with Dependent Children (AFDC) program and the Medicaid program. The purpose of the studies, which were required by the Consolidated Omnibus Budget Reconciliation Act of 1985, was to examine how best to operate quality control systems in order to obtain information which would allow program managers to improve the quality of administration and provide reasonable data on which to base withholding Federal matching payments for excessive levels of erroneous State payments.

FOR FURTHER INFORMATION CONTACT: Kathy Rama, (301) 966-5929.

SUPPLEMENTARY INFORMATION:

I. Background

The Medicaid Eligibility Quality Control (MEQC) program is a system developed to identify errors in determinations of Medicaid eligibility and to reduce erroneous expenditures in medical assistance payments by

monitoring eligibility determinations. The system promotes payment accuracy, fiscal responsibility, and program integrity.

On May 31, 1990 (55 FR 22142), we published a final rule that revised certain MEQC requirements. In the preamble to that final rule, we noted that, at the time the notice of proposed rulemaking for the final rule was published (January 26, 1987), certain statutorily required quality control studies had not been completed. The studies were required by section 12301 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), Public Law 99–272, as amended by section 1710 of the Tax Reform Act of 1986, Public Law 99–514. The purpose of the studies was to examine how best to operate quality control systems in order to obtain information which would allow program managers to improve the quality of administration and provide reasonable data on which to base withholding Federal matching payments for excessive levels of erroneous State payments.

As a result of receiving numerous State comments that questioned the appropriateness of issuing a final rule before the results of the studies were known, we delayed issuing the final rule until the findings of the studies were available. After considering the findings of the studies, we concluded and stated in the preamble to the final rule that it would not be appropriate to publish additional regulations. We gave our reasons as follows:

First, the current MEQC program is sound and has proved to be efficient and effective in reducing erroneous payments. The primary purpose of the MEQC program is to ensure that those individuals who receive assistance are eligible for services. The substantial reductions in error rates achieved by States demonstrate significant improvements in payment accuracy over time, thus indicating the effectiveness of the program.

Second, we analyzed the MEQC program to respond to specific, identified problems in the current process—not simply theoretical improvements which often entail considerable new costs and the diversion of resources, but do little to actually enhance the program.

Third, based on our analysis, we concluded that the principles and methods of the current program are valid. The concept of a uniform, national error threshold and shared fiscal responsibility for error is fair and equitable. The use of a double sampling methodology involving a State review of a sample of cases followed by a Federal re-review of a subsample of those cases is far more practical and efficient than duplicative, separate systems. It also provides an appropriate sharing of responsibilities and costs to achieve both error reduction and fiscal accountability. The sampling procedures and regression estimation methodology provide statistically valid, essentially unbiased and reliable estimates of payment error rates for corrective action and the calculation of disallowances. The definition and measurement of error are also reasonably balanced and complete.

Fourth, the current quality control focus on payment accuracy, fiscal responsibility, and program integrity has been and continues to be necessary and proper, given the appropriate public concern with high levels of erroneous payments. Quality control is, however, only one component of individual State management improvement efforts and the comprehensive Federal monitoring system designed to assess overall program performance. The MEQC program provides States with information on the frequency, magnitude, and sources of error to guide improvement in payment accuracy. The current MEQC program was never intended to be the only source of information about errors, much less provide comprehensive measures of program performance, such as timeliness, service delivery, efficiency, and effectiveness.

To the extent that program improvements are legitimately needed, we indicated that we would address these areas through appropriate statutory and administrative changes. We invited public comments on this approach.

II. Public Comments and Departmental Responses

In response to our request for public comments, we received correspondence from three State agencies, one private health care agency, and one law firm representing 18 public welfare agencies. Three of the commenters raised issues that were not within the scope for which comments were solicited, and as indicated in the preamble to the final rule, we are not addressing them in this document. Our responses to the remaining comments follow:

Comment: Two commenters recommended that the backlog of past "sanctions" in the Medicaid program be eliminated as had been done in the AFDC program.

Response: The Congress eliminated the backlog of past disallowances in the AFDC quality control program and proposed that the Department revise tolerance levels for AFDC quality control because the number of States which were liable for disallowances and the amount of past disallowances were very large. We believe that the fact that Congress took no similar action in the case of Medicaid disallowances reflects the fact that Congress believes the imposition of such disallowances to be appropriate. Further, we believe the Medicaid disallowances for prior years were established properly based on a sound review and measurement system which includes a separate Medicaid review of any ineligible case identified in the AFDC stratum to determine whether Medicaid eligibility exists.

Comment: One commenter suggested that, for future years, the performance standards be revised so that only States at the extreme of bad performance are "sanctioned."

Response: We do not believe that revisions to the 3 percent performance standard established by Congress would be appropriate. The 1988 national average error rate was 2.0 percent, with 4 States exceeding the 3-percent tolerance; the 1989 national average error rate was 2.1 percent, with five States exceeding the 3-percent tolerance. The national error rates for 1986 and 1987 were 2.5 and 2.2 percent, respectively. State performance is relatively consistent among States. We believe a national uniform error threshold is fair and equitable to States.

Comment: One commenter proposed that "sanctions" should be kept sufficiently low so that they do not endanger the States' ability to provide Medicaid services and recommended a new method of calculating disallowances similar to the sliding scale used in the AFDC program.

Response: Unlike the AFDC program, where error rates, the number of States liable, and disallowance amounts are high, recent error rates in Medicaid have been consistently low. The 1989 2.1 percent national error rate is evidence that States can maintain low error rates through accurate eligibility determinations and effective program management. We believe that current disallowance amounts are sufficiently low and do not endanger the States' ability to provide services.

Comment: Two commenters recommended that performance thresholds applied to States be adjusted to reflect caseloads that are differentially prone to error.

Response: Again, we do not believe that changes in the 3-percent performance standard established by the Congress would be appropriate. States may target effective corrective

actions to reduce the incidence of errors in error prone cases. Further, research provides no scientific basis to make consistent adjustments for case characteristics. Because so little of the variation in error rates between States can be explained by statistical analysis, the selection of specific characteristics for which to make adjustments cannot be empirically determined. The arbitrary selection of different alternative adjustment factors can result in dramatically different, and therefore inequitable, adjustments for States.

Comment: Two commenters suggested that States be rewarded for good performance. One commenter recommended that States with underpayment rates that are lower than the national average be allowed to offset their error rates with this reduction.

Response: Recent error rates in Medicaid have been consistently below the statutory threshold. For this reason, we believe it is not necessary to replace the disallowance process currently required by statute with an alternative system of incentives and disallowances. However, we are currently studying the feasibility of structuring an accountability system for Medicaid negative case actions. In this context, we may consider an incentive for good performance.

Comment: One commenter believes the method for calculating excess resource errors should be adjusted to avoid multiple counting of errors. That is, an excess resource error should be assigned only to the first month of eligibility or until resources are spent down.

Response: Under section 1902(r)(2) of the Act, States have the option to apply more liberal policies in determining income and resource eligibility of specified eligibility groups. If a State elects this option, it must amend its State Medicaid plan in order for MEQC to review cases in accordance with it. If a State has not chosen to use this option, statutory requirements mandate that an individual is ineligible for each month that he or she holds excess resources.

Comment: Two commenters believe States should not be "sanctioned" for errors that are found on the basis of information not available during the eligibility determination.

Response: We disagree with this comment. Although the source used to identify errors may not have been available during the eligibility determination, the factor causing the error did exist. States need to be aware of all errors to develop methods for identifying the error cause during the eligibility determination. States are free to use a variety of methods (e.g., collateral contacts) to verify eligibility. The fact that eligibility information was not obtained from one specific source or that data matches may not contain current information is not sufficient reason to hold the State harmless from an error. We recognize that it is unreasonable to hold States accountable for inaccurate, as opposed to outdated, information provided by a Federal agency that is the originating source of the data. Therefore, we have advised States that, effective October 1, 1990, we will not cite errors resulting from erroneous information provided by a Federal agency that is the primary source of verification. However, we believe that not citing errors that are the State's responsibility would undermine the focus of MEQC on fiscal responsibility and payment accuracy.

Comment: One commenter suggested that States should not be "sanctioned" for errors that result from Federal policy interpretations announced for the first time in MEQC reviews. The commenter recommended that the correctness of a payment be determined in accordance with the State plan or a court order and that States be notified of noncomplying State plans before an error is cited, even if the State must enact a law to remove the inconsistency.

Response: Although the comment implies otherwise, Medicaid payment accuracy is determined in accordance with the approved State plan (and approvable plan amendments) since the plan reflects the terms under which Federal matching payments are made to the State. MEQC case reviews are conducted against the approved State plan, regardless of whether or not it has been revised to reflect changes in the statute or regulation, and errors are not cited unless a plan amendment has been disapproved. However, errors are cited when State policy does not conform to the State plan. States can avoid these errors by ensuring that their policies are consistent with State plan provisions.

Regarding payments made under a court order, we determine that a payment is correct if it is made within the scope of the Medicaid program. HCFA does not provide Federal matching payments for services furnished that are beyond the scope of the Medicaid program unless ordered to do so by the court. We are not adopting this recommendation because we do not believe it is reasonable to amend the statute to make available Medicaid funds for court-ordered services that are beyond the scope of the Medicaid program.

Finally, the MEQC program does not interpret or develop Medicaid policy. Medicaid policy interpretations and guidance are available to all States through the State Medicaid Manual as the official HCFA issuance. States also may contact their HCFA Regional Office for technical assistance on correct policy interpretations and correct policy applications.

Comment: One commenter contended that HCFA should assess and report to the States the level of measurement error and sampling error in MEQC reviews.

Response: Since the commenter does not define "measurement error," we are assuming that the term means statistical sampling error (or precision). Estimates of sampling errors (or precision) are provided to the States upon request.

Comment: One commenter suggested that HCFA incorporate broader measures of performance into the MEQC standards.

Response: We agree that States should assess measures of quality and effectiveness against broad program objectives. However, we do not agree that a single comprehensive performance measurement system is necessary to achieve that goal. A comprehensive performance measurement system would be appropriate only if information is unavailable or inadequate for decisionmaking. This is not the case. The MEQC system is but one of several systems that provides program managers with meaningful information. Other procedures include management information reporting systems, management and program evaluations, audits, demonstration projects, and research studies. Further, States are better able to design their own performance measurement systems under current regulations than would be possible under a federally mandated system. Many States oppose the expanded use of performance standards for fiscal liabilities. Therefore, we are not adopting the commenter's suggestion.

Comment: One commenter recommended that we provide a 6-month grace period on "sanctions" after issuance of final regulations.

Response: We disagree with the commenter. We are bound by statutorily set effective dates. The Congress may provide delayed quality control implementation when it chooses and it has done so recently in the care of qualified Medicare beneficiaries. The Administrative Procedure Act requires public opportunity to comment on proposed regulations and provides for a

1-month delayed effective date of final regulations. We believe this regulatory process provides adequate notice for States to anticipate proposed program changes and adequate time to implement provisions of the final rule.

Comment: One commenter believed States should be held harmless from MEQC errors if they relied on erroneous information or advice supplied by Federal agencies.

Response: We agree with the commenter. As stated in an earlier response, we have advised States that, effective October 1, 1990, we will hold them harmless from MEQC errors in situations where erroneous information is provided by a Federal agency that is the primary source of verification (e.g., Supplemental Security Income and Retirement and Survivors Disability Income benefit information from the Social Security Administration). Further, the good faith waiver process of the quality control program has always allowed States to request waivers of errors caused by erroneous information supplied by Federal officials reasonably assumed to be in a position to provide such information.

III. Conclusion

In summary, we are reaffirming our decision not to publish regulations based on the results of the quality control studies required by section 12301 of COBRA, as amended by section 1710 of the Tax Reform Act of 1986.

(Sec. 1102 of the Social Security Act (42 U.S.C. 1302))

(Catalog of Federal Domestic Assistance Program No. 93.773, Medical Assistance Programs)

Dated: June 9, 1991.

Gail Wilensky,

Administrator, Health Care Financing Administration.

Approved: October 18, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 91-30352 Filed 12-18-91; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL MARITIME COMMISSION

46 CFR Part 586

[Docket No. 87-06]

Actions To Adjust or Meet Conditions Unfavorable to Shipping in the United States/Peru Trade

AGENCY: Federal Maritime Commission.

ACTION: Rescission of final rule and termination of proceeding.

SUMMARY: The Federal Maritime Commission ("Commission") published a final rule in this proceeding as 46 CFR 586.2 (1990). In response to a Motion to Terminate Proceedings and Rescind Final Rule filed by Naviera Neptuno, S.A. ("Neptuno"), the Commission is rescinding the final rule and terminating the proceeding.

EFFECTIVE DATES: December 19, 1991.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5740.

SUPPLEMENTARY INFORMATION: The Final Rule in this proceeding, issued pursuant to section 19(1)(b), of the Merchant Marine Act, 1920 ("Section 19"), 46 U.S.C. app. 876(1)(b), found conditions unfavorable to shipping to exist in the U.S./Peru trade ("Trade") as a result of the cargo reservation laws, decrees and policies of the Government of Peru ("GOP"). Decree No. 036-82-TC established the GOP cargo reservation system. Although subsequently amended by other decrees which were themselves later repealed by the GOP, Decree No. 036-82-TC remained in effect and provided the underlying basis for reservation of 50% of commercial cargo for movement on Peruvian-flag or associated vessels, thus denying access to major proportions of cargo by third-flag carriers and restricting the service and choice available to U.S. shippers. The Commission's action in this proceeding was based in large part on Decree No. 036-82-TC.

The Commission's final rule, issued on March 28, 1989, assessed a fee of $50,000 per voyage on several Peruvian-flag carriers. The effective date of the rule was, however, deferred due to political and economic conditions then-existing in Peru, brought to the Commission's attention by the Department of State ("DOS"). See 54 FR 12629 (March 28, 1989); 46 CFR 586.2.

Recent GOP Actions and the Motion

The GOP has recently acted to eliminate the cargo reservation policies and decrees which were the focus of the Commission's proceeding. Supreme Decree No. 020-91-TC, enacted July 3, 1991, cancels a number of previous Supreme Decrees, including *inter alia* Supreme Decree No. 036-82-TC. DOS informed the Commission of these enactments by a letter forwarding a July 15, 1991, Diplomatic Note from the Embassy of Peru in which the GOP suggested that the Commission review and repeal the final rule. Neptuno, a Peruvian-flag carrier subject to the rule, has filed a Motion which describes these filings and events and requests that the Commission rescind the final rule and terminate the proceeding.

Replies to the Motion

The Motion was served on all of the parties who had filed comments in earlier proceedings in this Docket. Nedlloyd Lines ("Nedlloyd") replied to the Motion. In addition, DOS sent a letter confirming that the GOP's "decrees are in effect and have eliminated all cargo preference."

Nedlloyd states that the decrees appear to be a significant and progressive step by the GOP but, nevertheless, suggests that rescission of the final rule would be premature. The basis for Nedlloyd's concern is a $100,000 penalty assessed against Nedlloyd earlier this year by the GOP for alleged violations of cargo reservation laws. Nedlloyd states that it is contesting the penalties, and that, although the GOP has taken no action to collect the penalties, they are still "pending." Nedlloyd suggests that the Commission allow a period in which to monitor GOP transition from cargo reservation by directing interested parties to report on conditions in the Trade in sixty days.

Discussion

Nedlloyed states that its asserted liability for penalties based on alleged violations of the cargo reservation scheme remains outstanding. Nedlloyd further advises, however, that this assertion of liability predates the GOP action to remove the cargo reservation scheme itself and that no enforcement efforts have been undertaken by the GOP.[1] In these circumstances, and given Nedlloyd's continuing ability to seek future action by this agency in light of changes in circumstances, we are reluctant to withhold Commission recognition of the GOP's recent actions.

The GOP enactments reflect the intention, expressed in Decree No. 020-91-TC, to "remove the restrictions affecting shipments by exporters and importers, including abolition of Reservation of Freight to promote shipping * * *." Article 1 of the Decree provides for the removal of administrative restrictions of various kinds affecting maritime shipments by

[1] The Commission, of course, would be concerned should efforts be made to belatedly enforce cargo reservation decrees which were the subject of this proceeding. While actual termination of such claims by the GOP would be welcome, the Commission will not speculate further on matters that might concern it in the future in view of the positive achievements in resolving the conditions unfavorable to shipping which were the focus of the proceeding.

exporters or importers. Article 2 abolishes reservation of freight in favor of Peruvian shipping companies, and article 3 provides for "participation of foreign shipping companies in the transport of Peruvian freight for export or import * * * on the basis of strict reciprocity." [2]

Based on the new Peruvian Decree, the Commission will grant Neptuno's Motion. It appears, indeed, that the GOP has taken concrete and positive steps to remove the conditions unfavorable to shipping in our mutual trade previously found. We therefore rescind the final rule and terminate the proceeding.[3]

List of subjects in CFR Part 586

Cargo vessels; Exports; Foreign relations; Imports; Maritime Carriers; Penalties; Rates and fares; Reporting and recordkeeping requirements.

Therefore, pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b); section 10002 of the Foreign Shipping Practices Act of 1988, 46 U.S.C. app. 1710a; Reorganization Plan No. 7 of 1961, 26 FR 7315 (August 12, 1961); and 46 CFR part 585, part 586 of title 46 of the Code of Federal Regulations is amended as follows:

PART 586—ACTIONS TO ADJUST OR MEET CONDITIONS UNFAVORABLE TO SHIPPING IN THE U.S. FOREIGN TRADE

1. The authority citation for part 586 continues to read as follows:

Authority: 46 U.S.C. app. 876(1)(b); 46 U.S.C. app. 1710a; 46 CFR part 585; Reorganization Plan No. 7 of 1961, 26 FR 7315 (August 12, 1961).

§ 586.2 [Removed]

2. Section 586.2 is removed.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91–30227 Filed 12–18–91; 8:45 am]

BILLING CODE 6730–01–M

[2] Thus, access by non-Peruvian flag carriers will be limited only by denial of access to Peruvian shipping companies to the freight generated in the country of origin of the foreign vessels in question. We note, however, that this proceeding was instituted as a result of concerns of U.S. shippers and shippers' organizations that their access to shipping services was adversely affected by GOP cargo reservation policies and decrees. Among the third-flag carriers affected were Chilean-flag carriers prominent in the movement of refrigerated cargoes. The exclusion of the Chilean-flag carriers arose in the context of a dispute over mutual access to Chilean cargoes by Peruvian-flag carriers. In promulgating its first final rule in this proceeding, 52 FR 46356 (December 7, 1987), the Commission advised that it could not accept as satisfactory a resolution of the matter which incorporated the proposition that regional disputes may be resolved by imposing burdens on U.S. commerce. In effect, the Commission warned, this would allow the GOP to hold the U.S.-Peru trade hostage to obtain concessions elsewhere. We remain committed to the principles earlier enunciated. While it is possible that the language of Article 3 might encompass such an approach to regional problems in the future, a determination to that effect would be speculative at this point. Accordingly, we see no reason in the present context to delay action on the Motion.

[3] This action is, of course, without prejudice to the initiation of further proceedings either on our motion or at the request of any affected third party, should conditions in the Trade warrant.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 90

[PR Docket No. 90–481; FCC 91–339]

Construction, Licensing, and Operation of Private Land Mobile Radio Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a Report and Order modifying and clarifying its rules and policies with regard to station construction, station operation, the discontinuance of station operations, license renewal and license reinstatement in the Private Land Mobile Radio Services. The Report and Order also implements a "finder's preference" program to give a dispositive licensing preference to persons that identify licensees that are not in compliance with the Commission's construction and operation rules.

EFFECTIVE DATE: All rules adopted in this proceeding are effective January 21, 1992.

FOR FURTHER INFORMATION CONTACT: Martin Liebman or Rosalind Allen, 202–634–2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, PR Docket No. 90–481, FCC 91–339, adopted October 24, 1991, and released November 21, 1991. The full text of this Report and Order is available for inspection and copying during normal business hours in the FCC Dockets Branch, room 230, 1919 M Street NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, telephone (202) 452–1422.

Summary of Report and Order

1. In the Report and Order in PR Docket No. 90–481, the Commission modifies and clarifies various compliance and licensing rules in the Private Land Mobile Radio Services.

2. First, we clarify our rules regarding the construction and operation of private land mobile radio services. We indicate that the construction of base stations must be in substantial accordance with the parameters specified in a station authorization and that in order to be considered "placed-in-operation", a conventional system must place at least one mobile and one base station in operation by the required deadline, and a trunked system must place at least two mobiles (or a mobile and a control station) and a base station in operation by the required, one-year construction/operation deadline.

3. Second, we clarify our rules regarding the automatic cancellation of licenses. We indicate that license cancel automatically if the licensee permanently discontinues operations for a period of one year or more.

4. Third, we reduce the time period in which a licensee can file for reinstatement and late renewal of an expired license from 180 days to 30 days. Additionally, to make it easier for licensees to file such reinstatement/late renewals, we will permit licensees to file these applications on Forms 574–R and 405–A, as well as the currently required Form 574.

5. Fourth, we establish a new "two-month" database-deletion policy to make frequencies encumbered by expired licenses available for reassignment more rapidly.

6. Finally, we establish a finder's preference program to give an incentive to individuals to assist us in recovering unused channels. Those individuals that provide us with information regarding licensee violations leading to our recovery of channels will be given a dispositive preference to become licensed on the recovered channels.

7. The Report and Order indicates that a preference may only be awarded for the identification of violations of our construction and operation rules and that the preference may only apply to channels that are licensed on an exclusive basis.

8. The Report and Order also provides the procedures that must be followed in filing a finder's preference request and the information that each request must contain.

9. Finally, we indicate that we will deal seriously with any individual that abuses this program or our process, and that such abuse could result in license revocation, monetary forfeiture or possible criminal prosecution.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, a final regulatory flexibility analysis has been prepared and is available for public review as part of the full text of this item. The text is available for inspection and copying during normal business hours in the FCC, Private Radio Bureau, Land Mobile and Microwave Division, Rules Branch (room 5202), 2025 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street NW., Washington, DC 20036, (202) 452–1422.

Paperwork Reduction

The collection of information requirement contained in Rule 90.173(k) has been approved by OMB under Section 3504(h) of the Paperwork Reduction Act. Copies of the submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street NW., Washington, DC 20036, (202) 452–1422. Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden may be sent to the Federal Communications Commission, Office of the Managing Director, Paperwork Reduction Project, OMB Control Number 3060–0461, Washington, DC 20554, or to the Office of Management and Budget, Paperwork Reduction Project, OMB Control Number 3060–0461, Washington, DC 20503.

OMB Number: 3060–0461

Title: 47 CFR 90.173(k), Construction, Licensing and Operation of Private Land Mobile Radio Stations (Notice of Proposed Rule Making in PR Docket No. 90–481).

Action: New collection.

Respondents: Businesses (including small businesses), non-profit institutions, local governments.

Estimated Annual Burden: 200 responses; 4.5 hours average burden per response; 900 hours total burden.

Needs and Uses: Persons who provide the Commission with information regarding the violation of certain construction and operation Rules would be granted a licensing preference for any channels recovered as a result of that information. This will aid the Commission's compliance program and make effective use of scarce radio spectrum.

List of Subjects

47 CFR Part 1

Radio.

47 CFR Part 90

Private land mobile radio services, Radio, Station applications and authorizations.

Amendatory Text

47 CFR Parts 1 and 90 are amended as follows:

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

Authority: Sections 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552, unless otherwise noted.

2. 47 CFR 1.926 is amended by adding a new paragraph (c) to read as follows:

§ 1.926 Application for renewal of license.

* * * * *

(c) Reinstatement of an expired license in the Private Land Mobile Radio Services may be requested up to thirty (30) days after the expiration date using FCC Form 574, 574–R or 405–A. See § 1.4.

3. 47 CFR 1.1102 is amended by adding a new paragraph (14) and a new Note D to read as follows:

§ 1.1102 Schedule of charges for private radio service.

Action	FCC form No.	Fee amount	Fee type code	Address
*	*	*	*	*
14. Finder's preference requests (see Note D below).	Corresp. FCC 155	105	PDX	Federal Communications Commission, Feeable Correspondence, P.O. Box 358305, Pittsburgh, PA 15251–5305.

* * * * *

Notes: D. The fee for a Finder's Preference Request is $105 per channel.

4. The authority citation for part 90 continues to read as follows:

Authority: Sections 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

5. 47 CFR 90.119 is amended by adding new paragraph (a)(5) and by revising paragraphs (e)(1) and (h) to read as follows:

§ 90.119 Application forms.

(a) * * *

(5) For reinstatement of an expired license. See also paragraphs (e)(1) and (h) of this section.

* * * * *

(e) * * *

(1) Apply for license renewal (if the reinstatement of renewal does not involve the modification of the station or system license) when the licensee has not received renewal Form 574–R in the mail from the Commission within sixty (60) days of license expiration, and may be used to apply for reinstatement of an expired license (if the reinstatement does not involve the modification of the station or system license).

* * * * *

(h) Form 574–R shall be used to apply for a renewal of an existing authorization and may be used to apply for reinstatement of an expired license, if the renewal or reinstatement does not involve the modification of the station or system license. (Form 574–R is generated by the Commission and is mailed to the licensee prior to the expiration of the license term).

6. 47 CFR 90.127 is amended by adding a last sentence to paragraph (b) to read as follows:

§ 90.127 Submission and filing of applications.

* * * * *

(b) * * * Application for license reinstatement must be filed no later than thirty (30) days after the expiration date of the license. See § 1.4 of this chapter.

* * * * *

7. 47 CFR 90.149 is amended by revising paragraph (a), by redesignating paragraph (c) as paragraph (d), by redesignating paragraph (b) as paragraph (c), and by adding a new paragraph (b), to read as follows:

§ 90.149 License term.

(a) Licenses for stations authorized under this part will be issued for a term not to exceed five years from the date of the original issuance, modification or renewal, provided however that licensees have an additional thirty (30) days to apply for reinstatement of expired licenses.

(b) If no application for reinstatement has been filed as specified in this Part, the authorization shall be deemed to have been automatically cancelled on the date specified on the authorization.

* * * * *

8. 47 CFR 90.155 is amended by revising paragraph (a) and adding new paragraph (c) to read as follows:

§ 90.155 Time in which station must be placed in operation.

(a) All stations authorized under this part, except as provided in paragraph (b) of this section and in §§ 90.629 and 90.631(f), must be placed in operation within eight (8) months from the date of grant or the authorization cancels automatically and must be returned to the Commission.

* * * * *

(c) For purposes of this section, a base station is not considered to be placed in operation unless at least one associated mobile station is also placed in operation. See also §§ 90.633(d) and 90.631(f).

9. 47 CFR 90.157 is amended by revising paragraph (a), by removing paragraph (b) and by redesignating paragraph (c) as new paragraph (b) to read as follows:

§ 90.157 Discontinuance of station operation.

(a) The license for a station shall cancel automatically upon permanent discontinuance of operations and the licensee shall forward the station license to the Commission. Alternatively, the licensee may notify the Commission of the discontinuance of operations of a station by checking the appropriate box on Form 574–R or Form 405–A and requesting license cancellation. Notification of discontinued operation or cancellation shall be sent to: Federal Communications Commission, Gettysburg, PA 17326.

* * * * *

10. 47 CFR 90.173 is amended by adding a new paragraph (k) to read as follows:

§ 90.173 Policies governing the assignment of frequencies.

* * * * *

(k) Notwithstanding any other provisions of this Part, any eligible person may seek a dispositive preference for an exclusive channel assignment in the 220–222 MHz, 470–512 MHz, and 800/900 MHz bands by submitting information that ultimately leads to the recovery of frequencies in these bands. Recovery of such frequencies will come about as a result of information provided regarding the failure of existing licensees to comply with various provisions of §§ 90.155, 90.157, 90.629, 90.631(e) or (f), or 90.633(c) or (d). Preferences will not apply to instances where the targeted channels are those encompassed by the National Plan for Public Safety (the 821–824/866–869 MHz channels) or any Regional Public Safety Plans—unless the requested preference is accompanied by a written statement from the relevant Regional Public Safety Planning Committee indicating that the request is not inconsistent with the Region's Public Safety Plan. The dispositive preference provided for in this paragraph also may be awarded to any person who arranges for an existing licensee to voluntarily request license cancellation because the licensee anticipates that it will be unable to timely construct and place its licensed facilities in operation. See §§ 90.155, 90.629, 90.631 (e) and (f), 90.633 (c) and (d). In the instance of such consensual preferences, both finder and licensee must certify that they have neither given nor received any direct or indirect compensation in connection with the requested license cancellation, and the finder will assume the former licensee's deadline for constructing and placing the licensed facility in operation.

(1) Eligibility for preference—The recipient of a finder's preference must be eligible to be a licensee in the private land mobile services and eligible to be licensed for the channels targeted by the finder's request on either a primary basis or through intercategory sharing—except a finder's preference for occupied channels in the 800 MHz Public Safety Category shall only be available to Public Safety Category eligibles.

(2) Timeliness of finder's request—A preference based on a construction or placed-in-operation violation will not be acceptable for filing until 180 days after the construction deadline of the target licensee. The preference shall not apply to any case scheduled for regular review during the Private Radio Bureau's normal compliance activities or to any case under Commission review or investigation. An applicant that files a timely request for a finder's preference that results in channel recovery, and that also timely submits an application in a form acceptable for filing, will receive a dispositive preference for the recovered channel(s). Where more than one applicant obtains a preference for the same channel(s), we will grant the license to operate on the channel(s) to one of these applicants through our random selection procedures. See § 1.972 of this chapter.

(3) Contents of request—The finder's preference request shall be mailed to the following address: Federal Communications Commission, Feeable Correspondence, P.O. Box 358305, Pittsburgh, PA 15251–5305. See § 1.1102(14) of this chapter. The request shall contain detailed information to establish a *prima facie* violation, including: the name and address of the licensee allegedly violating the applicable rules; the licensee's call sign, frequencies and location of the licensed facility; the Commission Rule(s) that the licensee is allegedly violating, including the dates or benchmarks the licensee has failed to meet; and a detailed statement as to the specific basis for the applicant's knowledge that the licensee is violating the rules specified in this section. General and conclusory statements shall result in the summary dismissal of any such request. All preference requests shall be in the form of a sworn affidavit or a declaration dated and subscribed by the person as true under penalty of perjury as set forth in § 1.16 of this chapter. All preference requests shall certify that a complete copy of the preference request has been served on the target licensee. See § 1.47 of this chapter.

11. 47 CFR 90.175 is amended by revising the introductory paragraph to the section and by adding a new paragraph (f)(15) to read as follows:

§ 90.175 Frequency coordination requirements.

Except for applications listed in paragraph (f) of this section, each application for a new frequency assignment, for a change in existing facilities as listed in § 90.135(a), or for operation at temporary locations in accordance with § 90.137, must include a showing of frequency coordination as set forth below. An application to reinstate a license expired for more than thirty (30) days will be considered as a request for a new frequency assignment. When frequencies are shared by more than one service, concurrence must be obtained from the other applicable certified coordinators.

* * * * *

(f) * * *

(15) Applications timely-filed by recipients of a finder's preference, where the applicant intends to operate at the same site location, and with the same technical parameters as the prior licensee.

12. 47 CFR 90.611 is amended by revising paragraph (d) to read as follows:

§ 90.611 Processing of applications.

* * * * *

(d) Applications for channels in the SMR category that cannot be granted

due to a lack of available channels in a particular area will be placed on a waiting list for that area. Waiting lists will consist of two groups. The first group will be comprised of applications from existing licensees who, in the area corresponding to the particular waiting list, operate trunked systems with 70 or more mobile units per channel. The second group will be comprised of applications to establish new systems or to obtain additional channels for conventional systems. Applications will be placed in the appropriate group according to filing dates, with the earliest date receiving the highest ranking. All applications in the first group will receive priority over any application in the second group regardless of filing date. When channels become available as a result of either the Commission's compliance activities, a licensee's voluntary and independent request for license cancellation, or failure by the recipient of a finder's preference to timely submit an application in a form acceptable for filing, the highest ranking application(s) will be granted based on the site specified and the Commission's mileage separation standards. An applicant filing a timely request for a finder's preference that results in the recovery of SMR category channels, and that also timely submits an application in a form acceptable for filing, will receive a dispositive preference for those channels over the highest ranking application(s). Where more than one applicant obtains a preference for the same channel(s), we will grant the license to operate on the channel(s) to one of these applicants through our random selection procedures. See § 1.972 of this chapter. Trunked systems that have had authorized channels cancelled due to failure to meet the loading requirements in § 90.631 will not be permitted on the waiting list for a period of six months from the date of the issuance of the superseding license.

* * * * *

13. 47 CFR 90.631 is amended by adding a last sentence to paragraph (f) to read as follows:

§ 90.631 Trunked systems loading, construction and authorization requirements.

* * * * *

(f) * * * For purposes of this section, a base station is not considered to be placed in operation unless at least two associated mobile stations, or one control station and one mobile station, are also placed in operation.

* * * * *

14. 47 CFR 90.633 is amended by revising paragraph (d) to read as follows:

§ 90.633 Conventional systems loading requirements.

* * * * *

(d) If a station is not placed in operation in eight months, except as provided in § 90.629, its license cancels automatically and must be returned to the Commission. For purposes of this section, a base station is not considered to be placed in operation unless at least one associated mobile station is also placed in operation.

* * * * *

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-30048 Filed 12-18-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 91-238; RM-7691]

Radio Broadcasting Services; Colfax, WA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Dakota Communications, substitutes Channel 273C3 for Channel 272A at Colfax, Washington, and modifies its construction permit for Station KRAO accordingly. See 56 FR 41812, August 23, 1991. Channel 273C3 can be allotted to Colfax in compliance with the Commission's minimum distance separation requirements at the petitioner's requested site without the imposition of a site restriction. The coordinates for Channel 273C3 at Colfax are North Latitute 46-51-43 and West Longitude 117-10-26. Since Colfax is located within 320 kilometers (200 Miles) of the U.S.-Canadian border, concurrence of the Canadian government has been obtained With this action, this proceeding is terminated.

EFFECTIVE DATE: January 27, 1992.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91-238, adopted December 6, 1991, and released December 13, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73.

Radio Broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 contunues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Washington, is amended by removing Channel 272A and adding Channel 273C3 at Colfax.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-30211 Filed 12-18-91; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 56, No. 244
Thursday, December 19, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-43-AD]

Airworthiness Directives; McDonnell Douglas Model DC-3 Series Airplanes, Including Those Modified for Turbo-Propeller Power.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (nprm); reopening of comment period.

SUMMARY: This notice revises an earlier proposed airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-3 series airplanes, which would have required revising inspection procedures, installing a structural modification, and adding models to the applicability. That proposal was prompted by an in-flight wing separation. This action would revise the proposed rule by adding a requirement to perform repetitive visual inspections of those airplanes that are modified to incorporate wing inspection access holes. The actions specified by this proposed AD are intended to prevent degradation of the structural integrity of the airplane.

DATES: Comments must be received no later than January 22, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-43-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The applicable service information may be obtained from McDonnell Douglas Corporation, Technical Publications-Technical Administrative Support, C1-L5B, 3855 Lakewood Boulevard, Long Beach, California 90846. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Lee, Aerospace Engineer, ANM-122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; telephone (213) 988-5325.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 89-NM-43-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 89-NM-43-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion:

A proposal to amend part 39 of the Federal Aviation Regulations to supersede AD 69-15-04, Amendment 39-1396, which is applicable to McDonnell Douglas Model DC-3 series airplanes, was published in the **Federal Register** on March 26, 1991 (56 FR 12490). That proposal would have revised the currently required inspection procedures, required the installation of a structural modification, and added airplanes to the applicability of the rule. That proposal was prompted by reports of in-flight wing separations, apparently due to undetected cracks and subsequent failure of the wing structure. Cracking, if not detected and corrected, could result in degradation of the structural integrity of the airplane.

Since issuance of that proposal, the FAA has determined that it must be revised to include repetitive visual inspections of those airplanes that are modified to incorporate wing inspection access holes. Repetitive visual inspections at intervals of 2,000 hours time-in-service are necessary to detect cracking in a timely manner and to assure the continued airworthiness of these airplanes. Paragraph (a) of the proposed rule has been revised accordingly.

The FAA has also determined that C-52A airplanes (military version) may be subject to the addressed unsafe condition since their design is similar to that of the other affected Model DC-3 series airplanes. Accordingly, the applicability of the proposed rule has been revised to include the C-52A models.

Since these changes would expand the scope of the originally proposed AD, the FAA has determined that it is necessary to reopen the comment period to provide additional time for public comment.

The format of the supplemental proposal has been restructured to be consistent with the standard **Federal Register** style.

There are approximately 2,000 Model DC-3 series airplanes of the affected design in the worldwide fleet. It is estimated that 610 airplanes of U.S. registry would be affected by this AD, that it would take approximately 150 work hours per airplane to accomplish the required initial actions, and that the average labor cost would be $45 per work hour. The cost for required parts is estimated to be $1,000 per airplane. Follow-on action would require approximately 50 work hours per

airplane at $45 per work hour to accomplish the required inspections. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $4,727,500 for the first year, or $7,750 per airplane; and $1,372,500 for each year thereafter, or $2,250 per airplane.

These figures are based on an assumption that no airplane has been modified previously in accordance with the requirements proposed in this action.

According to FAA registration records, the mean number of Model DC–3 airplanes registered per owner is about 1.6. Over half of the owners have only one airplane, and the largest number currently operating in a single fleet is 12. There is no easily-available and accurate source of data on the types of businesses in which current U.S. Model DC–3 operators are engaged nor the total number of aircraft of all types that they operate. However, many Model DC–3's are known to be operated by for-hire carriers, especially unscheduled cargo carriers; such use in unscheduled for-hire carriage has been employed here for Regulatory Flexibility Act (RFA) determination purposes.

For air carriers, the FAA defines a "small entity" as one with 9 aircraft (any type) or less, and its criterion for a "significant impact" is at least $3,700 per year for an unscheduled carrier and $51,800 per year for a scheduled carrier operating aircraft of fewer than 60 seats, such as a Model DC–3.

The estimated $7,750 initial modification expenditure that would be required by the proposed AD for even one Model DC–3 converts at 10% (the 10% discount factor required by the Office of Management and Budget for reconciling non-inflation-adjusted future and present expenditure) to an annual equivalent of over $3,700 per year, unless it is considered to apply to a planning period of approximately 2½ years or more. It is thus conceivable that even a single airplane could generate significant costs for a small operator, in terms of the RFA, if the airplane had no economic use (and thus no sale value for future operation) beyond a 2½ year period after the modification, during which there would not have been enough use of the airplane to bring into effect fully or partially offsetting savings from the proposed reduced reinspection requirements.

However, there would seem to be a low likelihood of such an extreme end-of-life cycle scenario for Model DC–3's belonging to a substantial number of small operators, and reinspection cost savings may be projected to completely offset initial expenditures within realistic future lifetimes for existing Model DC–3's (if not in current operators' fleets, then in others to which they might be sold). Savings may be projected to completely offset initial expenditure within a nine-year future period even if the assumed average annual utilization of 667 hours were reduced to 333. Such a period would have added $9 \times 333 = 2,997$ additional hours to the airframe, not an unrealistic increment considering the demonstrated longevity of this type.

Therefore, it is concluded that there is unlikely to be a significant negative economic impact on a substantial number of small entities stemming from the combined effects of the mandatory modification and relaxed inspection provisions of the proposed AD.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–1396 and by adding the following new airworthiness directive:

McDonnell Douglas: Docket 89–NM–43–AD. Supersedes AD 69–15–04, Amendment 39–1396.

Applicability: Model DST, Super DC–3, DC–3, DC–3A, DC–3B, DC–3C, and DC–3D series airplanes; all military versions, C–41, C–41A, C–47, C–47A, C–47B, C–48, C–48A, C–49, C–49A, C–49B, C–49C, C–49D, C–49J, C–49K, C–50, C–50A, C–50B, C–50C, C–50D, C–51, C–52, C–52A, C–52B, C–52C, C–53, C–53B, C–53C, C–53D, C–68, C–117A, C–117D, and R4D series airplanes; including those modified for turbo-propeller power; certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent structural failure of the wings, accomplish the following:

(a) For airplanes not modified with the repair or preventive doublers at both wing stations 94.250 and 127.750, in accordance with McDonnell Douglas Service Bulletin 229, any revision; or McDonnell Douglas Service Bulletin 263, any revision through Revision 8, dated December 15, 1971; or McDonnell Douglas Service Rework Drawing SR03578003, dated April 6, 1988; accomplish the following:

(1) Within 900 hours time-in-service after performing the last inspection in accordance with AD 69–15–04, amendment 39–1396, or within one year after the effective date of this AD, whichever occurs first, accomplish the following:

(i) Inspect the wing in accordance with McDonnell Douglas Service Rework Drawing SR03578001, dated March 11, 1988; or McDonnell Douglas Service Rework Drawing SR03578002, Revision A, dated September 26, 1988; for the applicable airplanes, using the visual and X-ray techniques specified. Repeat the visual inspection thereafter at intervals not to exceed 2,000 hours time-in-service.

(ii) Modify the airplane to incorporate access holes, in accordance with McDonnell Douglas Service Rework Drawing SR03548001, Revision A, dated March 7, 1989.

Note: Airplanes previously modified to incorporate access holes do not have to be remodified if visibility and access can be obtained.

(2) Within 2,000 hours time-in-service or two years after the effective date of this AD, whichever occurs first, modify the wing in accordance with McDonnell Douglas Service Rework Drawing SR03578003, dated April 6, 1988.

(b) For airplanes modified to incorporate the repair or preventive doublers at both wing stations 94.250 and 127.750, in accordance with McDonnell Douglas Service Bulletin 229, any revision; or McDonnell Douglas Service Bulletin 263, any revision through Revision 8, dated December 15, 1971; or McDonnell Douglas Service Rework Drawing SR03578003, dated April 6, 1988: Within 2,000 hours time-in-service after the last inspection in accordance with AD 69–15–04, amendment 39–1396, and thereafter at intervals not to exceed 2,000 hours time-in-service, inspect the wing using the visual method specified in McDonnell Douglas

Service Rework Drawing SR03578001, dated March 11, 1988; and McDonnell Douglas Service Rework Drawing SR03578002, Revision A, dated September 26, 1988; for the applicable airplanes.

(c) Cracked structure detected during the inspections required by paragraph (a) or (b) of this AD must be repaired or replaced prior to further flight, in accordance with McDonnell Douglas Service Rework Drawing SR03578003, dated April 6, 1988.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of paragraph (a) or (b) of this AD.

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

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

Issued in Renton, Washington, on December 4, 1991.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-30269 Filed 12-18-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 90-AWA-13]

Proposed Establishment of Long Beach Airport Radar Service Area and Alteration of John Wayne Airport/ Orange County Airport Radar Service Area; CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws the Notice of Proposed Rulemaking (NPRM), Airspace Docket No. 90-AWA-13, which was published in the **Federal Register** on April 26, 1991 (56 FR 19498). That NPRM proposed to establish an Airport Radar Service Area (ARSA) at Long Beach (Daugherty Field), CA, and to adjust the southwest confines of the John Wayne Airport/Orange County ARSA to accommodate the adjoining Long Beach ARSA. After review of the public comments and the airspace configuration of the Los Angeles Basin, this NPRM is being withdrawn by the FAA because future rulemaking is planned for a comprehensive redesign of the airspace in the Los Angeles Basin.

DATES: The proposed rule is withdrawn on December 19, 1991.

FOR FURTHER INFORMATION CONTACT: Alton D. Scott, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, Docket No. 90-AWA-13, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9252.

The Proposed Rule

On April 26, 1991, a Notice of Proposed Rulemaking was published in the **Federal Register** to establish an ARSA at Long Beach (Daugherty Field), CA, and to adjust the southwest confines of the John Wayne Airport/ Orange County ARSA to accommodate the adjoining Long Beach ARSA (56 FR 19498).

Summary of Comments

Forty-eight comments were received regarding the proposal. A thorough review of the airspace proposal and the issues raised during the comment period was conducted by the FAA. The common view expressed during the comment period was that the FAA should redesign and simplify the regulatory airspace within the entire Los Angeles Basin. This redesigned airspace should be systematically developed to provide for increased levels of safety and efficiency.

Conclusion

In light of the comments received, it was concluded that the establishment of the Long Beach ARSA would increase the overall airspace complexity in the Los Angeles Basin. Currently, the Los Angeles Basin airspace is composed of 1 terminal control area, 6 airport radar service areas, 25 control tower facilities, and 4 military facilities. The amount and complexity of this airspace dictate a need to modify the entire Los Angeles Basin airspace to make it more compatible with the increasing amount of general aviation and air carrier activity. The NPRM is being withdrawn by the FAA because future rulemaking is planned for a comprehensive redesign of the airspace in the Los Angeles Basin. This future rulemaking would relieve congestion, reduce complexity, reduce controller workload, and make the airspace more compatible for both instrument flight rule and visual flight rule users in this region.

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

Withdrawal of Proposed Rule

Accordingly, pursuant to the authority delegated to me, the Notice of Proposed Rulemaking, Airspace Docket No. 90-AWA-13, as published in the **Federal Register** on April 26, 1991 (56 FR 19498), is hereby withdrawn.

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

Issued in Washington, DC, on December 10, 1991.

Original signed by:

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 91-30273 Filed 12-18-91; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Chapter I

[Docket No. RM91-10-000]

Notice of Intent To Establish a Negotiated Rulemaking Committee

Issued December 12, 1991.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of intent to establish a negotiated rulemaking committee.

SUMMARY: The Federal Energy Regulatory Commission (FERC or Commission) proposes to establish a negotiated rulemaking committee to revise and develop a uniform and comprehensive proposed regulation governing *ex parte* communications between persons outside the Commission and Commission officials and employees. The committee's goal will be to develop *ex parte* regulations that allow the maximum amount of information to be available to the Commission, consistent with maintaining the full integrity of the Commission's decisionmaking process. This notice identifies the proposed members of the committee, establishes the committee's agenda, and invites comments on the proposal to establish the negotiated rulemaking committee and on the proposed members of the committee.

DATES: Comments, applications or nominations must be submitted to the Commission no later than January 21, 1992.

ADDRESSES: Comments, applications or nominations should refer to Docket No. RM91-10-000 and must be filed with: Office of the Secretary, Federal Energy Regulatory Commission, 825 North

Capitol Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael Schopf, Associate General Counsel, Enforcement and General & Administrative Law, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, Phone: (202) 208–0457.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission (FERC or Commission) proposes to establish a negotiated rulemaking committee to revise and develop a uniform and comprehensive proposed regulation governing *ex parte* communications between persons outside the Commission and Commission officials and employees. The proposed committee will focus on the legal and policy issues involved in formulating a new regulation having prospective effect only, and will not investigate or examine specific conduct or allegations in past or pending proceedings. The Commission's current *ex parte* regulations carry forward without substantive change two sets of rules that predate the FERC's creation. These are the old Federal Power Commission regulation, embodied in Rule 2201 of the Commission's Rules of Practice and Procedure (18 CFR 385.2201), and the old Interstate Commerce Commission rules applicable to oil pipeline matters, now reflected in Rule 1415 of the Commission's Rules of Practice and Procedures (18 CFR 385.1415). Over the years, the Commission has addressed particular *ex parte* issues in individual cases and has provided internal guidance on *ex parte* questions to the Commission and the staff. These efforts, however, do not eliminate the need for up-to-date, comprehensive and uniform regulations.

There is a need for clearer guidance as to the scope of the *ex parte* prohibitions in trial-type and adjudicatory proceedings. Clearer standards are necessary, for example, to govern informal consultations between the Commission and our environmental staff and other Federal or state agencies having environmental responsibilities or interests, as well as contacts by the Commission and our staff with applicants and other persons for the purpose of obtaining information necessary to the staff's environmental analysis. Also, while the *ex parte* prohibitions are not applicable to informal general policy rulemakings, additional guidance is necessary regarding the procedures to be followed for assuring that significant off-the-record communications are reflected in the public rulemaking file so that they may be considered in the Commission's notice and comment decisional process.

In the Commission's judgment, negotiated rulemaking procedures are well suited to a comprehensive review of the FERC's *ex parte* regulations. In the Negotiated Rulemaking Act of 1990, Public Law No. 101–648, November 28, 1990, Congress has encouraged the use of techniques designed to give identifiable interests that are significantly affected by a rule an opportunity to participate in the early stages of its development. The early participation of significantly affected interests is likely to improve communication among them, give the Commission and the public access to the shared information and knowledge possessed by the various interests, and lead ultimately to a better rule. Since everyone has a stake in a fair and efficient administrative process at the Commission, we have every reason to expect a good faith negotiation.

The Commission had identified interests that may be significantly affected by the rule. These include various industry groups regulated by the Commission, customer groups, consumer and environmental groups, the Federal Government, state regulatory officials, and the federal energy bar.

The following persons, listed with the group or organization each represents, are proposed as members of the negotiated rulemaking committee:

John Cheatham, III, Esq. Senior Vice President, General Counsel and Secretary, Interstate Natural Gas, Association of America.	Interstate Natural Gas Association of America.
Lorraine Cross, Director, State and Federal Agency Relations, American Gas Association.	American Gas Association.
Richard G. Morgan, Esq., Lane & Mittendorf, Washington, DC	Independent Petroleum Association of America.
A. Scott Anderson, Esq., General Counsel, Texas Independent Producers & Royalty Owners Association.	Texas Independent Producers & Royalty Owners Association.
Charles B. Curtis, Esq., Van Ness, Feldman, Sutcliffe & Curtis, Washington, DC.	Natural Gas Supply Association.
Edward J. Grenier, Jr., Esq., Sutherland, Asbill & Brennan, Washington, DC.	Process Gas Consumers.
Michele F. Joy, Esq., Counsel and Secretary, Association of Oil Pipelines.	Association of Oil Pipelines.
Peter B. Kelsey, Esq., Vice President, Law and Corporate Secretary, Edison Electric Institute.	Edison Electric Institute.
Alan J. Roth, Esq., Spiegel & McDiarmid, Washington, DC	American Public Power Association.
Robert Daileader, Jr., Esq., Nixon, Hargrave, Devans & Doyle, Washington, DC.	National Independent Electric Producers.
John R. Molm, Esq., Troutman, Sanders, Lockerman & Ashmore, Atlanta, GA.	National Hydropower Association.
Charles D. Gray, Esq., Assistant General Counsel, National Association of Regulatory Utility, Commissioners.	National Association of Regulatory Commissioners.
Edwin S. Rothschild, Energy Policy Director, Citizen Action	Citizen Action.
Name	National Wildlife Federation.
Thomas F. Brosnan, Esq., Gallagher, Boland, Meiburger & Brosnan, Washington, DC.	Federal Energy Bar Association.
Dinah Bear, Esq., General Councel, U.S. Council on Environmental Quality.	U.S. Council on Environmental Quality.
Gary U. Edles, Esq., General Counsel Administrative Conference of the United States.	Administrative Conference of the United States.
David N. Cook, Esq., Deputy General Counsel, Federal Energy Regulatory Commission.	Agency Representative.
Michael Schopf, Esq., Associate General Counsel, Enforcement and General & Administrative Law.	Agency Representative.

In addition, any Commissioner may serve *ex officio* as a non-voting member of the committee.[1] Committee meetings will be chaired by an impartial facilitator, who will assist the members of the committee in conducting discussions and negotiations and manage the keeping of minutes and records.

As indicated earlier, the agenda of the committee will be to undertake a comprehensive review of the Commission's *ex parte* regulations and to produce a consensus report for Commission consideration containing a proposed rule meeting the objectives discussed above.[2] The committee's goal will be to develop *ex parte* regulations that allow the maximum amount of information to be available to the Commission, consistent with maintaining the full integrity of the Commission's decisionmaking process. While the Commission may accept all, part or none of the consensus proposal of the committee, it will make a good faith effort to use the consensus report as the basis for the proposed Commission rule that will be published as its NOPR.[3] If the committee fails to reach a consensus on the proposed rule that meets the goal set out by the Commission, it may transmit a report specifying any areas in which it has reached a consensus. The committee may include in a report any other information or material the committee considers appropriate. Any committee member may include as an addendum to the report additional information, recommendations or materials. The committee should transmit its report to the Commission by April 16, 1992. The target date for publication by the Commission of a notice of proposed rulemaking is May 15, 1992.

The Commission will provide appropriate administrative support for the committee, including facilities for committee meetings and necessary related office equipment and clerical assistance. Members of the committee will be responsible for their own expenses of participation in the committee, except that, in accordance with section 7 of the Federal Advisory Committee Act and section 588 of the Negotiated Rulemaking Act, the Commission may pay for a member's reasonable travel and per diem expenses if the member certifies a lack of adequate financial resources to participate in the committee, and the Commission determines that the member's participation is necessary to assure adequate representation of the interest being represented by the member.

Interested persons are invited to comment on the proposal to establish the negotiated rulemaking committee and on the proposed membership of the committee. Persons who believe that they will be significantly affected by the proposed rule and that their interest will not be adequately represented by the committee membership specified in this notice may apply or nominate another person for membership on the committee to represent their interest. Each application or nomination must include—

(1) The name of the applicant or nominee and a description of the identifiable interest such person will represent;

(2) Evidence that the applicant or nominee is authorized to represent that interest;

(3) A written commitment that the applicant or nominee will actively participate in good faith in the development of the proposed rule; and

(4) The reasons that the committee membership proposed in this notice does not adequately represent the interest of the person submitting the application or nomination.

Comments, applications or nominations must be submitted to the Commission no later than January 21, 1992. They should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, and should refer to Docket No. RM91–10–000.

Comments, applications and nominations will be placed in the public files of the Commission and will be available for public inspection at the Commission's Public Reference Room, 941 North Capitol Street NE., Washington, DC 20426, during regular business hours.

If, after considering the comments, applications, and nominations, the Commission decides to establish a negotiated rulemaking committee, it will provide public notice of that fact. The notice will include the final membership of the committee, along with appropriate guidance on the commencement of the negotiated rulemaking process. The Commission reserves the right not to initiate the negotiated rulemaking process or, once initiated, to terminate the process if it determines the process is no longer in the public interest.

By direction of the Commission. Commissioner Trabandt concurred in part and dissented in part with a separate statement attached.

Lois D. Cashell,

Secretary.

Trabandt, Commissioner, concurring in part and dissenting in part

I dissent in part on the instant Notice of Intent (Notice) in opposition to the use of the negotiated rulemaking process for these purposes and also to the inclusion of the informal rulemaking issue in the negotiations, for the reasons discussed below. I concur in the substance of the Notice otherwise, for the reasons discussed below. I discuss these matters in some detail in order that interested parties will have full benefit of the arguments debated by the Commission over the course of the eight month consideration of this negotiated rulemaking (a.k.a. "reg-neg") proposal. Hopefully, this discussion will assist interested parties in fashioning their comments within thirty days.

1. Introduction

At the outset, I want to make three points very clear. First, I want to state categorically my deep respect for the views of Chairman Allday and my fellow Commissioners on this sensitive subject. I recognize fully that this is a matter of judgment that involves a number of factors in terms of fact, law and policy, as well as our own individual personal experiences on these matters. That I have a strong preference for a traditional NOPR does not by any measure suggest any lack of respect for my colleagues' own assessment of those factors or their conclusion.

Second, I am not opposed at all to clarifying the operation of the *ex parte* rules as they apply to adjudications. In fact, I agreed with Commissioner Moler's suggestion to that effect during the *Iroquois* proceeding [1] and *ex parte* investigation last year. As the discussion at the Commission meeting made very clear, all five members of the Commission are willing to put in place such a clarification, and I strongly support that objective.

Third, I am not opposed to the use of the negotiated rulemaking procedure in our regulation of jurisdictional companies in the electric power, hydroelectric, natural gas and oil

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[1] A Commissioner who chooses to address the committee or participate in committee deliberations will represent only his/her own position and not the collective viewpoint of the Commission or the position of any other Commissioner.

[2] For purposes of defining "consensus" on a proposed rule, the Commission intends "consensus" to mean unanimous concurrence among the voting interest represented on the committee, including the agency.

[3] Negotiated Rulemaking Act, section 583(a)(7); S. Rep. No. 97, 101st Cong., 1st Sess. 19 (1989).

[1] 52 FERC ¶ 61,091.

pipeline industries. In an appropriate case, the negotiated rulemaking procedure would provide a valuable alternative to the traditional NOPR, as the Environmental Protection Agency has found in the past and Congress established by statute in the Negotiated Rulemaking Act of 1990, 5 U.S.C. 581. I look forward with considerable enthusiasm to the initiation of a negotiated rulemaking in one of our regulatory program areas in the near future. And, I am confident that rules fashioned in a negotiated rulemaking procedure can provide the significant advantages over adversarial rulemakings that Congress contemplated, such as (1) increasing the acceptability and improving the substance of rules, (2) making it less likely that the affected parties will resist enforcement or challenge such rules in court, and (3) shortening the amount of time needed to issue final rules. But, at bottom, I am simply not persuaded that this is the appropriate case.

I also believe that it also bears repeating, as I wrote during the Iroquois *ex parte* review and subsequently in formal correspondence to Chairman Dingell of the Committee on Energy and Commerce and Chairman Conyers of the Committee on Government Operations of the U.S. House of Representatives, that we should not let the *ex parte* rules be used as the basis for gagging, intimidating, mushrooming or muzzling us in the conduct of our official offices. I have maintained an "open door" policy since I took the oath of office as a Commissioner on November 4, 1985. Within the limitations of the *ex parte* rules and other applicable Commission regulations, I have met with literally hundreds of company officials, trade association representatives, consumer and environmental organization representatives, U.S. state and local officials, Canadian Federal and provincial officials and other interested groups. I also have attended and spoken at numerous meetings and conferences involving such groups and officials since November 1985.

As I have said before, I consider such communications to be an important function of the Commission and this office, in terms of both explaining Commission policies to interested parties and maintaining an up-to-date understanding of current industry conditions. It also is interesting to note that during the course of the Iroquois project proceedings over the past several years, I met in that fashion, subject to the aforementioned limitations, with various parties who also happened to be supporters or opponents of the project, including representatives of the project, equity owning utilities, various state officials, the Independent Petroleum Association of America and the New England Fuel Institute, among many others. There were no *ex parte* communications from any party related to Iroquois project proceedings in any such meetings or discussions, nor with regard to any other pending adjudication.

2. Why the Negotiated Rulemaking Procedure Is Inappropriate

First, I believe that the *ex parte* issue is a strictly legal matter based on long-settled notices of administrative due process in a series of cases. The *ex parte* prohibition in 18 CFR 385.2201 reflects the current state of the law and there are recent court cases to the same effect. A copy of those regulations is attached for information and reference purposes. (Attachment A). To the extent that those regulations are deemed ambiguous as a result of the experience in *Iroquois*, I can't understand why the Office of General Counsel (OGC) simply doesn't provide the Commission with a set of specific recommendations for appropriate refinements reflecting the perceived imperfections based on *Iroquois*. There is nothing complex or difficult about those questions. Once receiving the OGC recommendations, we could decide which to adopt and the procedural mechanism for that, *i.e.*, an interpretive order or NOPR. It also is interesting that OGC would support use of negotiated rulemaking for *ex parte* matters, while opposing its use for separation of functions issues on the grounds it's an internal matter, even though the latter issue is a constant complaint of industry and the subject of repeated inquiries and confirmation questions from Members of the U.S. Senate Committee on Energy and Natural Resources and others.

I also share the concern expressed by Chairman Synar of the House Subcommittee on Environment, Energy and Natural Resources in his letter of November 13, 1991, to Chairman Allday about the inappropriateness of the negotiated rulemaking process "as a means of formulating revisions to a federal agency's own *ex parte* rules or other standards of conduct," because "(i)nherent in use of the reg-neg process is recognition that the ultimate outcome will entail compromise among the affected parties. With regard to difficult policy matters, that approach is often appropriate and even desirable. But to the extent there are concerns about FERC's *ex parte* rules, I fear that employing this particular procedure may signal those affected by your *ex parte* rules that FERC's standards of conduct are a proper subject for 'consensus' between the Commission and those it regulates. With all due respect, I do not believe any agency's ethical standards should be a matter of compromise and consensus." (Pages 2 and 3.) In fairness, Chairman Allday by letter of November 26, 1991, responded to Chairman Synar and assured him that, "I strongly believe that the Commission would reject any (reg-neg) Committee 'consensus' recommendation that would compromise the integrity of the Commission's decisionmaking process," while otherwise defending the choice of the reg-neg process for this purpose. (Pages 2 and 3.)

Ironically, the real problem with our current *ex parte* regulations is not with the actual text of the regulations, but rather with the OGC interpretations, including particularly those in the Iroquois proceeding. I agree completely with the criticism of those interpretations set forth in Commissioner Moler's dissenting opinion to our July 30, 1990, order in the Iroquois dockets. A copy of that portion of her dissent is attached. (attachment B.) She persuasively set forth the problem created by those interpretations in the hypothetical discussed on the last page of her opinion. I find it very difficult to believe that the Commission cannot remedy those problems with a relatively precise, and even surgical, amendment of the existing regulation, accompanied by a series of specific examples in the pre-ambulatory text to help guide the implementation by the Commission and outside parties. And, that could all be accomplished rather directly and immediately in a traditional NOPR.

Even more ironically, had we just begun that NOPR process last April, when this Notice was first proposed, we would have been done several months ago, with absolutely no extraordinary costs and with full public participation. I continue to wonder, under these circumstances, what the apparent fascination is with the reg-neg approach for the *ex parte* issue. Any why, for all practical purposes, reg-neg is now apparently considered to be the *only* way to tackle this hardly imponderable issue?

Second, it is not at all clear *what* there is for the advisory committee established for the negotiated rulemaking procedure to negotiate about the *ex parte* rules. I think of the situation in the context of three concentric circles. The innermost circle is the strict statutory *ex parte* prohibition, about which there is no confusion and for

which there is no discretion on the part of the Commission. As the statutory language and legislative history of the Negotiated Rulemaking Act stipulates, the negotiated rulemaking procedure cannot be used to amend or modify an agency's statutory obligations. So, the advisory committee cannot negotiate any change in our statutory *ex parte* obligations and prohibitions.

The next concentric circle includes the interpretation of those statutory obligations under applicable case law precedent. Once again, I fail to see how a committee of 25 individuals, apparently including non-lawyers as well as lawyers can sit around a table and negotiate an acceptable legal interpretation of applicable case law. In any event, I thought that was why we have an OGC and several hundred attorneys in the first place.

I read last spring that another independent federal agency reportedly paid a New York law firm 50 thousand dollars for a 36-page opinion on the narrow legal issue of when the term of that agency's Chairman expires under applicable law. While that agency apparently has been sharply criticized by Congress for hiring outside counsel and for wasting so much money, at least they got a legal opinion from a highly qualified and very reputable law firm. Here, we would be spending considerably more money in the end to get a legal opinion from an advisory committee selected primarily to represent diverse industry groups, rather than on the basis of their legal expertise in this particular area of the law (although I do *not* mean to suggest at all that the attorneys listed on the proposed committee are not well qualified practitioners generally capable of representing their respective organizations). Perhaps, we should give serious consideration to hiring a law firm as a preferred alternative, if it is perceived that it would be inappropriate for OGC to provide such legal advice directly to the Commission under these circumstances.

The third outer concentric circle would encompass those requirements and prohibitions on communications that would not be imposed as a matter of law by statutory obligations, but would be deemed appropriate or desirable as a matter of policy. Now that conceivably could be something about which lawyers and non-lawyers could debate, and negotiate, and even potentially reach a consensus. I, however, fail to see any advantage to having such a debate, negotiation, and potential consensus proceeding with only the *ex officio* participation of each of the five most vitally interested parties in the subject, *i.e.*, the members of this Commission who must attempt against considerable odds to remain well-informed for our duties and responsibilities, as Congress and the courts clearly and unambiguously intend. In effect, it would be a negotiation without the principals in the negotiation about a matter of policy of critical and quite personal concern to each of them.

To me, that's nonsensical, particularly when we would be intimately involved in the negotiation of a traditional NOPR on this same subject. I also would note that we were actively involved in the *ex parte* issues included in the 10(j) Final Rule on the April 24 agenda. In that rulemaking, we had a NOPR proposal we worked out and extensive public comments, and we made a decision in the final rule after some debate about "neutrality." And, the whole process from start to finish worked out well. Why wouldn't the process work just as well for a traditional *ex parte* NOPR.

As a practical matter, the way these things work, the Commission staff will probably have a strong guiding hand in formulating the proposed rule. I also am concerned that, in the end, our *ex officio* status may not allow us to participate meaningfully in the actual negotiations. While I have considerable respect for the two individual Commission staffers proposed for the Committee to represent the Commission as an institution, I continue to believe that Commissioners should be allowed to participate as full voting members of the committee. And, based on past discussions, I am quite concerned that, in the third, outer concentric circle subject area of discretionary requirements and prohibitions as a matter of policy, there will be serious consideration of phone logs, visitor logs, memoranda of phone conversations, memoranda of meetings and other requirements, all subject to independent OGC review and investigation. In fact, just such a memoranda of meetings procedure with OGC review apparently was imposed on Commission procedure with OGC review apparently was imposed on Commission employees who were interviewed by General Accounting Office employees and Congressional staffers involved in the oversight review of FERC by the Committee on Government Operations of the U.S. House of Representatives.

I also am very concerned, additionally, that it would be proposed that we would be prohibited from discussing with anyone any issue as a general policy matter that also exists in any pending case. Reportedly, certain Commission offices already have implemented such prohibition on discussions with outside visitors. I also have been told, and assume it's true, that there has been opposition to participation by FERC officials in meetings about legislation that involve issues in pending cases, such as our regulation of natural gas gathering systems, based on a claim that *ex parte* restrictions prohibit any such participation.

In effect, we would be prohibited from talking about every contested subject, even as a general policy matter, because it could be an issue in one or another contested case, as almost all subjects of any interest usually are. If confronted with such proposed requirements and prohibitions from our own advisory committee (particularly with the active participation of the Commission staff as our representative), I am very concerned that the Commission will find it politically difficult to justify doing less in its own discretion as a matter of policy.

I also am not as confident as others that the advisory committee will likely stampede on its own initiative, or be stampeded, to a proposal with looser requirements and prohibitions. First, as discussed above, the statutory obligations and interpretations of law are legal matters, which quite simply are not negotiable. So, in the first place, the only real subject matter for negotiation is the discretionary, additional requirements and prohibitions as a matter of policy. Second, I believe there is a widespread perception in the industry that there is a certain "unevenness" in the amount of access and communication available to various companies and law firms at FERC. The perception appears to be that the Commission process is largely closed to many, if not most, groups, but still accessible to some favored entities for various reasons. I do not assert that as a fact in any way, but it is a consistent criticism.

Thus, I believe it is quite possible, if not likely, that an advisory committee might have a majority supporting broad-based informal communication prohibitions to "level" the regulatory playing field, and make any perceived preferential access or communication more difficult to maintain. And that, quite honestly, is my candid assessment of the direction the advisory committee probably would choose (and for which it may even conceivably have Commission staff support). I would suggest that the comments filed in the 10(j) rulemaking procedure on the *ex parte* issue in

hydro-electric licensing support that conclusion.

Also, a number of industry representatives and FEBA practitioners have informally told me that they agree with that assessment. For example, several natural gas industry groups might be expected to support prohibitions or limitations on all discussions on the theory that pipelines reap the most benefit today of pre-filing conferences and more open discussion. I obviously have no enthusiasm for that result, which would return the Commissioners and their staffs to the "mushroom" status of prior years (a term first printed by the founding publisher of *Gas Daily; i.e.*, keep us in the dark and feed us informational manure), particularly when we could otherwise deal with any necessary refinement of the *ex parte* rules directly, expeditiously, less expensively, and quite responsibly through a regular NOPR.

It also has been argued that another reason to have an advisory committee and a negotiated rulemaking is to give industry the chance to participate in deciding what kind of *ex parte* rule we would have, because they too have interests at stake. If the best guess is that a majority of the members of the advisory committee will want to close down access, because of the "unevenness" consideration, that may serve their perceived self-interest, but it sure doesn't help us. In the alternative, if a majority of the members want to support an open process, they can do that in their comments in response to a traditional NOPR. They don't need a negotiated rulemaking to support that result in any event. Consequently, I fail to see how industry's participation in a negotiated rulemaking will provide any better assurance of getting the "right" result.

Finally, even if there was some persuasive argument for an *ex parte* reg-neg process, which there clearly is not in my judgment, this is decidedly not the time for action. Chairman Synar has asked us to wait until the Subcommittee has completed its investigation and review and makes recommendations on the spectrum of *ex parte* issues in a report early next year. We still have the ongoing Subcommittee investigation of the *Iroquois* matter, but thus far we don't have a concrete clue as to what's involved or the likely result. And, we have just been advised, by letter of December 10, 1991, from Chairman Synar, that the Members of the Commission are going to be called to a hearing to testify about the *Iroquois* matter in mid-January after reviewing the transcripts and other materials developed by the Subcommittee and the General Accounting Office. We also have been advised that there will be more general questions, as a result of the Subcommittee's inquiry, "concerning whether certain changes should be made in the law or in FERC's *ex parte* rules, or whether greater efforts should be undertaken to ensure a more thorough understanding of those rules."

In essence, we're initiating the formal reg-neg notice process *before* we ourselves know what problems may exist under current rules and practices. I personally think that the better part of valor is to delay for a short period until we know the details of the *Iroquois* matter and the Subcommittee report. Then, we can decide exactly how the reg-neg committee should—and perhaps more importantly—and should not proceed in its comprehensive review of our *ex parte* regulations.

3. The Information rulemaking Issue

Chairman Allday's letter of June 11, 1991, in response to Chairman Dingell's letter of May 3, 1991, on the subject of a negotiated rulemaking discusses informal rulemakings, as follows:

> Also, while the *ex parte* prohibitions do not apply to general policy rulemaking, the Commission may wish to consider procedures for assuring that significant off-the-record communications received in a rulemaking proceeding are placed in the public rulemaking file so that they may be considered in the Commission's decisional process. The courts have indicated that even in rulemaking proceedings, an agency may not rely on significant new information that is not in the public file or not officially noticeable. *Action for Children's Television* v. *FCC*, 564 F.2d 458, 476 (D.C. Cir. 1977); *Sierra Club* v. *Costle*, 657 F.2d 298, 397, 402–403 (D.C. Cir. 1981). The Administrative Conference of the United States has likewise recognized that contacts with outside sources of information are proper and may be necessary to the full development of a rulemaking but has recommended procedures to require the submission of all written communications and significant oral communication in the public file. (Recommendation No. 77–3, 1 CFR 305.77–3.)

Subsequently, the "Staff Report and Analysis" forwarded by Chairman Allday on June 14, 1991, to the Full Committee in response to Chairman Dingell's letter of May 11, 1991, on the subject of pending energy legislation comes to a different conclusion. The Staff Report and Analysis states, at page 21, as follows:

> *Ex parte Communication*
>
> Under the APA, the rules prohibiting *ex parte* communications apply only to adjudications that by statute must be conducted on the record after hearing. Commission regulations apply these prohibitions to all trial-type cases, regardless of whether an evidentiary hearing is required by statute or merely provided by Commission rule or order. Because, as discussed above, contested rate proceedings are generally set for formal hearing, the *ex parte* rules apply.
>
> Even where informal rulemaking procedures are used, the courts have indicated that similar considerations concerning off-the-record communications may apply. The courts have relied on due process grounds to extend the *ex parte* rules to cover informal rulemaking if they involve conflicting private claims to a valuable privilege. *Sangamon Valley Television Corp.* v. *United States*, 269 F.2d 21 (D.C. Cir. 1959). In any event, in order to assure fairness, any written communications on the merits in a rulemaking proceeding are placed into the public record *and significant oral communications on the merits are to be summarized in writing and placed into the public record.* These practices are currently being evaluated in a generic proceeding examining whether to revise the Commission's long-standing *ex parte* rules.
>
> (Emphasis added; footnotes omitted.)

Still later, the Commission was advised on one occasion during this debate that there already is such a requirement as a result of the adoption of a March 16, 1988 OGC memorandum, discussed below. Nevertheless, at the Commission meeting of November 27, 1991, Commission staff advised the Commission, in response to my direct questions, that the March 16, 1988 memorandum was purely advisory guidance not legally binding on any Commissioner or Commission employee, apparently then or now. To the best of my knowledge, and I expressly inquired at the November 27 meeting, no Commission employee has every filed a memorandum describing a "significant oral communication" in a rulemaking docket in any event.

What is curious about this discussion is that Commission staff also advised on several occasions that we *already* have a settled requirement and practice of summarizing any "significant oral communications on the merits" in an informal rulemaking proceeding and placing them in the public record. That is curious for two reasons. First, as discussed, the Commission to my knowledge has no such requirement in force today and there is no general practice to that effect. Second, Chairman Allday's May 3 letter makes clear that, "the Commission *may wish to consider* procedures for assuring that significant off-the-record communications received in a rulemaking proceeding are placed in the public rulemaking file so that they may be considered in the Commission's decisional process" (emphasis added);

i.e., on a *prospective* basis in the future. Clearly, there may be some confusion or even a difference of opinion at the Commission about the facts regarding current FERC practices in informal rulemakings. But, that does not begin to tell the whole history and story of the informal rulemaking issue.

Frankly, I was surprised that an early proposal to establish a negotiated rulemaking committee stated that, "there is a need for clearer guidance as to the scope of the *ex parte* prohibitions both in trial-type proceedings *and in informal rulemakings.*" There is absolutely no need for clearer guidance as to the scope of the *ex parte* prohibitions in informal rulemakings, because a matter of law *ex parte* prohibitions apply only to adjudications. The suggestion of *ex parte* prohibitions in informal rulemakings is a clear contradiction in terms, or an oxymoron, as they say. There are no "parties" in informal rulemakings and it is not a trial-type proceeding. And, there simply is no court case or administrative case that says *ex parte* either does or should apply to informal rulemakings.

As the Second Circuit succinctly stated, "*Ex parte* communications * * * with a *judicial or quasi-judicial* body regarding a pending matter are improper and should be discouraged." *PANSY* v. *FERC*, 743 F. 2d 93, 110 (2nd Cir. 1984) (emphasis added). When undertaking rulemaking, unlike adjudication, the Commission engages in legislation, not adjudication. In the legislative process, which, unlike the judicial, involves generic (not fact-specific) considerations, decision makers must have broad access to information.

It has been argued that even after the Supreme Court's *Vermont Yankee* decision (favoring administrative procedural flexibility in the absence of explicit statutory requirements) the D.C. Circuit held to the contrary—at least, that court found *considerations* of *ex parte* applied to informal rulemaking in *Sierra Club* v. *Costle*, 657 F.2d 289 (1981), especially the discussion following page 400.

I have read the case and the discussion beginning on page 400. *Sierra Club* v. *Costle* makes clear that *ex parte*, cannot, by definition, ("by or for one party") apply outside the adjudicatory context. Note 501 points out that "It should not be forgotten that informal rulemaking involves 'interested persons,' rather than 'parties' in the usual adjudicative sense of the term. The concept of 'ex parte' implies a different structure from that involving mere 'interested persons.' One can only have contact without 'parties' present [only] in a proceeding where parties are involved, namely adjudication or formal rulemaking."

Beyond the meaning of Latin terms, I find compelling the practical considerations the court brought up against adopting the judicial norm to legislation. The court cautioned, 657 F.2d at 401:

> As judges we are insulated from these pressures [that ordinarily animate a democratic society] because of the nature of the judicial process in which we participate; but we must refrain from the easy temptation to look askance at all face-to-face lobbying efforts, regardless of the forum in which they occur, merely because we see them as inappropriate in the judicial context. Furthermore, the importance to effective regulation of continuing contact with a regulated industry, other affected groups, and the public cannot be underestimated.

(Footnotes omitted.)

The court, at n.503, cited to a speech by the late Chief Judge McGowan to the effect that, "Anyone with experience of both knows that a courtroom differs markedly in style and tone from a legislative chamber. The customs, the traditions, the mores, if you please, of the processes of persuasion, are emphatically not the same. What is acceptable in one is alien to the other." (*See*, n. 504 on the benefits of outside contacts to policy making in the informal regulatory context.)

While the court did hold that the EPA needed to supplement the record with private comments of "central relevance" to the rule, the court did so on the basis of a requirement in the Clean Air Act, not the Administrative Procedures Act. That still does not bring *ex parte* into play, for just stating the proposition obviates the need for having a negotiated rulemaking on that subject. Indeed, and very importantly for this discussion, the court held, 657 F.2d at 401–402, that Congress explicitly *rejected* applying the rules of adjudication to rulemaking when it amended the Government in Sunshine Act.

A distinguished former Chairman tried unsuccessfully to impose just such an *ex parte*-type limitation for the (in)famous 1988 Electric NOPRs. Her March 16, 1988 memorandum forwarded a memorandum by the General Counsel outlining the rules to be applicable to off-the-record communications between employees of the Commission and outside parties on rulemaking matters. I would note that March 16, 1988, also was the date the Commission issued those Electric NOPRs, and the Chairman distributed her memorandum later on that same date, which was not deemed to be a mere coincidence at all by some of us then on the bench. I perhaps uncharitably characterized the memo at that time as a thinly veiled "gag rule" for those 1988 Electric NOPRs, but I do not agree that the 1988 memo was intended to "open up" our process for those NOPRs, as some have asserted.

The OGC memorandum stated that the courts and the Administrative Conference of the United States have recognized that contacts with outside sources of information may be proper and necessary to the full development of a general policy rule, and that constraints appropriate for adjudication are neither practical nor desirable for rulemaking, citing *Sierra Club* v. *Costle*, and the Administrative Conference, Recommendation 77–3, 1 CFR 305.77–3. However, to ensure the fairness of Commission procedures and the maintenance of a complete rulemaking record, the memo indicated that any written communications on the merits received after a notice of proposed rulemaking has issued should promptly be placed in the public record. Further, *significant oral communications* on the merits after the issuance of a notice of a proposed rulemaking should be summarized in writing and likewise placed in the public file. And, communications that merely duplicate comments and arguments already in the record need not be placed in the public file.

Similarly, the memo stated that explanatory statements by a Commission official to the public or Congress that objectively summarize the issues in pending cases and describe public actions the Commission has already taken are not comments on the merits and need not be included in the record. Finally, the memo admonished Commissioners and staff advisors that they have a continuing obligation to consider all timely comments in a rulemaking with an open mind, and must base their decisions on information and arguments that are in the rulemaking record or that may be officially noticed, citing *National Advertisers, Inc.* v. *FTC*, 627 F.2d 1151 (D.C. Cir. 1979), cert denied, 447 U.S. 921 (1980).

Now, once again, as we grapple with the mega-NOPR on natural gas and other major policy issues in electric power regulation and hydroelectric licensing, we may be confronted by yet another proposal to impose *ex parte*-type prohibitions on Commissioners in informal rulemakings. That could not come at a worse time, in my judgment, given the obvious need for all the help we can get from all segments of industry in understanding the complexities of the many issues under review in that NOPR,

as well as other anticipated rulemakings in the near future in other areas of our regulation. I remain convinced as a matter of policy that the public interest is best served by free and open communications with all interested parties in these important rulemakings, just as was the case in the 1988 Electric NOPRs.

I had hoped that there would be a consensus to affirmatively remove the informal rulemaking issue from the Advisory Committee's charter. However, the instant Notice of Intent does not do so. Rather, it states, "Also, while the *ex parte* prohibitions are not applicable to general policy rulemakings, addition guidance is necessary regarding the procedures to be followed for assuring that *significant off-the-record communications* are reflected in the public rulemaking file so that they may be considered in the Commission's decisional process." (Emphasis added.) First, I would note again that there are *no* procedures of any kind currently in our regulations for any so-called "significant off-the-record communications" in informal rulemakings. As discussed above, the 1988 Chairman's initiative was rejected and abandoned by the Commission at that time. So, we're talking about additional guidance for procedures which do *not* now exist.

Second, I invite the reader's attention to the term in the 1988 OGC memorandum attached to that Chairman's memorandum, which calls for, "significant oral communications on the merits after the issuance of a notice of proposed rulemaking should be summarized in writing and likewise placed in the public file." One need not be a rocket scientist to figure out that the use of the term "significant off-the-record communications" in the instant notice will probably invite yet another effort to have those 1988 "significant oral communications" requirements imposed on us (this time by the reg-neg committee) with regard to informal rulemakings. And, in fact, the 1988 OGC memo could be the starting point for the proposed new requirements, based on this obvious semantical hook.

I also invite the reader's attention to the fact that the key case used in the March 16, 1988, OGC memorandum and cited again in Chairman Allday's June 11, 1991 letter is *Sierra Club* v. *Costle*, 657 F. 2d 289 (1981). It is quite obvious analytically that the 1988 memorandum directly and this Notice implicitly attempt to invoke that case for the same proposition that there must be informal rulemaking requirements/limitations with regard to "significant off-the-record/oral communications." In my judgment, any objective assessment of how we should proceed to address the *ex parte* issue must now, as a result, accept as an operative assumption that there will probably be an effort to use the *Sierra Club* v. *Costle* opinion to impose the 1988 memorandum requirements, or worse, to limit severely our communications in informal rulemakings. I am persuaded that we must affirmatively and unambiguously foreclose any conceivable possibility of that result.

Also, think please for a moment about how such a requirement would work if eventually imposed on us. In essence, there would be a violation of the new regulations if a Commissioner or Commission employee failed to submit a summary in writing to be placed in the public record in the event of a significant oral communication on the merits after the issuance of a NOPR, although communications that merely duplicate comments and arguments already in the record need not be placed in the public file. Consequently, the test for the requirement turns on two prongs. The first is "significant" and when does an oral communication cease to be "insignificant" and reach some threshold level of "significance" in the context of the subject matter of a NOPR. Skilled attorneys could spend endless hours engaging in open debate and associated mind games about the relative significance or insignificance of a particular communication about a particular subject from a particular person at a particular time in the NOPR process.

Once a conclusion is made that an oral communication was, in fact, significant, the second prong and next step in the analysis would be to determine whether the substance of that particular communication had already been introduced into the record. For openers, that exception would not presumably be available at any time prior to the receipt of formal written comments in the rulemaking docket, except as otherwise submitted in stray correspondence (which already would be required to be put in the record). So during that initial 30 to 60 day comment period, *any* "significant" oral communication would have to be summarized in the public file. Thereafter, the requirement would turn on whether the public comments somewhere and somehow would be deemed to have duplicated the specific "significant" communication.

For any major rulemaking, that could involve a laborious and painstaking search, as well as a certain degree of subjective judgment. For example, the Commission received 7500 pages of initial comments from several hundred parties in the Mega–NOPR docket. To be safe, a Commissioner may have to conclude either: (1) not to have any oral communications about any subject arguably encompassed within a NOPR, or even relevant to any subject in it; or (2) to summarize every oral communication in an abundance of caution to avoid being tripped up by disagreements over "significance" or whether it really was already in the record of the rulemaking docket. Those are two options which I would not wish to voluntarily adopt.

The better course of action is to state categorically our view, as a matter of law and policy, that there are no *ex parte* or other prohibitions applicable to informal rulemakings as a matter of law, and we will not consider any such recommendation with regard to informal rulemaking in a NOPR or in a negotiated rulemaking, as a matter of policy. I would note in that regard that the Public Utility Commission of California recently came to that same conclusion in its Interim Opinion Issuing Proposed Rule To Govern *Ex Parte* Communications In Commission Proceedings. Decision 91–07–074, July 31, 1991. Therein, our distinguished sister agency stated as follows, expressly citing and quoting from *Sierra Club* v. *Costle*. (Slip op. 4 and 5.)

2. Legislative Functions

When acting as a Constitutional alternative to or delegate of the Legislature, the Commission operates in a proactive mode, formulating new or revising existing policy via a process, which often (though not always) involves assessing facts of a more generalized nature than those which form the basis of an adjudicative case. We believe that the overwhelming majority of our activities involve legislative functions. Some of our proceedings are exclusively legislative; these proceedings include rulemakings. Pursuant to Rule 14.1 of our Rules or Practice and Procedure, rulemakings solicit public comment on the proposed rule but do not require evidentiary hearings.

Because rulemakings constitute a forum for soliciting public comment, they require an open process which affords us the opportunity to hear and consider conflicting viewpoints. This open process is a fundamental characteristic of a rulemaking, as the United States Court of Appeals for the District of Columbia Circuit observed in 1981:

> Under our system of government, the very legitimacy of general policy[ ]making performed by unelected administrators depends in no small part upon the openness, accessibility, and amenability of these officials to the needs and ideas of the public from whom their ultimate authority derives, and upon whom their commands must fall. * * * Furthermore, the importance to effective regulation of continuing contact with a regulated industry, other affected groups, and the public cannot be underestimated. Informal contacts may enable the agency to win needed support for its program, reduce future enforcement requirements by helping those regulated to anticipate and shape their plans for the future, and spur the provision of information which the agency needs. (*Sierra Club* v. *Costle*, 657 F. 2d 298, 400; see also Administrative Law Treatise, Kenneth Culp Davis, 2nd ed., vol. 1 § 6:18, p. 537.)

We concur with this view. Consequently, to enable us to function efficiently in a rulemaking, we believe full and open communication between the participants in the legislative process and the Commission is mandatory. When the Commission is engaged in rulemaking, it is appropriate in the interests of furthering the Commission's proactive policy[ ]making function to neither prohibit *ex parte* communications, nor to require their public disclosure. Therefore, we exclude *ex parte* communications from coverage under the generic rule.

Also, the clear disposition of Congress and the Administration is that our process get opened up and not further inhibited by new informal rulemaking prohibitions. Certainly, Congress is well aware of the current state of the law and Charles Stalon and I both have testified to that effect in the past. Additionally, it has been argued that we should refine our *ex parte* rules, in part, to respond to the amendment to S.341 (now S.1220) on the same subject introduced by Senator Bingaman. I cannot believe that the Senator or his colleagues on the Committee on Energy and Natural Resources have any interest in further inhibiting our ability to attempt to be well-informed about the industries we collectively regulate, particularly with regard to informal rulemaking.

The Commission has also been advised that the need for additional guidance for informal rulemakings closely follows the recommendation of the Administrative Conference of the United States (ACUS), Recommendation 77–3, 1 CFR 305.77–3 (1977), as well as the earlier advice provided by OGC in the March 16, 1988 memorandum. In point of fact, the 1977 ACUS recommendation has been revised to reflect more recent court decisions, as discussed in some detail in Chapter 6 "Off-The-Record Or *Ex Parte* Communications in Rulemaking" of the ACUS "A Guide To Federal Agency Rulemaking," 2nd Edition, 1991. The ACUS concludes that there is no ban on off-the-record communications, as a matter of law, citing *Sierra Club* v. *Costle*.

Admittedly, the ACUS does recommend as a policy matter that agencies consider experimenting with various procedures to disclose oral communications that contain significant information or argument respecting the merits of a proposed rule and discusses current agency practices. And, quite honestly, the 1988 OGC memo arguably reflects the basic thrust of ACUS Recommendation 77–3 and might be deemed by some to be consistent with the 1991 ACUS recommendation. Also, as the Commission staff argued at the November 27, meeting and as discussed in a 1991 ACUS guide, some other agencies have similar rules. Nonetheless, it is clear that there is no legal requirement for such procedures at this time, and the Commission's decision remains a matter of policy discretion (*e.g.*, the third concentric circle discussed above?).

I am also concerned that the ACUS also recommends certain procedures for Executive Branch communications in rulemakings, which could further inhibit the appropriate flow of information on policy matters with the Administration, at just the wrong time. I have been convinced for some time that FERC general policy making needs to be better co-ordinated with Administration energy policy, which we could otherwise frustrate with wholly contrary informal rulemaking. The adoption by this Administration of Federal Government-wide National Energy Strategy only heightens that need, in my judgment.

4. Procedures

a. Commissioner Participation

If a majority is disposed to use negotiated rulemaking for a review of *ex parte* prohibitions, despite the advantages I see in a simple, regular order or NOPR (but hopefully without any suggestion of a prohibition for informal rulemakings and with an express statement to the contrary), the procedures are important. We should avoid any *fait accompli* by insisting that our offices be represented directly in the negotiation process. I, for one, am not persuaded to completely delegate this task (even on adjudications) on the assurance that we'll otherwise be kept informed and have some role in guiding the negotiations. Also, I do not want to see a precedent established that Commissioners are shut out of negotiated rulemakings. If this initiative was a regular, internally developed rulemaking, as I believe it should be, we would be represented by our staffs, if not ourselves, at the table, just as we were for the *ex parte* aspects of the 10(j) rulemaking. That should also be the requirement for negotiated rulemakings as well, particularly when they involve rules to be imposed on us.

Another way of stating that proposition is to recognize that we are vitally interested parties, which the statute and the Administrative Conference of the United States (ACUS) say must be included in the advisory committee. Also, the ACUS says that the agency itself needs to be involved in the negotiations, with representation that should be able to express the agency's views with credibility.

I also would note that the statute calls for open meetings of the advisory committee, public availability of documents, and for any interested member of the public to submit written views to the advisory committee and make an oral presentation at an appropriate time. So, as vitally interested members of the public, as well as Commissioners, we may have certain statutory rights to participate tangentially in the advisory committee deliberations directly or through our separate staffs. But, that, in effect, is playing around the margins of the negotiations. We should have a seat at the bargaining table, because we, as a matter of fact, have vital interests at stake—*i.e.*, our ability to satisfy our sworn oath of office in a well-informed manner.

I am pleased that the majority at least accepted Commissioner Moler's compromise proposal of *ex officio* status for individual Commissioners representing themselves. Consequently, those of us choosing to attend meetings of the reg-neg committee will be able to participate directly in the discussions of the Committee as a matter of right, without being forced to be more vocal members of the general public under the statute. Nonetheless, I would still prefer strongly that individual Commissioners be afforded the right to participate in the negotiations as a full voting member in the efforts to develop a consensus recommendation for the Commission. I also would be very disturbed if this *ex officio* compromise becomes the binding precedent in any future programmatic reg-neg process.

b. Disposition of the Advisory Committee's Recommendation

The Commission has debated whether to make a binding commitment now that any proposed *ex parte* rule adopted by consensus in the advisory committee would be adopted without modification as the Commission's proposed rule in the subsequent NOPR. I strongly opposed that proposition and, instead, proposed that we adopt a Federal Trade Commission formulation that, "the advisory committee shall engage in direct negotiations to develop *recommendations that will form the basis* for a NOPR" (emphasis added), that we would develop as a proposed rule.

We should not agree that the product of the negotiated rulemaking *ipso facto* becomes the proposed rule. It is palpable "horse hockey" that such a commitment is necessary to provide some incentive for the practicing bar and the industry to participate. Advisory committees serve in almost every agency of the Federal government without any prior assurance that their recommendations will ever be proposed as agency policy or agency recommendations. Also, such a commitment would be a bad precedent in our first negotiated rulemaking under the new law. I would note that the ACUS materials indicate that, in the past, agencies such as EPA have considered themselves legally bound to implement such commitments, once made, on a contract theory approach; so once made, it is not revocable.

We should retain the final authority as to the actual substance of the proposed rule, while giving an assurance only that the recommendations of the advisory committee will be taken into account by us and included as part of the NOPR (but not as the substance of the proposed rule, *per se*). We should not have the burden of proof, so to speak, for modifying or reversing the advisory committee recommendations, which would be the practical result of putting their recommendation in as the proposed rule. I would also note that the 1990 law does not require the adoption of such recommendations as the proposed rule (nor does the Administrative Conference suggest that). In the end, most commentators appreciate that collectively we members of an independent Commission have the responsibility by law to propose rules; and we shouldn't, as a matter of policy, delegate that to an advisory committee, or anyone else.

I am pleased that the majority has adopted a reasonable position on this issue. The Notice states that, "(w)hile the Commission may accept all, part or none of the consensus proposal of the committee, it will make a good faith effort to use the consensus report as the basis for the proposed Commission rule that will be published as its NOPR." (Slip op. at 7.) The Notice also cites to the relevant sections of the statute and related legislative history on this point, which supports that position. On balance, then, the Commission would intend to accord appropriate weight to a consensus Committee recommendation in developing the NOPR, but would not under any circumstances be bound to adopt or propose such a recommendation, in whole or in part.

Additionally, the statute defines "consensus" to mean unanimous concurrence, unless the advisory committee decides itself that there will only be general, but not unanimous concurrence, or any other definition agreed to by members of the advisory committee at the beginning of their efforts. The ACUS materials make clear that one of the threshold considerations by the agency and by members of the advisory committee is what level of concurrence should be required, as a function of the substantive interests of the parties at stake in the negotiations. For me, any recommendations should be the product of unanimous concurrence, if we are to have any obligation to address them. I have no interest in general concurrence, let alone some formulation of majority or super-majority rules, to decide the regulations governing our personal communications.

I am pleased that the majority has adopted in footnote 2 a definition of "consensus" requiring the unanimous concurrence among the voting interests represented on the committee, including the agency. That definition will ensure that the product of these negotiations must constitute a "true consensus" for the Commission in the subsequent NOPR process to accord it due weight as a consensus proposal. Thereby, all participants in the reg-neg process will have an equal and fair opportunity to represent their organizations interest in the negotiation, and no super-majority faction will be able to dictate a consensus proposal for Commission consideration in the NOPR.

c. Scope of the Negotiations

In addition to the issue of informal rulemakings discussed previously, I have serious concerns about any generalized scope of negotiations "to revise and develop a uniform and comprehensive proposed regulation governing *ex parte* communications between persons outside the Commission and Commission officials and employees." The Notice does not state, for example, that the scope of the negotiation is specifically and solely 18 CFR 385.2201, the attached *ex parte* regulation, as it should if that's all we want revised.

The statute also states that the advisory committee has the right to address any other matter the advisory committee determines to be "relevant" to the proposed rule. I'm particularly concerned about where this "relevancy" test could lead as to the scope of the negotiations. For example, the advisory committee conceivably could conclude that the Commission intends a comprehensive review of anything and everything that arguably is "relevant" to *ex parte* regulations, including enforcement. So, it is particularly important that we specify what we want negotiated and what we do not intend to be considered and negotiated, as a critical precautionary protection.

I am pleased that the Notice now states that, "(t)he proposed committee will focus on the legal and policy issues involved in formulating a new regulation having prospective effect only and will not investigate or examine specific conduct or allegations in past or pending proceedings." (Slip op. at 2.) In the face of the Congressional oversight investigation of *ex parte* matters discussed in Chairman Synar's November 13, 1991, and December 10, 1991 letters, it seems prudent to limit now the scope of the reg-neg comprehensive review, particularly since the Commission itself does not yet have a concrete clue as to the *ex parte* problems identified by the Subcommittee under the existing regulations and practice. Additionally, I believe it is the Commission's responsibility to focus the attention of the reg-neg committee on the specific subject matter to be reviewed, rather than await any potential disagreement later in the process.

Furthermore, the statute and the ACUS materials specify that the agency is obligated to provide the advisory committee with a specific set of issues to be considered and negotiated. And, further, the agency should carefully considered how to design the negotiations before they begin, including (among other things) what issues are negotiable; what constraints are imposed on each of these issues by statute and agency policy; what positions will the agency take initially; what is the range of solutions acceptable to the agency; what are the expected needs and positions of the other parties at the table; will the agency offer as a starting point for

negotiations its own draft rule? (See generally ACUS Negotiated Rulemaking Sourcebook, 1990, Chapter 6—Negotiating the Rule.)

Before being asked to vote on an Order to Establish A Negotiated Rulemaking, I formally have requested that we have the opportunity to review the Commission staff list of issues, possible options, draft rule, etc. Reviewing the Commission staff documents before considering the draft Notice, and then making sure that the Order specifies precisely what is, and what is not, to be considered by the advisory committee, is the *only* way to ensure that we do not end up with an "unguided institutional missile," or, perhaps even worse, one guided by someone else with differing views.

d. Federal Advisory Committee Act (FACA)

FACA requires that an agency have a general regulation governing advisory committee activities in effect, as a condition precedent to the submission of individual advisory committee charters for review by the General Services Administration (GSA). The GSA final regulations implementing FACA codifies that statutory requirement, as well. The FTC determined that it was required to have the general regulation in place before it initiated action to establish an advisory committee to review its Rule 703. I find nothing in the Negotiated Rulemaking Act that would modify this statutory requirement in FACA, and as it is discussed in the ACUS Sourcebook. Consequently, I would conclude that the Commission should promulgate the general regulation as a first step in any *ex parte* negotiated rulemaking.

I am pleased to note that the Commission staff at the November 27, 1991 Commission Meeting informed the Commission that, concurrent with the public comment period for the instant Notice, Commission staff would take the appropriate steps under the GSA regulations implementing FACA for this reg-neg committee. Those steps are important to ensure that the committee is properly constituted and initiated as a matter of law, before the reg-neg process begins. Any failure to satisfy at the outset all applicable legal requirements, such as the GSA regulations under FACA, would unnecessarily expose the Commission and the reg-neg committee to later criticism and potential challenge.

5. Recommendations

(1) I recommend that FERC consider an alternative approach in the form of a regular NOPR based on internal OGC recommendations for refining the existing regulation, rather than adopt a negotiated rulemaking.

(2) If FERC is going to proceed with a negotiated rulemaking, the Commission should drop any reference to informal rulemakings, and insert in lieu thereof, "The Commission is satisfied that as a matter of law *ex parte* prohibitions do not apply to informal rulemaking and as a matter of policy such prohibitions would be inappropriate. Therefore, the negotiated rulemaking will not consider such prohibitions."

(3) If FERC is going to proceed with a negotiated rulemaking, the Commissioners should be allowed to participate directly in the negotiations.

(4) If FERC is going to proceed with a negotiated rulemaking, there should be no commitment that a consensus recommendation will be promulgated in the NOPR as the proposed rule. Rather, the Commission should only provide assurance that consensus recommendations will be taken into account in our deliberations on the proposed rule and will be reflected in the NOPR. And, a "consensus" must be a true unanimous consensus, including the Commission representatives.

(5) If FERC is going to proceed with a negotiated rulemaking, the Order should specify exactly what's to be negotiated and what's outside the scope; but only after we have the opportunity to review Commission staff draft materials.

(6) If FERC is going to proceed with a negotiated rulemaking, we should satisfy first the FACA requirement for a general advisory committee regulation.

6. Conclusion

I view this Notice as a critical issue for how the Commission will function in the years ahead. I am persuaded that we must retain the ability to discuss general policy (*i.e.*, issues not subject to strict *ex parte* prohibitions in a specific docket) even though the policy issue is involved in particular cases, and to discuss informal rulemakings without any prohibitions based on *ex parte* grounds such as the "significant oral communication" requirement. I hope that FERC can proceed to consider a refinement of the strict *ex parte* rules for adjudications without imposing such prohibitions in informal rulemakings or general policy issues on ourselves or having them *de facto* imposed by the advisory committee.

For these reasons, I concur in part and dissent in part.

Charles A. Trabandt,

Commissioner.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 347

[Docket No. 78N-0021]

RIN 0905-AA06

Skin Protectant Drug Products for Over-the-Counter Human Use; Tentative Final Monograph; Reopening of Administrative Record

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking; reopening of administrative record.

SUMMARY: The Food and Drug Administration (FDA) is reopening the administrative record for the rulemaking for over-the-counter (OTC) skin protectant drug products to include data on the ingredient "hard fat." This action is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments by February 18, 1992.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 7, 1978 (43 FR 34628) FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC skin protectant drug products together with the recommendations of the Advisory Review Panel on OTC Topical Analgesic, Antirheumatic, Otic, Burn, and Sunburn Prevention and Treatment Drug Products (the Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class.

The agency's proposed regulation, in the form of a tentative final monograph, for OTC skin protectant drug products was published in the **Federal Register** of February 15, 1983 (48 FR 6820). Neither the Panel nor the agency considered "hard fat" as an active ingredient for skin protectant uses in either of these publications.

In the **Federal Register** of August 3, 1990 (55 FR 31776) FDA published a final rule, in the form of a final monograph,

establishing conditions under which OTC anorectal drug products are generally recognized as safe and effective and not misbranded. In that document, FDA included "hard fat" as a "protectant active ingredient" in § 346.14 of the final monograph (21 CFR 346.14). The name "hard fat" has replaced the previously used names: Cocoa butter substitutes, hydrogenated cocoglycerides, and hydrogenated palm kernel glycerides. Hard fat is described in an official monograph in "The United States Pharmacopoeia XXII/The National Formulary XVII" (Ref. 1). The agency found that data submitted in response to the OTC anorectal tentative final monograph demonstrated that 19 grades of ingredients designated commercially as Witepsol ingredients perform in a similar fashion to cocoa butter as a skin protectant. Consequently, the agency classified the Witepsols as monograph protectant ingredients for anorectal use when designated as "hard fat."

On December 1, 1990, the agency received a citizen petition (Ref. 2) requesting that the tentative final monograph for OTC skin protectant drug products be amended to include "hard fat" as a Category I ingredient in such products. The request was based on the agency's action on this ingredient in the final rule for OTC anorectal drug products, as discussed above. The petition requested that the agency reopen the administrative record for the rulemaking for OTC skin protectant drug products to include "hard fat," because the tentative final monograph for those products had been published in 1983. The petition provided suggested labeling for OTC skin protectant drug products containing hard fat as an active ingredient.

FDA has carefully considered the request and believes that it would be appropriate to reopen the administrative record for the rulemaking for OTC skin protectant drug products to include the data and information on hard fat considered in the rulemaking for OTC anorectal drug products. Cocoa butter and hard fat (cocoa butter substitutes) are monograph protectant ingredients in the anorectal final rule. Cocoa butter has been considered in the rulemaking for OTC skin protectant drug products and was proposed as Category I in the tentative final monograph (48 FR 6820 at 6832). Based on agency action in the rulemaking for OTC anorectal drug products, hard fat would be classified as a monograph ingredient in the final monograph for OTC skin protectant drug products. The agency is currently developing this final monograph. Therefore, the agency considers that good cause exists, as stated in 21 CFR 330.10(a)(7)(v), to consider the monograph status of hard fat for skin protectant uses at this time. The labeling for such products, suggested in the petition, will be discussed in the final rule for OTC skin protectant drug products.

Interested persons may on or before February 18, 1992, submit to the Dockets Management Branch (address above) written comments regarding the ingredient hard fat used as a skin protectant active ingredient. Three copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments received may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

References

(1) "The United States Pharmacopoeia XXII and The National Formulary XVII," United States Pharmacopeial Convention, Inc., Rockville, MD p. 1931, 1989.

(2) Comment No. CP1, Docket No. 78N–0021, Dockets Management Branch.

Dated: December 11, 1991.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 91–30220 Filed 12–18–91; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900–AF41

Schedule for Rating Disabilities—Dental and Oral Conditions

AGENCY: Department of Veterans Affairs.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of Veterans Affairs (VA) is issuing an advance notice of proposed rulemaking (ANPRM) concerning that portion of the Schedule for Rating Disabilities which deals with dental and oral conditions. This ANPRM is necessary because of a General Accounting Office (GAO) study and recommendation that the medical criteria in the rating schedule be reviewed and updated as necessary. The intended effect of this ANPRM is to solicit and obtain the comments and suggestions of various interest groups and the general public on necessary additions, deletions and revisions of terminology and how best to proceed with a systematic review of the medical criteria used to evaluate dental and oral conditions.

DATES: Written comments and submissions in response to this ANPRM must be received by VA on or before February 18, 1992.

ADDRESSES: Interested persons and organizations are invited to submit written comments and suggestions regarding this ANPRM to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington DC 20420. All written submissions will be available for public inspection only in the Veterans Service Unit, room 170 at the above address and only between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until February 27, 1992.

FOR FURTHER INFORMATION CONTACT: Bob Seavey, Consultant, Regulations Staff (211B), Compensation and Pension Service, Veterans Benefits Administration, (202) 233–3005.

SUPPLEMENTARY INFORMATION: In December 1988, GAO published a report entitled VETERANS' BENEFITS: Need to Update Medical Criteria Used in VA's Disability Rating Schedule (GAO/HRD–89–28). After consulting numerous medical professionals and VA rating specialists GAO concluded that a comprehensive and systematic plan was needed for reviewing and updating VA's Schedule for Rating Disabilities (38 CFR part 4). The medical professionals noted outdated terminology, ambiguous impairment classifications and the need to add a number of medical conditions not presently in the rating schedule. VA rating specialists noted that for some disorders they would prefer more medical criteria for distinguishing between various levels of severity and that inconsistent ratings may result when unlisted conditions had to be rated by analogy to other listed disorders. GAO recommended that VA prepare a plan for a comprehensive review of the rating schedule and, based on the results, revise the medical criteria accordingly. It also recommended that VA implement a procedure for systematically reviewing the rating schedule to keep it updated. VA agreed to both recommendations, and this ANPRM is one step in a comprehensive rating schedule review plan which will ultimately be converted into a systematic, cyclical review process.

This ANPRM is the first stage in VA's consideration of what regulatory action to take, if any, with respect to revising and updating that portion of the rating schedule dealing with dental and oral

conditions (38 CFR 4.150). Interested organizations and individuals are invited to submit comments and suggestions for revising current medical criteria, adding additional disabilities and/or deleting certain rarely encountered disorders or transferring them to other sections of the rating schedule. Submissions may run the gamut from narrative discussions of individual rating criteria to wholesale format changes and substitute rating schedules. Where changes are suggested, we would also appreciate a recitation as to the scientific or medical authority for such changes. Early submissions will expedite the comment review process and are encouraged.

List of Subjects in 38 CFR Part 4

Handicapped, Pensions, Veterans.

Approved: November 13, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

[FR Doc. 91-30279 Filed 12-18-91; 8:45 am]

BILLING CODE 8320-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91-359, RM-7835]

Radio Broadcasting Services; Hinesville, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Bullie Broadcasting Corporation proposing the substitution of Channel 284C3 for Channel 284A at Hinesville, Georgia, and modification of its construction permit to specify the higher class channel. Channel 284C3 can be allotted to Hinesville in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.8 kilometers (7.9 miles) west in order to avoid a short-spacing to Station WFYV(FM), Channel 283C, Atlantic Beach, Florida. The coordinates are North Latitude 31-52-18 and West Longitude 81-43-46. In accordance with § 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest or require the petitioner to demonstrate the availability of an additional equivalent channel for use by interested parties.

DATES: Comments must be filed on or before February 3, 1992, and reply comments on or before February 18, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: J Geoffrey Bentley, Debra J. Jezouit, Birch, Horton, Bittner, and Cherot, 1155 Connecticut Avenue, NW., suite 1200, Washington, DC 20036 (Attorneys for petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's notice of proposed rule making, MM Docket No. 91-359, adopted December 4, 1991, and released December 13, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73:

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-30209 Filed 12-18-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-358, RM-7867]

Radio Broadcasting Services; Atlantic, Atlantic Beach, and Hatteras, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Robert L. Purcell seeking the allotment of Channel 297C1 to Atlantic Beach, North Carolina, as the community's first local FM transmission service. To accommodate the allotment at Atlantic Beach, Purcell requests the substitution of Channel 233A for unoccupied but applied for Channel 297A at Atlantic, North Carolina, and the substitution of Channel 268A for unoccupied but applied for Channel 232A at Hatteras, North Carolina. Channel 297C1 can be allotted to Atlantic Beach with a site restriction of 28.8 kilometers (17.9 miles) northeast to avoid a short-spacing to Station WNCT-FM, Channel 300C, Greenville, North Carolina, at coordinates North Latitude 34-48-17 and West Longitude 76-27-13. Channel 268A can be allotted to Hatteras without the imposition of a site restriction, at coordinates 35-12-54 and 75-41-30. Channel 233A can be allotted to Atlantic with a site restriction of 0.6 kilometers (0.4 miles) east to avoid a short-spacing to Station WRNS-FM, Channel 236C, Kinston, North Carolina, at coordinates 34-53-30 and 76-20-00.

DATES: Comments must be filed on or before February 3, 1992, and reply comments on or before February 18, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Robert L. Purcell, 15010 Carrolton Road, Rockville, Maryland 20853 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's notice of proposed rulemaking, MM Docket No. 91-358 adopted December 4, 1992, and released December 13, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a notice of proposed rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this

one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-30210 Filed 12-18-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 541

Denial of Petition for Rulemaking; International Association of Auto Theft Investigators

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of Petition for Rulemaking.

SUMMARY: This notice denies a petition filed by the International Association of Auto Theft Investigators requesting that this agency promulgate a voluntary standard for manufacturers and owners to mark the major parts of motor vehicles with identifying numbers or symbols. This petition is denied since, based on a recent NHTSA study for Congress, the agency believes it is uncertain that promulgation of a voluntary parts marking standard would further the goals of preventing theft and decreasing the fencing of stolen motor vehicles and parts.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Gray, Office of Market Incentives, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Gray's telephone number is (202) 366-1740.

SUPPLEMENTARY INFORMATION: In order to alleviate the growing national problem of motor vehicle theft Congress amended the Motor Vehicle Information and Cost Savings Act in 1984 by adding a new title VI (15 U.S.C. 2021 *et seq.*). Title VI was enacted by Congress as a comprehensive attack on vehicle theft through the following means: A requirement for marking the major component parts of frequently stolen passenger automobiles; increased Federal criminal penalties for vehicle theft; penalties for tampering with the new marking system; tighter controls on the import and export of motor vehicles; and a series of studies examining the new theft prevention program's effectiveness to determine if the program should be modified or expanded.

Section 613 of title VI (15 U.S.C. 2033) authorizes NHTSA to promulgate a voluntary vehicle theft prevention standard that is practicable and provides relevant objective criteria. Under such a standard, persons could voluntarily mark identifying numbers or symbols on major parts of any motor vehicle that they manufacture or own.

In conjunction with title VI, Congress enacted sections 511 and 512 of title 18 of the U.S. Code that, respectively, impose criminal penalties for tampering with an "identification number for a motor vehicle or motor vehicle part" and provide for forfeiture of such vehicles or parts for tampering with the identification numbers. The definition of "identification number" includes a number or symbol that is inscribed or affixed for purposes of identification under title VI.

Pursuant to title VI, NHTSA has promulgated 49 CFR part 541, Federal Motor Vehicle Theft Prevention Standard. That standard requires manufacturers to mark 14 major parts of their passenger automobile car lines that the agency determines are likely to have a high theft rate. Under 49 CFR part 543, Exemption from Vehicle Theft Prevention Standard, manufacturers may obtain exemptions from the parts marking requirements for passenger motor vehicle lines which include, as standard equipment, an antitheft device if the agency concludes that the device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements.

The International Association of Auto Theft Investigators (IAATI) filed a petition dated May 14, 1991, asking that NHTSA promulgate a voluntary parts marking standard, as authorized by section 613 of title VI. IAATI offered the following arguments in support of its petition: That a properly constructed voluntary standard would ameliorate problems in title VI that it believes relate to various compromises in the legislative process; and, that a voluntary standard would "protect" and serve as a guideline for motor vehicle manufacturers that are currently marking vehicles not subject to the theft prevention standard. IAATI further stated that the voluntary standard would, in conjunction with the prohibition against tampering, "protect" markings by vehicle manufacturers that continue to mark vehicles despite obtaining an exemption from parts marking pursuant to 49 CFR part 543. IAATI stated that it encourages continuation of stamping of engines, transmissions, and frames on all vehicles by manufacturers. IAATI also asserted that with the implementation of a voluntary standard, Federal law enforcement officials would be able to prosecute offenders and seize vehicles which have parts marking even though the vehicles are not subject to the mandatory parts marking standard.

After carefully considering each argument for a voluntary parts marking standard, the agency is denying IAATI's petition for a voluntary standard.

In determining whether to initiate action to establish a voluntary parts marking program, NHTSA views the major issue as whether such promulgation would further the goals of title VI. The legislative history of title VI shows that the title was enacted to prevent thefts and decrease the ease with which certain stolen vehicles and their major parts can be fenced. (See House Report 98-1087 part 1 on the Motor Vehicle Theft Law Enforcement Act of 1984, September 26, 1984.)

NHTSA believes that the track record of the existing mandatory parts marking standard is instructive about the likelihood of success of a voluntary standard in furthering the goals of title VI. This belief is based on the similarity that a voluntary standard would have to the existing standard. The success, thus far, of the part 541 prevention standard has been at best inconclusive.

Earlier this year, as required by section 614 of title VI (15 U.S.C. 2034), the agency issued a report to Congress on the effect of the mandatory parts marking standard on motor vehicle theft and recovery. In that report, the agency concluded, based on approximately five years of data, that "no meaningful statement on the effectiveness of parts marking can be made using the available national data sets."

In arriving at this conclusion, the agency considered, among other matters, the potential usefulness of parts marking in aiding criminal prosecution by examining the effects of parts marking on the prosecution, conviction, and sentencing of motor vehicle thieves. The tampering prohibition in 18 U.S.C. 511 and the forfeiture provision in 18 U.S.C. 512 currently apply to identification numbers marked in compliance with the theft prevention standard at 49 CFR part 541. The report showed that between the years 1985 and 1989, out of approximately 150,000 to

200,000 arrests for motor vehicle thefts per year nationwide, at the State and Federal level, Federal prosecutors obtained, for the four year period, a total of 107 convictions for violations of 18 U.S.C. 511. The greatest number of convictions under section 511 in a single year was in 1988, when there were 40 convictions.

Considering the inconclusiveness of the benefits that have accrued from the mandatory parts marking standard, which reflects on the probability of success for a voluntary standard, and considering that if a voluntary standard were to be developed and issued, agency resources would need to be redirected, the agency believes that issuing a voluntary parts marking standard is not warranted at present. Furthermore, no provision of title VI nor part 541 prohibits any manufacturer or owner from marking any vehicle part in any location as long as the markings do not cover or compromise the Federally mandated marking standard for a vehicle subject to part 541.

IAATI also believes that a voluntary marking program would further "protect" vehicle manufacturers that continue to mark vehicles despite obtaining an exemption from parts marking pursuant to 49 CFR part 543. However, the exemption for a manufacturer relieving it of marking the component parts does not mediate the enforcement provisions under title 18 sections 511 or 512.

Additionally, the agency understands, IAATI's desire for manufacturers to continue to stamp engines, transmissions, and frames on all vehicles. However, it is not within the statutory authority of the agency to require manufacturers to stamp these parts, since the statute allows manufacturers to inscribe or affix vehicle identification numbers onto a component part.

For the preceding reasons, there is no reasonable possibility that the requested standard would be issued at the conclusion of a rulemaking proceeding. Therefore, NHTSA denies the petition of the International Association of Auto Theft Investigators to issue a voluntary theft marking standard.

Authority: 15 U.S.C. 2021–2024, 2026 and 2033; delegation of authority at 49 CFR 1.50.

Issued on: December 11, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91–30248 Filed 12–18–91; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB66

Endangered and Threatened Wildlife and Plants; Notice of Public Hearings on Proposed Threatened Status for the Delta Smelt

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearings.

SUMMARY: The Fish and Wildlife Service (Service), under the Endangered Species Act of 1973, as amended (Act), gives notice that public hearings will be held on the proposed threatened status for the delta smelt (*Hypomesus transpacificus*). The hearings will allow all interested parties to submit oral or written comments on the proposal. The proposed rule was published October 3, 1991 at 56 FR 50075.

DATES: The Service has scheduled three public hearings in the following California locations: Thursday, January 9, 1991, in Sacramento; Tuesday, January 14, 1991, in Santa Monica; and Thursday, January 16, 1991, in Visalia. Each public hearing will be held from 1 p.m. to 4 p.m., and from 6 p.m. to 9 p.m. Written comments from all interested parties must be received by January 31 1991. Any comments received after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: The public hearings will be held in the following locations:

- Thursday, January 9, 1991, Radisson Hotel, 500 Leisure Lane, Sacramento, California.
- Tuesday, January 14, 1991, Guest Quarters Suite Hotel, 1707 4th Street, Santa Monica, California.
- Thursday, January 16, 1991, Visalia Convention Center, 303 E. Acequia, Visalia, California.

Written comments and documents should be sent directly to the Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Field Office, 2800 Cottage Way, room E–1803, Sacramento, California 95825–1846. Comments and documents received will be available for public inspection during normal business hours, by appointment, at the above address.

FOR FURTHER INFORMATION CONTACT: A. Keith Taniguchi, Sacramento Field Office, at the above address (telephone 916/978–4866 or FTS 460–4866).

SUPPLEMENTARY INFORMATION:

Background

The delta smelt is restricted to Suisun Bay and the contiguous Sacramento-San Joaquin estuary (the Delta) in northern California. This fish is threatened by one or more of the following factors: Freshwater exports of Sacramento River and San Joaquin River outflows for agriculture and urban use, introduced nonindigenous aquatic species, agricultural and industrial chemicals, prolonged drought, and stochastic (random) extinction by virtue of its 1-year life span and the small isolated nature of the remaining population. A proposed rule to list the delta smelt as a threatened species with critical habitat was published in the **Federal Register** on October 3, 1991 (56 FR 50075).

Section 4(b)(5)(E) of the Act, as amended (16 U.S.C. 1531 *et seq.*), requires that a public hearing be held if it is requested within 45 days of the publication of a proposed rule. On November 6, 1991, the Service received a written request for a public hearing from George R. Baumli of the State Water Contractors, Sacramento, California. The Service received 16 additional requests for public hearings within the 45-day time period. As a result, the Service scheduled three public hearings to be held in the following locations:

January 9, 1991—Radisson Hotel, 500 Leisure Lane, Sacramento, California.

January 14, 1991—Guest Quarters Suite Hotel, 1707 4th Street, Santa Monica, California.

January 16, 1991—Visalia Convention Center, 303 E. Acequia, Visalia, California.

Each hearing will be held from 1 p.m. to 4 p.m., and from 6 p.m. to 9 p.m.

Parties wishing to make statements for the record should bring a copy of their statements to the hearing. Written comments will be given the same weight as oral comments. Oral statements may be limited in length, if the number of parties present at the hearings necessitates such a limitation. However, there will not be any limits to the length of written comments or materials presented at the hearings or mailed to the Service. The comment period closes on January 31, 1991. Written comments should be submitted to the Sacramento Field Office (see ADDRESSES section).

Author

The primary author of this notice is A. Keith Taniguchi, Sacramento Field Office see **ADDRESSES** section).

Authority: The authority for this section is the Endangered Species Act (16 U.S.C.

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

List of Subjects in 50 CFR Part 17

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

Dated: December 13, 1991.

David L. McMullen,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 91–30257 Filed 12–18–91; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 56, No. 244
Thursday, December 19, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

December 13, 1991.

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

(1) Agency proposing the information collection; (2) title of the information collection; (3) form number(s), if applicable; (4) how often the information is requested; (5) who will be required or asked to report; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to provide the information; (8) name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, ORIM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 720–2118.

Revision

• Food and Nutrition Service
Model Food Stamps Periodic Reporting, Notice of Late/Incomplete Reporting, Adequate Notice, Sponsored Aliens, Duplication.
Participation, and Disqualified Recipient Report; FNS–385, 386, 387, 394, 396, 437, 439, 441, 442, and 524.
Recordkeeping; on occasion; monthly; quarterly; semiannually; annually.
Individuals or households; State or local governments; 96,499,081 responses; 21,355,788 hours.
Paul Jones, (703) 305–2476.

Extension

• Food and Safety Inspection Service
Processing Procedures and Cooking Instruction for Cooked, Uncured, Comminuted Meat Patties (9 CFR parts 318 and 320).
Recordkeeping.
Businesses or other for-profit; small businesses or organizations; 680 recordkeepers; 115 hours.
Roy Purdie, (202) 720–5372.

• Food and Nutrition Service
Evaluation of Maryland's Expanded Electronic Benefit Transfer Program.
One time survey.
State or local governments; 28,694 responses; 3,317 hours.
Margaret Andrews, (703) 305–2115.

• Agricultural Marketing Service
Reporting Requirements Under the Regulations Governing Inspection and Certification of processed Fruits and Vegetables and Related Products; FV–159, FV–356, FV–468.
On occasion.
Individuals or households; State or local governments; farms; businesses or other for-profit; Federal agencies or employees; non-profit institutions; small businesses or organizations; 13,062 responses; 670 hours.
James R. Rodeheaver, (202) 720–4693.

• Office of Finance and Management
Uniform Administrative Requirements for Grants and Cooperative Agreements; 7 CFR 3016; SF–424, 269, 272, 272a, 270, 271, 269a, 424a, 424b, 424c, 424d.
Recordkeeping; on occasion; quarterly; annually.
State or local governments; 46,123 responses; 267,766 hours.
Diane Cary, (202) 720–1554.

Reinstatement

• Farmers Home Administration
Form FmHA 1940–59, Settlement Statement, Form FmHA 1940–59.
On occasion.
Businesses or other for-profit; small businesses or organizations; 33,000 responses; 16,500 hours.
Jack Holston, (202) 720–9736.

• Rural Electrification Administration
Accounting Requirements for REA Telephone Borrowers.
Recordkeeping.
Businesses or other for-profit; small businesses or organizations; 900 recordkeepers; 10,800 hours.
Paul Marsden, (202) 720–9551.

Larry K. Roberson,
Deputy Departmental Clearance Officer.

[FR Doc. 91–30229 Filed 12–18–91; 8:45 am]
BILLING CODE 3410–01–M

President's Council on Rural America; Meeting

AGENCY: Department of Agriculture.

ACTION: Notice of meeting.

SUMMARY: The Under Secretary for Small Community and Rural Development, Department of Agriculture, is announcing a meeting of the President's Council on Rural America. The meeting is open to the public.

DATES: Meeting on Monday, January 27, 8:30 a.m. to 5 p.m., Tuesday, January 28, 8:30 a.m. to 1 p.m., and Wednesday, January 29, 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held in:
Colonial Williamsburg, *January 27 and 28;* The Lodge and Conference Center, rooms D and E.
January 29; The Tidewater Room, 310 South England Street, Williamsburg, Virginia 23187, phone: 1–800–HISTORY x7793 or 7477.

The nearest airports are Williamsburg/Newport News and Richmond International.

FOR FURTHER INFORMATION CONTACT: Jennifer Pratt, Special Assistant to the Council, Office of Small Community and Rural Development, room 5405 South Building, USDA, Washington, DC 20250, (202) 690–2394.

SUPPLEMENTARY INFORMATION: The President's Council on Rural America was established by Executive order on July 16, 1990. Members are appointed by the President and include representatives from the private sector and from State and local governments. The Council is reviewing and assessing the Federal Government's rural economic development policy and will advise the President and the Economic Policy Council on how the Federal Government can improve its rural development policy. The purpose of the meeting is to make decisions on a work plan for the Council task groups. The public may participate by providing written and verbal comments. Written comments may be submitted to Jennifer Pratt.

Dated: December 3, 1991.

Roland R. Vautour,

Under Secretary for Small Community and Rural Development.

[FR Doc. 91-30137 Filed 12-18-91; 8:45 am]

BILLING CODE 3410-07-M

Animal and Plant Health Inspection Service

[Docket No. 91-172]

Receipt of Permit Application for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an application for a permit to release genetically engineered organisms into the environment is being reviewed by the Animal and Plant Health Inspection Service. The application has been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: Copies of the application referenced in this notice, with any confidential business information deleted, are available for public inspection in room 1141, South Building, United States Department of Agriculture, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. You may obtain a copy of this document by writing to the person listed under **"FOR FURTHER INFORMATION CONTACT."**

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Program Specialist, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permits, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

SUPPLEMENTARY INFORMATION:

The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason To Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following application for a permit to release genetically engineered organisms into the environment:

Application Number	Applicant	Date Received	Organisms	Field Test Location
91-317-01, renewal of permit 90-332-02, issued on 03-12-91.	DeKalb Plant Genetics	11-13-91	Corn plants genetically engineered to express a phosphinothricin acetyl transferase gene, which confers tolerance to glufosinate and bialaphos herbicides.	Kihei, Hawaii

Done in Washington, DC, this 13th day of December 1991.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-30345 Filed 12-18-91; 8:45 am]

BILLING CODE 3410-34-M

Federal Grain Inspection Service

Advisory Committee Meeting

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92-463), notice is hereby given of the following committee meeting:

Name: Federal Grain Inspection Service Advisory Committee.

Date: January 14-15, 1992.

Place: Capitol Holiday Inn, 550 "C" Street, SW., Washington, DC 20024.

Time: 1:30 p.m. January 14 and 8 a.m. January 15.

Purpose: To provide advice to the Administrator of the Federal Grain Inspection Service with respect to the implementation of the U.S. Grain Standards Act.

The agenda includes: (1) Status of financial matters, (2) Official Commercial Inspection, (3) grain quality activities, (4) status of standards and regulations, (5) international monitoring report, (6) status of research programs, (7) type evaluation program, and (8) other matters.

The meeting will be open to the public. Public participation will be limited to written statements unless permission is received from the Committee Chairman and orally address the Committee. Persons, other than members, who wish to address the Committee or submit written statements before or after the meeting, should contact John C. Foltz, Administrator, FGIS, U.S. Department of Agriculture, P.O. Box 96454, Washington, DC 20090-6454, telephone (202) 720-0219.

Dated: December 12, 1991.

John C. Foltz,

Administrator.

[FR Doc. 91-30188 Filed 12-18-91; 8:45 am]

BILLING CODE 3410-EN-M

Food and Nutrition Service

Emergency Food Assistance Program and Soup Kitchens; Availability of Commodities for Fiscal Year 1992

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces: (1) The surplus and purchased commodities that will be available for donation to household under The Emergency Food Assistance Program (TEFAP); and (2) the commodities that will be available to soup kitchens and food banks. The commodities made available under this notice shall be directed to needy persons, including unemployed and homeless persons.

EFFECTIVE DATE: October 1, 1991.

FOR FURTHER INFORMATION CONTACT: Philip K. Cohen, Chief, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302-1494 or telephone (703) 305-2660.

SUPPLEMENTARY INFORMATION:

Background and Need for Action

Surplus Commodities

Donations of commodities to needy households were initiated in 1981 as part of efforts to reduce stockpiles of government-owned commodities. These donations responded to concern over

the costs to taxpayers of storing vast quantities of foods, while at the same time there were persons in need of food assistance. The Emergency Food Assistance Program was codified in title II of Public Law 98–8, the Emergency Food Assistance Act (EFAA) of 1983, as amended (7 U.S.C. 612c note). Surplus foods made available for distribution under the EFAA are limited to amounts determined by the Secretary to be in excess of the quantities needed to carry out other programs, including Commodity Credit Corporation (CCC) sales obligations and domestic food assistance programs. The Secretary of Agriculture anticipates that the following surplus commodities acquired by the CCC under its price-support activities will be made available in the noted amounts for distribution through TEFAP during Fiscal Year 1992: butter, 72 million pounds; flour, 120 million pounds; and cornmeal, 48 million pounds. The actual types and quantities of commodities made available by the Department may differ from the above estimates because of agricultural production, market conditions and the distribution of these donated foods to other domestic outlets.

Purchased Commodities

In recent years, the supply of available surplus commodities has been drastically reduced. These reductions are the result of changes in the agricultural price-support programs which have brought supply and demand into better balance, and accelerated donations and sales. Congress responded to the reduced availability of surplus commodities with section 104 of the Hunger Prevention Act of 1988, Public Law 100–435, which added sections 213 and 214 to the EFAA. Those sections required the Secretary to annually purchase, process, and distribute commodities for household consumption in addition to those surplus commodities otherwise provided under TEFAP. In section 110 of the Hunger Prevention Act, Congress also required the Secretary to purchase, process and distribute commodities for soup kitchens and food banks.

For Fiscal Year 1992, $120 million has been appropriated for purchasing, processing, and distributing additional commodities for household use. The Department anticipates purchasing for distribution to households through TEFAP during this fiscal year peanut butter, raisins, and the following canned foods: corn, tomatoes, green beans, pears, applesauce, and pork or beef. The amounts of each item purchased will depend on the prices USDA must pay.

For Fiscal Year 1992, $32 million has been appropriated to purchase, process, and distribute commodities for distribution to soup kitchens and food banks. For such outlets, the Department anticipates the purchase of nonfat dry milk, frozen cut-up chicken, frozen ground beef, and the following canned foods: peaches, applesauce, orange juice, corn, green beans, peas, poultry, and pork or beef. The amounts of each item purchased will depend on the prices USDA must pay.

December 12, 1991.

Betty Jo Nelsen,

Administrator.

[FR Doc. 91–30357 Filed 12–18–91; 8:45 am]

BILLING CODE 3410–30–M

Forest Service

Lockwood and North Round Valley Timber Sales, Rapid River Roadless Area, Payette National Forest, ID

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: A Notice of Intent to prepare an Environmental Impact Statement (EIS) for the proposed Lockwood and North Round Valley timber sales (Rapid River roadless area, Idaho) was published in the **Federal Register** June 9, 1989 (Vol. 54, No. 110, p. 24726–24727). That notice is hereby revised to show three changes: (1) The name of the EIS, (2) the responsible official, and (3) the projected schedule.

1. The name of the EIS is now the "Lockwood and North Round Valley Timber Sales." (The previous title was, "Proposed Timber Management Entries Into the Rapid River Roadless Area." To many, that name implied development in the Rapid River drainage. In fact, both sales are entirely outside that drainage.)

2. The responsible official is now David Spann, New Meadows District Ranger, Payette National Forest. (It was formerly the Forest Supervisor of Payette National Forest. The change reflects the increased responsibility Payette National Forest has placed on District Rangers for implementing the National Environmental Policy Act (NEPA).

3. The draft EIS is now scheduled for release to the public in January 1992, and the final EIS in May 1992. (The previous schedule was March 1990 for the draft, and September 1990 for the final).

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action should be directed to David Spann, District Ranger, phone (208) 347–2141; or Pete Walker, Team Leader, phone (208) 634–0629.

Dated: December 10, 1991.

Veto J. LaSalle,

Forest Supervisor.

[FR Doc. 91–30302 Filed 12–18–91; 8:45 am]

BILLING CODE 3410–11–M

Rural Telephone Bank

Notice of Filing Date Extension

AGENCY: Rural Telephone Bank, USDA.

ACTION: Notice of Extension of final date for submitting nominations form.

SUMMARY: Notice is hereby given that Rural Telephone Bank (RTB) stockholders have been granted an extension of time to submit RTB Form 4, Nominations for Directors. This action extends the deadline for submission of RTB Form 4 until December 20, 1991.

ADDRESSES: The nominations form should be mailed to Assistant Secretary, Rural Telephone Bank, U.S. Department of Agriculture, room 4025–S, Washington, DC 20250–1700.

FOR FURTHER INFORMATION CONTACT: Robert Peters, Deputy Assistant Governor, Rural Telephone Bank, (202) 720–9554.

SUPPLEMENTARY INFORMATION:

In letter dated November 8, 1991, stockholders were formally advised of the February, 1992, RTB Board of Directors elections and that nominations were being accepted for the Board. Enclosed with the letter was RTB Form 4 which was to be completed by the stockholder and returned to the RTB no later than December 13, 1991. Stockholders were subsequently advised by letter dated December 2, 1991, that the deadline for submitting RTB Form 4 had been extended until December 20, 1991. Further, to provide the stockholders with additional time to return RTB Form 4, the date for the election of Directors has also been changed from February 12, 1991, to February 18, 1992. (7 U.S.C. *et seq.*)

Dated: December 16, 1991.

Michael M.F. Liu,

Acting Governor.

[FR Doc. 91–30337 Filed 12–18–91; 8:45 am]

BILLING CODE 3410–15–M

Soil Conservation Service

Central Hampshire Park Critical Area Treatment RC&D Measure Plan, West Virginia

AGENCY: U.S. Department of Agriculture, Soil Conservation Service.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1960; the Council on Environmental Quality Guidelines, (40 CFR part 1500); and the Soil Conservation Service Guidelines, (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Central Hampshire Park Critical Area Treatment RC&D Measure Plan, Hampshire County, West Virginia.

FOR FURTHER INFORMATION CONTACT: Rollin N. Swank, State Conservationist, Soil Conservation Service, 75 High Street, room 301, Morgantown, West Virginia 26505, Telephone (304) 291–4151.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Rollin N. Swank, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

Notice of a Finding of No Significant Impact

The purpose of the measure is critical area treatment for erosion control. The measure is designed to stabilize by regarding, shaping, and revegetating approximately 3.5 acres of land that has an average erosion rate of 50 tons per acre per year. Conservation practices include rock lined and vegetated waterways, land smoothing, seeding, and mulching.

Central Hampshire Park Critical Area Treatment RC&D Measure Plan, Hampshire County, West Virginia

The Notice of a Finding of No Significant Impact has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Rollin N. Swank, State Conservationist.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

This activity is listed in the Catalog of Federal Domestic Assistance under No. 19.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Dated: December 9, 1991.

Rollin N. Swank,

State Conservationist.

[FR Doc. 91–30306 Filed 12–18–91; 8:45 am]

BILLING CODE 3410–16–M

Finding of No Significant Impact for Frazer Park Watershed, Chester County, SC

Introduction

The Frazer Park Watershed is a federally assisted action authorized for planning under Public Law 83–566, the Watershed Protection and Flood Prevention Act. An environmental assessment was undertaken in conjunction with the development of the watershed plan. This assessment was conducted in consultation with local, State, and Federal agencies as well as with interested organizations and individuals. Data developed during the assessment are available for public review at the following location: U.S. Department of Agriculture, Soil Conservation Service, 1835 Assembly Street, room 950, Columbia, South Carolina 29201.

Recommended Action

The proposal requires the clearing and snagging of 5850 feet within the Dry Fork channel and a portion of the adjacent floodplain. The proposed plan will convey the peak flows through the residential area reducing flood damages to existing residential structures. One structure will be relocated outside the watershed. The plan will provide a recreational area which will be utilized by the residents of Frazer Park.

Effect of Recommended Action

The proposed action will reduce identified flood damages in the Frazer Park Watershed significantly by improving the hydrologic capacity of Dry Fork Creek. Streamflow will be stabilized to the extent that designed storm peak discharges will be carried by channel.

A literature review of cultural resources as they relate to the planned components was made. The review concludes that no significant adverse impacts will occur to cultural resources in the watershed when the plan is implemented. If artifacts of archaeological or historical properties which appear to be significant are discovered during construction, they will not be disturbed until onsite consultation and advice is received from the State of South Carolina Archives and History.

Dry Fork Creek is an ephemeral creek and provides no fishery habitat or other significant aquatic habitat. The watershed supports low to medium wildlife habitat areas.

Woody vegetation will be removed from the channel sides and channel bottom. This woody vegetation will be replaced with sod and herbaceous plants. Therefore the loss of brushy vegetation will be temporary. The "edge effect" created as a result of this project action will greatly benefit songbirds and other small wildlife within the habitat area.

A report has been made to the U.S. Fish and Wildlife Service in compliance with section 7 of the Endangered Species Act.

There are no wetlands identified within the project area.

Scenic values will be complemented with the diversity added to the landscape by the installation of the recreational area and the shaping and vegetation of the floodplain.

No significant adverse environmental impacts will result from installations, with the exception of minor inconveniences to local residents during construction.

Alternatives

The planned action is the most practical means of reducing flood damages, controlling sedimentation, and improving water quality. The other alternatives considered dikes, dams, and flood proofing homes in the floodplain.

Consultation—Public Participation

Formal agency consultation began with the initiation of the notification of the State Single Point of Contact for Federal Assistance in December 6, 1989. Agencies were again notified when planning was authorized in January 11, 1991.

Scoping meeting involving an interdisciplinary team was held on May 28, 1987.

The watershed plan and environmental assessment was transmitted to all participating and interested agencies, groups, and

individuals for review and comment in December 1991. Public meetings were held during the planning process to keep interested parties informed of the study progress and to obtain public input to the plan and environmental assessment.

Agency consultation and public participation to date has shown no unresolved conflicts with the implementation of the recommended plan. The participation and support by land users in the planning process indicate their commitment in solving the erosion problems.

Conclusion

The environmental assessment summarized above indicates that this federal action will not cause significant local, regional, or national adverse impacts on the environment. Therefore, based on the above findings, I have determined that an environmental impact statement for the Frazer Park Watershed is not required.

Dated: December 6, 1991.

Billy Abercrombie,

State Conservationist.

[FR Doc. 91–30303 Filed 12–18–91; 8:45 am]

BILLING CODE 3410–16–M

Frazer Park, SC

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR parts 1500–1508); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement (EIS) is not being prepared for flood prevention in Frazer Park, Chester County, South Carolina.

FOR FURTHER INFORMATION CONTACT: Mr. Billy Abercrombie, State Conservationist, Soil Conservation Service, 1835 Assembly Street, room 950, Columbia, South Carolina, 29201, telephone (803) 765–5681.

SUPPLEMENTARY INFORMATION: The environmental evaluation of this federally-assisted action indicates that the proposed measure will not cause significant adverse local, regional or national impacts on the environment. As a result of these finding, Mr. Billy Abercrombie, State Conservationist, has determined that the preparation and review of an EIS is not needed.

The proposed action is to reduce flooding and improve flow conditions on 1.1 miles of ephemeral streams in and adjacent to the Frazer Park area.

The Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental evaluation and the environmental assessment are on file and may be reviewed by interested parties at the Soil Conservation Service, 1835 Assembly Street, room 950, Columbia, South Carolina 29201, 803–765–5681.

The FONSI has been sent to interested federal, state, and local agencies and other interested parties. A limited number of copies of the FONSI are available to fill single copy requests.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and Local officials.

Dated: December 6, 1991.

Billy Abercrombie,

State Conservationist.

[FR Doc. 91–30304 Filed 12–18–91; 8:45 am]

BILLING CODE 3410–16–M

Larenim Park Critical Area Treatment and Handicap Facility Development RC&D Measure Plan, West Virginia

AGENCY: U.S. Department of Agriculture, Soil Conservation Service.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines, (40 CFR part 1500); and the Soil Conservation Service Guidelines, (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Larenim Park Critical Area Treatment and Handicap Facilities Development RC&D Measure Plan, Mineral County, West Virginia.

FOR FURTHER INFORMATION CONTACT: Rollin N. Swank, State Conservationist, Soil Conservation Service, 75 High Street, room 301, Morgantown, West Virginia 26505, Telephone (304) 291–4151.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Rollin N. Swank, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

Notice of a Finding of No Significant Impact

The purpose of the measure is critical area treatment and handicap facilities development for erosion control. The measure is designed to stabilize by regrading, shaping, and revegetating approximately 2 acres of land that has an average erosion rate of 50 tons per acre per year. Conservation practices include surface water control, land grading and shaping, heavy use area protection, seeding, and mulching.

Larenim Park Critical Area Treatment and Handicap Facilities Development RC&D Measure Plan, Mineral County, West Virginia

The Notice of a Finding of No Significant Impact has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Rollin N. Swank, State Conservationist.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Dated: December 5, 1991.

Rollin N. Swank,

State Conservationist.

[FR Doc. 91–30305 Filed 12–18–91; 8:45 am]

BILLING CODE 3410–16–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Kentucky Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Kentucky Advisory Committee to the Commission will

convene at 2 p.m., and adjourn at 4 p.m. on Friday, January 10, 1992, at the Raddison Plaza, 369 West Vine Street, Lexington, Kentucky 40507. The meeting will include: (1) A planning and informational session for the SAC; (2) a discussion of the status of the Commission; (3) a report on civil rights progress and/or problems in the State; (4) review of plans for a project in Fiscal Year 1992.

Persons desiring additional information, or planning a presentation to the Committee should contact Kentucky Chairperson Thelma Clemons 502/893–1055 or Bobby D. Doctor, Regional Director, Southern Regional Office of the U.S. Commission on Civil Rights at (404/730–2476, TDD 404/730–2481). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Southern Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 13, 1991.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91–30213 Filed 12–18–91; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Certificate of Eligibility for Atlantic Billfishes.

Form Number: None; OMB—0648–0216.

Type of Request: Request for extension of the expiration date of a currently approved collection without any change in the substance or method of collection.

Burden: 260 recordkeepers; 117 recordkeeping hours; average hours per recordkeeper—.45 hours a year.

Needs and Uses: Fish dealers and processors possessing billfish must certify that these billfish have not been caught in a specified management area. The information is used to enforce a prohibition on the commercial sale of billfish from this area.

Affected Public: Businesses or other for profit, small businesses or organizations.

Frequency: Recordkeeping.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Ronald Minsk, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Ronald Minsk, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: December 13, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91–30261 Filed 12–18–91; 8:45 am]

BILLING CODE 3510–CW–M

Foreign-Trade Zones Board

[Order No. 545]

Approval for Expansion of Foreign-Trade Zone 122 Nueces County, Texas

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR part 400), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

Whereas, The Port of Corpus Christi Authority, Grantee of Foreign-Trade Zone No. 122, has applied to the Board for authority to expand its general-purpose zone at its port terminal complex in Nueces County, Texas, within the Corpus Christi Customs port of entry;

Whereas, The application was accepted for filing on November 14, 1990, and notice inviting public comment was given in the **Federal Register** on November 27, 1990 (Docket No. 45–90, 55 FR 49317);

Whereas, An examiners committee has investigated the application in accordance with the Board's regulations and recommends approval;

Whereas, The expansion is necessary to improve and expand zone services in the Nueces County area; and,

Whereas, The Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, The Board hereby orders:

That the Grantee is authorized to expand its zone in accordance with the application filed on November 14, 1990. The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing or assembly operations. The authority given in this Order is subject to settlement locally by the District Director of Customs and the Army District Engineer regarding compliance with their respective requirements relating to foreign-trade zones.

Signed at Washington, DC, this 6th day of December, 1991.

Alan M. Dunn,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91–30359 Filed 12–18–91; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[A–428–602]

Brass Sheet and Strip From Germany; Negative Final Determination of Circumvention of Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of negative final determination of circumvention of antidumping duty order.

SUMMARY: On August 10, 1990, the Department of Commerce published a negative preliminary determination of circumvention of the antidumping duty order on brass sheet and strip from Germany. The circumvention inquiry covered one manufacturer of this product, Wieland-Werke AG, and the period January 1986 through January 1989.

We gave interested parties an opportunity to comment on the preliminary negative determination. After our analysis of the comment and rebuttal briefs, we have determined that Wieland is not circumventing the order on brass sheet and strip from Germany.

EFFECTIVE DATE: December 19, 1991.

FOR FURTHER INFORMATION CONTACT: David Mason, or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S.

Department of Commerce, Washington, DC 20230; telephone: (202) 377–2923.

SUPPLEMENTARY INFORMATION:

Background

On August 10, 1990, the Department of Commerce (Department) published in the **Federal Register** (55 FR 32655) a preliminary negative determination of circumvention of the antidumping duty order on brass sheet and strip from Germany. The Department has now completed this inquiry in accordance with section 781(c) of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Antidumping Duty Order

Imports covered by the antidumping duty order are shipments of brass sheet and strip, other than leaded brass and tin brass sheet and strip, from Germany. The chemical composition of the products covered is currently defined in the Copper Development Association (C.D.A.) 200-series of the Unified Numbering System (U.N.S.) C200000 series. Products whose chemical composition is defined by other C.D.A. or U.N.S. series are not covered by this order. During the relevant period of this inquiry, such merchandise was classifiable under item numbers 612.3960, 621.3982, and 612.3986 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under Harmonized Tariff Schedules (HTS) item numbers 7409.21.00 and 7409.29.00. TSUSA and HTS item numbers are provided for convenience and for Customs purposes. The written description remains dispositive.

Analysis of Comments Received

We invited interested parties to comment on the preliminary negative determination. We received comments from Wieland-Werke AG (Wieland) and petitioners (the International Association of Machinists and Aerospace Workers, the International Brotherhood of Electrical Workers, the International Union of Electronic, Electrical, Salaried Machine and Furniture Workers, Industrial Union Department, AFL–CIO, and the United Steelworkers of America). We also received rebuttals from both parties listed above. We did not hold a public hearing on this matter since neither party requested one.

Comment 1: Petitioners contend that critical evidence that should have been supplied by the respondent is missing, and in its absence the Department should make an affirmative circumvention determination. Specifically, petitioners point to Wieland's failure to respond to the Department's questions concerning the actual uses to which manganese brass was put by Wieland's customers in the United States, and the expectations of those customers concerning 667-series brass, known as manganese brass.

Petitioners argue that Congress logically expects the Department to ascertain the "actual" characteristics of the merchandise, the "actual" expectations of the ultimate users, the "actual" uses of the merchandise, the "actual" channels of marketing, and the "actual" cost of modification. Anything other than information on actual experience, petitioners claim, would be at odds with Congress' direction that the Department apply "practical measurements" regarding minor alterations. (S. Rep. No. 71, 100th Cong. 1st Sess. 100 (1987).)

Moreover, petitioners contend that Wieland's assertion that it lacks knowledge of its customers' use of the merchandise is not convincing. Petitioners first assert that Wieland probably knew the actual uses to which the product was put and expectations of its customers based upon the orders and specifications for the manganese brass, and by the type of businesses in which its customers were engaged. Secondly, petitioners insist Wieland could have made inquiries concerning its customers' expectations and uses of the brass if Wieland were truly unaware of the actual uses and expectations. Finally, petitioners claim that if Wieland's customers actually used and expected 667-series brass to serve in its normal capacity as an alloy for spot, seam, and butt-resistant welding, rather than as a substitute for 200-series brass, Wieland would have furnished such favorable information to the Department. Consequently, petitioners assert that by withholding data on the actual uses of manganese brass and the expectations of its customers, Wieland has unreasonably deprived the Department of the most vital information in the inquiry. Additionally, petitioners state that the C.D.A.'s skepticism on the interchangeability of 667 or manganese brass with 200-series brass or cartridge brass is of no consequence if, in actuality, Wieland's U.S. customers have used 667-series brass as a substitute for 200-series brass.

To the extent substitution of manganese brass for 200-series brass has taken place, petitioners insist circumvention has occurred, and thus that the Department should make an affirmative determination. Overall, petitioners conclude that, in the absence of essential information on the actual experiences requested, the Department should follow its practice in other proceedings with recalcitrant respondents, and draw the adverse inference that Wieland has been circumventing the antidumping duty order on German brass sheet and strip.

In response, Wieland claims it steadfastly maintained a policy of full cooperation throughout the inquiry and freely provided highly sensitive cost, customer, and marketing data to the Department. Secondly, Wieland maintains that it provided detailed responses to all of the Department's requests, and that it supplemented those responses where appropriate. Third, Wieland states that at no time did the Department indicate that its responses, as supplemented, were in any way deficient or that Wieland was not cooperating in the inquiry. Lastly, Wieland maintains that the information petitioners claim was omitted is not required and, in any event, could not overcome the plain fact that 667-series manganese brass is a wholly separate product from 200-series cartridge brass.

In addition, Wieland asserts there is no support in the statute or legislative history for petitioners' claim that the Department must rely on actual uses of the entries of 667-series brass made. Wieland insists that the objective characteristics and possible uses of a product are strongly indicative of whether that product, as a practical matter, can be substituted for the one covered by an antidumping duty order and thereby determinative of whether circumvention is occurring.

Department's Position: We disagree with petitioners. First, brass of the 667-series existed prior to, and at the time of, the initiation of the investigation on brass sheet and strip. At that time, petitioners specifically sought to include only 200-series brass in the scope of the Department's less than fair value investigation and the International Trade Commission's (ITC) injury determination. In the current inquiry, however, petitioners contend that Wieland is circumventing the order on 200-series brass by its importation of 667-series brass.

The Department has examined the possibility of substitution of 200-series brass with 667-series brass. The Department specifically sought and received information on record from C.D.A. brass metals experts concerning the likelihood and practical effect of such substitution. Based upon this information, the Department has determined that substitution is highly unlikely since under 200-series type applications, 667-series brass is subject to cracking and cannot maintain the

level of ductility of 200-series brass. Specifically, 200-series brass or cartridge brass is used almost exclusively for bullet shells or ammunition. In this application, the chemical structure of the metal must enable the materials to be drawn, stretched, and formed in order to make a shell which will not crack under firing conditions. Cartridge brass meets this requirement because it has the highest ductility of all the different types of brass. By contrast, 667-series brass does not meet such requirements and would be damaged if used in this application. This distinction has substantial practical implications for substitution. Accordingly, the Department has concluded that an objective standard provides some indication of whether circumvention is occurring in this case and fulfills Congress' dictate that we consider practical measurements.

The record in this case clearly indicates that: (1) 667-series brass existed prior to, and at the time of, the original investigation; (2) petitioners specifically sought to include only 200-series brass in their petition; and (3) there is evidence suggesting that substitution is unlikely because of significant differences in the two products, and there is no evidence indicating that substitution occurred. For these reasons, we cannot find a minor alteration in this case.

Comment 2: Petitioners are concerned that the Department has confused this circumvention inquiry with a scope clarification. Petitioners specifically question the Department's need to focus on a scope clarification analysis in the context of a preliminary determination on circumvention when petitioners, throughout the inquiry, have conceded that 667-series manganese brass was not within the scope of the original investigation.

Department's Position: As petitioners requested, the Department is conducting a circumvention inquiry, not a scope clarification. Indeed, had the petitioners' application not involved allegations of circumvention through minor alterations, it would have been unnecessary to pursue this matter further since the descriptions of the merchandise in the original petition, along with the Department and ITC's final determinations, make clear that 667-series brass is not within the scope of the antidumping duty order covering 200-series brass to the exclusion of other series of brass.

Thus, a matter separate from scope clarification, the Department independently evaluated each of the five criteria under the minor alterations provision as set forth in the legislative history on circumvention (see S. Rep. No. 71, 100th Cong., 1st Sess. 100 (1987)). First, the overall characteristics of the 667-series brass differ from those of the 200-series brass. The alloy, which is the essential characteristic of the products, differs between the two so as not to allow product interchangeability. Next, with regard to expectations of ultimate users and the use of the merchandise, we determined that substitution of 667- and 200-series brass is very unlikely and would result in an inferior product for the expected use for 200-series brass. Further, although the same channels of marketing are used for each product and Wieland estimates the costs of the products to be comparable, the Department does not regard this as dispositive and, in any event, these factors are subordinate in this case to overall physical characteristics, customer expectations, and use.

Furthermore, the Department also considered such factors as the circumstances under which manganese brass entered the United States, and the timing and volume of 667-series brass exported to the United States, in determining whether circumvention was occurring in this case. Even though shipments of 667-series brass began after the petition was filed, the quantities were moderate and shipped for test marketing purposes only, which shipments Wieland has since ceased.

Comment 3: Petitioners contend that the Department has drawn an extremely narrow and restrictive reading of the statutory concept of "minor alterations," as evidenced by the Department's reasoning that Wieland is not modifying its 200-series brass, but is instead manufacturing and exporting a different type of brass altogether. According to petitioners, such an interpretation is not supported by the statute. Instead, petitioners maintain that the determination should be based upon whether the class or kind of merchandise has been changed slightly, not whether a particular sale or order has been changed slightly. Petitioners claim that this interpretation is the sort of "practical measurement" that Congress intended.

Moreover, petitioners assert that German manganese brass was only brought to prominence after publication of the antidumping duty order on 200-series brass. Petitioners insist they were unaware of any domestic production or imports of 667-series brass prior to such publication. Accordingly, petitioners conclude they were reasonable in not designating the 667 alloy in their petition. Consequently, petitioners urge that in designating product coverage in their petition they should not be held to anticipate respondent's attempt to circumvent the antidumping duty order with an unusual alloy that respondent had never before sold in the United States.

In response, Wieland contends that 667-series brass is not a minor alteration of brass sheet and strip of the 200-series, but is instead a distinct and separate product. Wieland states that because 667-series brass does not involve a minor alteration of brass subject to the antidumping duty order, shipments of this product did not constitute circumvention.

Wieland maintains that the 667-series brass existed as a separate product at the time the petitioners filed their petition on 200-series brass. Wieland argues, moreover, that petitioners specifically excluded series 600 brass from the original investigation. According to Wieland, 667-series brass has long been recognized as a separate product, and its production by Wieland and sale in the United States is not a mere alteration of an existing product, but rather the production and marketing of an entirely different product. Wieland concludes that this result is clearly outside the reach of the "minor alterations" provision of the Tariff Act and does not represent the type of evasion which Congress sought to address.

In citing to the legislative history of the minor alterations provision, Wieland argues that there are clear distinctions between this case and examples cited in the legislative history. Specifically, Wieland points out that each example cited in the legislative history illustrates the case of a slight modification of an existing product which adds new and often superfluous features to the product, and that these are far different from this brass sheet and strip case which involves the production of an entirely different product, which predates the antidumping investigation, and which exhibits substantially different composition and characteristics.

Secondly, Wieland contends that the Department based its determination not only on each of the factors contained in the legislative history, but on other factors bearing on the circumstances surrounding the investigated entries, and the volume and timing of those entries. Wieland claims that the Department's use and interpretation of these additional criteria is fully consistent with Congress' intent and the Department's practice.

Department's Position: We disagree with petitioners. To accept petitioners' view that circumvention is present in

this instance would be tantamount to converting the minor alterations provision of the statute into one covering all alterations, both significant and minor. Such an interpretation would yield arbitrary results since it would reach products which are the result of normal business practices and not the result of circumvention activities.

By contrast, the legislative history states examples to illustrate conduct that constitutes circumvention through minor alterations. Specifically, the legislative history indicates that the application of fire resistance coating to cookware prior to importation, or the addition of a calculation or memory feature to portable electric typewriters prior to importation are clear examples of minor alterations which this circumvention provision is intended to address. Those products may be substituted for each other, whereas 200 and 667 brass may not. Moreover, the legislative history, either through examples or explanation of this provision, does not indicate that distinct products, which existed prior to the issuance of an order, should be included when they differ in significant respects.

Comment 4: Petitioners contend that they have been hampered by their limited access to Wieland's complete response. Specifically, petitioners contend that Wieland's report on its test marketing of 667-series brass in the United States could offer clues concerning the actual uses and expectations of Wieland's U.S. customers and should be made available to the petitioners under an administrative protective order.

Department's Position: Throughout this circumvention inquiry, the Department made available to the petitioners all proprietary data sought by petitioners, with limited exceptions. Accordingly, petitioners received the results of respondent's marketing test under the administrative protective order as contained in respondent's July 11, and September 29, 1989 responses.

Negative Final Determination of Circumvention

After a full examination of the comments received, we determine that Wieland is not circumventing the antidumping duty order on brass sheet and strip from Germany. This circumvention determination is in accordance with section 781(c) of the Tariff Act (19 U.S.C. 1677j) and 19 CFR 353.29 (1991).

Dated: December 11, 1991.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 91-30360 Filed 12-18-91; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

ACTION: Notice of application for an amendment to an export trade certificate of review.

SUMMARY: The Office of Export Trading Company Affairs (OETCA), International Trade Administration, Department of Commerce, has received an application for an amendment to an Export Trade Certificate of Review. This notice summarizes the amendment and requests comments relevant to whether the Certificate should be amended.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination of whether the Certificate should be amended. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, room 1800H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 89-A0010."

OETCA has received the following application for an amendment to Export Trade Certificate of Review No. 89-00010, which was issued on May 10, 1991 (56 FR 23284, May 21, 1991).

Summary of the Application

Applicant: Air-Conditioning & Refrigeration Institute, ("ARI"), 1501 Wilson Boulevard, suite 600, Arlington, Virginia 22209. Contact: Renee S. Hancher, Manager of International Trade, Telephone: (703) 524-8800.

Application No.: 89-A0010.

Date Deemed Submitted: December 10, 1991.

Request For Amended Conduct: ARI seeks to amend its Certificate to:

1. Add the following companies as "Members" within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2(1)): Alco Controls Division, Emerson Electric Company; Bristol Compressors, Inc.; Climate Master, Inc., A Subsidiary of LSB Industries; Eaton Corporation, Automotive & Appliance Controls Operation; Edwards Engineering Corporation; E.I. du Pont de Nemours & Company, Fluorochemicals Division; EVAPCO, Inc.; FHP Manufacturing Company, Division of Harrow Products, Inc.; Heat Exchangers, Inc.; Manitowoc Equipment Works, Division of Manitowoc Co., Inc.; Mile High Equipment Company; Mortex Products, Inc.; Parker Refrigeration Components Group, Parker-Hannifin Corporation; Paul Mueller Company; Scotsman Ice Systems; Servend International, Inc.; Superior Coils, Inc.; and Tecumseh Products Company;

2. Delete each of the following companies as a "Member" of the Certificate: Artesian Building Systems, Inc.; A.D. Auriema Inc.; Sundstrand Heat Transfer, Inc., Sundstrand Corp.; and Win-Tron Electronics Ltd.;

3. Change the listing of the company name of the following current "Members" as follows: Change Copeland Corporation to Copeland Corporation, Division of Emerson Electric Company; Kysor-Warren to Kysor/Warren; Lau Industries to Lau; Marvair Company to Crispaire; Sterling Radiator Division, Reed National Corp. to Sterling Radiator, A Division of Mestek, Inc.; Titus Products, Division of Phillips Industries, Inc. to TITUS; Turbotec Products, Inc. to Turbotec Products Inc.; Phillips Industries, Inc. to Tomkins Industries, Inc.; and Halsey Taylor, Scotsman Industries to Halsey Taylor Division, Elkay Manufacturing Company; and

4. Add (a) Refrigerant Recovery/Recycling Equipment; (b) Thermal Storage Equipment; and (c) Ground Source Closed-Loop Heat Pumps (ARI

Standard 330) as products to be covered by the Certificate.

Dated: December 13, 1991.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 91-30262 Filed 12-18-91; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Policy Board Advisory Committee; Meeting

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Policy Board Advisory Committee will meet in closed session on 7–8 January 1992 from 0900 until 1700 in the Pentagon, Washington, DC.

The mission of the Defense Policy Board is to provide the Secretary of Defense, Deputy Secretary of Defense and the Under Secretary of Defense for Policy with independent, informed advice and opinion concerning major matters of defense policy. At this meeting the Board will hold classified discussions on national security matters.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92-463, as amended [5 U.S.C. app. II, (1982)], it has been determined that this Defense Policy Board meeting concerns matters listed in 5 U.S.C. 552b (c)(1)(1982), and that accordingly this meeting will be closed to the public.

Dated: December 16, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-30349 Filed 12-18-91; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Air Force Institute of Technology Board of Visitors, a Subcommittee of the Air University Board of Visitors; Meeting

The Air Force Institute of Technology Board of Visitors, a Subcommittee of the Air University Board of Visitors, will hold an open meeting at 8:30 a.m. on 2 March 1992, in the Commandant's Conference Room (ten seats available), Building 125, Wright-Patterson Air Force Base, Ohio.

The purpose of the meeting is to give the board the opportunity to present to the Commandant, Air Force Institute of Technology, a report of findings and recommendations concerning the Institute's educational programs. The findings of the subcommittee will also be reported to the Commander, Air University, at the next regularly scheduled meeting of the Air University Board of Visitors.

For further information on this meeting, contact Lt. Col. Richard Nissing, Deputy Director, Operations and Plans, Directorate of Operations and Plans, Air Force Institute of Technology, (513) 255-5402 or 4219.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 91-30333 Filed 12-18-91; 8:45 am]

BILLING CODE 3910-01-M

Air University Board of Visitors; Meeting

The Air University Board of Visitors will hold an open meeting on 12–15 April 1992, beginning at 0810 in the Air University Conference Room, Air University Headquarters, Maxwell Air Force Base, Alabama (10 seats available).

The purpose of the meeting is to give the board an opportunity to review Air University educational programs and to present to the Commander, Air University, a report of their findings and recommendations concerning these programs.

For further information on this meeting, contact Dr. Dorothy D. Reed, Coordinator, Air University Board of Visitors, Headquarters, Air University, Maxwell Air Force Base, Alabama 36112-5001, telephone (205) 953-5159.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 91-30330 Filed 12-18-91; 8:45 am]

BILLING CODE 3920-01-M

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board of the Space and C³I Panel of 1992 Summer Study on Global Reach/Global Power will meet on 8–9 Jan 1992 from 8 a.m. to 5 p.m. at HQ/SPACECMD, Peterson AFB, CO.

The purpose of this meeting is to receive presentations and to hold discussions on Air Force Space and C³I projects and programs relevant to Global Reach/Global Power. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 91-30331 Filed 12-18-91; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board's Committee on Technology to Support Force Projection: Global Reach—Global Power will meet on 9–10 January 1992 at Phillips Lab, Kirtland AFB, NM, 8 a.m. to 5 p.m.

The purpose of this meeting is to receive briefings and gather information for the study.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697-4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 91-30332 Filed 12-18-91; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board's AFOTEC Advisory Group will meet on 14–15 January 1992, at HQ AFOTEC, Kirtland AFB, NM, 8 a.m. to 5 p.m.

The purpose of this meeting is to receive briefings and gather information for the study.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697-4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 91-30334 Filed 12-18-91; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board's Committee on Technology Options for Global Reach—Global Power: 1995–2020 (Mobility Panel) will meet on 16–17 January 1992, at HQ MAC, Scott AFB, IL, 8 a.m. to 5 p.m.

The purpose of this meeting is to receive briefings and gather information for the study.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 91–30335 Filed 12–18–91; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Notice of Intent To Prepare a Supplement to the Final Environmental Impact Statement (FEIS) on Navigation Improvement of Ft. Pierce Harbor, FL

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The proposed work consists of increasing the Ft. Pierce Harbor Entrance Channel from the existing 27-foot depth (mlw) by 350-foot width to 30 feet deep by 400 feet wide, increasing the inner channel from the existing 25-foot depth by 200-foot width to 28 feet deep by 250 wide, increasing the depth of the turning basin and berthing areas from the existing 25-foot depth to 28 feet, increasing the size of the turning basin to approximately 22 acres, and constructing a new 250-foot wide by 1250-foot long spur channel north from the turning basin.

EFFECTIVE DATE: December 19, 1991.

FOR FURTHER INFORMATION CONTACT: Dr. Jonathan D. Moulding, U.S. Army Corps of Engineers, P.O. Box 4970, Jacksonville, Florida 32232–0019, (904) 791–2286.

SUPPLEMENTARY INFORMATION:

1. The following alternatives will be considered:

a. Ocean disposal of dredged material.

b. Upland disposal of dredged material.

c. Alternative project dimensions.

2a. Comments on alternatives and environmental concerns are invited from any affected Federal, State, and local agencies, affected Indian tribes, and other private organizations and parties.

2b. Significant issues to be analyzed in depth in the EIS that have been identified to date are the rate of recovery of the rocky ledge habitat community in the channel, selection of a disposal site for the dredged material, and water quality effects during construction dredging.

2c. Coordination with appropriate Federal and State agencies is required under provisions of the Endangered Species Act and National Historic Preservation Act.

3. Scoping will be conducted by letter and through a Scoping meeting held in the Ft. Pierce area in January 1992.

4. The Draft Supplement EIS is expected to be available for review in the 3rd Quarter CY 1992.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 91–30329 Filed 12–18–91; 8:45 am]

BILLING CODE 3710–08–M

[AR 55–355]

Military Traffic Management Command, Department of the Army; Defense Traffic Management Regulation (AR 55–355, NAVSUPINST 4600.70, AFR 75–2, MCO P4600.24B, DLAR 4500.3)

AGENCY: Military Traffic Management Command, Department of the Army.

ACTION: Comments on proposal to allow DOD approved classes A&B carriers to trip lease.

SUMMARY: The following are proposed changes to Chapter 33 of the DMTR which prohibits the tripleasing of classes A & B explosives.

DATES: Comment period will end on January 21, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia McCormick, Headquarters, Military Traffic Management Command, ATTN: MTIN, 5611 Columbia Pike, Falls Church, VA 22041–5050, (703) 756–1596.

SUPPLEMENTARY INFORMATION: MTMC is authorized by DOD Directive 5160.53 to develop and maintain procedures for the movement of DOD shipments within the continental United States. MTMC is also required to ensure that DOD shipments are tendered to carriers able to meet DOD requirements at the lowest overall cost. Therefore, the following criteria have been established to ensure responsive service by the carrier industry as well as allow the carriers to maximize the use of equipment. Changes will be incorporated into chapter 33 of the Defense Traffic Management Regulation (DTMR) AR 55–355, NAVSUPINST 4600.70, AFR 75–2, MCO P4600.14B, DLAR 4500.3.

Facts

a. AR 55–355, chapter 33, 33–17, prohibits the use of trip leased commercial vehicles for the transport of Classes A or B ammunition, explosives or poison, or radioactive Yellow III label materials. This requirement was extended to any shipment requiring a Transportation Protective Service (TPS).

b. As a result of two serious incidents it became apparent that DOD needed to make closer checks on carriers and their drivers to ensure that the equipment was in good order and that the drivers were properly trained as to the hazards associated with the commodities. Also, strict control needed to be maintained to ensure minimal impact on the public should an accident occur.

This action will allow: a. Maximization of acceptable equipment in the transport of explosives by relaxing the tripleasing requirement for classes A & B explosives.

b. The integrity of the equipment and the qualifications of the drivers will be maintained by restricting tripleasing with only other DOD approved classes A & B carriers.

c. Minimization of potential shortages in regional areas of approved explosives carriers with adequate equipment and qualified drivers.

d. May increase potential for smaller, regional type carriers to compete in the market. The following criteria will apply: a. Carriers approved by MTMC to handle DOD classes A & B explosives will be authorized to trip lease with other approved carriers of classes A & B explosives.

b. Carriers must agree not to use any approved carrier which has been prohibited, for whatever reason, from participation in this type traffic or DOD traffic in general.

c. Failure on the part of the trip leased carrier, to provide the required safety and/or security for the shipment could result in adverse action against both the prime carrier and the trip leased carrier.

d. Any violations will be handled in accordance with established classes A & B agreement and the Military Traffic Management Command Regulation 15–1, which could result in the carrier not only losing its approval to handle DOD classes A & B but also nationwide action on its participation on all DOD traffic up to 3 years.

Upon adoption of the above, the classes A & B agreement will be revised to incorporate changes, thereby requiring all approved classes A & B carriers to initiate a new agreement.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 91–30328 Filed 12–18–91; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before January 21, 1992.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett (202) 708–5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Mary P. Liggett at the address specified above.

Dated: December 16, 1991.

Mary P. Liggett,

Acting Director, Office of Information Resources Management.

Office of Postsecondary Education

Type of Review: Revision.
Title: Summary Data Sheet/Listing Form.
Frequency: Annually.
Affected Public: Individuals, households, State or Local Government, Federal Agencies or employees, and Non-Profit Institutions.
Reporting Burden: Responses—57; *Burden Hours*—855.
Recordkeeping Burden: Recordkeepers—57; *Burden Hours*—4.56.
Abstract: The Department requests this data from State Education Agencies. The information will be used to prepare a State listing of schools in which teaching services will qualify the teachers for Defense/Direct and Perkins Loan Programs. ED will use the information to publish a directory of designated low-income elementary/secondary schools.

Office of Policy and Planning

Type of Review: New.
Title: Drug-Free Schools and Communities Act: Outcomes of DFSCA State and Local Programs.
Frequency: Annually.
Affected Public: Individuals, Households, State or Local Governments.
Reporting Burden: Responses—9,576; *Burden Hours*—4,816.
Recordkeeping Burden: Recordkeepers—0; *Burden Hours*—0.
Abstract: This study will collect data in order to examine the effectiveness of comprehensive School-Based Drug Prevention Programs. The Department will use this information to identify successful drug prevention strategies and in planning future directions for the Drug-Free Schools and Communities Act.

[FR Doc. 91–30367 Filed 12–18–91; 8:45 am]

BILLING CODE 4000–01–M

Notice Inviting Applications for New Awards for Fiscal Year 1992 Under the Drug-Free Schools and Communities Programs

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On September 18, 1991, a combined application notice establishing closing dates for many of the Department's direct grant and fellowship programs was published in the **Federal Register** (56 FR 47270).

On page 47281, change the application deadline date from January 21, 1992 to February 4, 1992, and the applications available date from December 6, 1991 to December 30, 1991, for (1) the Drug-Free Schools and Communities Program—Demonstration Grants to Institutions of Higher Education (CFDA 84.184A); and (2) the Drug-Free Schools Communities Program—Counselor Training Grants Program (CFDA 84.241A).

FOR APPLICATIONS OR INFORMATION CONTACT: The Division of Drug-Free Schools and Communities, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 2133, Washington, DC 20202-6439. Telephone: (202) 401–1258. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 3202, 3203, 3211.

Dated: December 13, 1991.

John T. MacDonald,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 91–30368 Filed 12–18–91; 8:45 am]

BILLING CODE 4000–01–M

ENDANGERED SPECIES COMMITTEE

Order and Rulings by Administrative Law Judge From Prehearing Conference Held on December 3–4, 1991, Setting of Discovery and Hearing Schedule, Date of Second Prehearing Conference, Other Hearing-Related Matters

AGENCY: Endangered Species Committee.

ACTION: Notice of Order and Rulings by Administrative Law Judge, Setting of Discovery and Hearing Schedule, Notice of Date and Location for Second Prehearing Conference, and Other Hearing-Related Matters.

SUMMARY: On September 11, 1991 the Bureau of Land Management, Department of the Interior, filed an application with the Secretary of the Interior seeking an exemption from section 7 of the Endangered Species Act that would permit the Bureau to hold timber sales on 44 tracts remaining in the Bureau's 1991 timber sales program in Oregon. See 56 FR 48546, September 25, 1991, the **Federal Register** notice

announcing receipt of the application. In accordance with 16 U.S.C. 1536(g) and 50 CFR 452.03, on October 1, 1991 the Secretary of the Interior made certain threshold determinations concerning the application and concluded that the application qualifies for consideration by the Endangered Species Committee. See 56 FR 54562, October 22, 1991, the **Federal Register** notice announcing the Secretary's determinations.

Under 16 U.S.C. 1536(g)(5) the Secretary, who serves as Chairman of the Endangered Species Committee, has 140 days from the date he determines that the application qualifies for consideration to conduct a fact-finding hearing to develop the record from which he will prepare a report to the Committee under 16 U.S.C. 1536(g)(4)–(8) and 50 CFR part 452 and to complete the report and provide it to the Committee. Section 1536(g)(5) permits this 140-day period to be extended upon the mutual agreement of the Secretary and the exemption applicant.

The Secretary of the Interior has designated Harvey C. Sweitzer, an administrative law judge, to conduct the fact-finding hearing. See 56 FR 57633, November 13, 1991. The administrative law judge will be assisted by the staff of the Endangered Species Committee, which will include the Division of General Law, Office of the Solicitor, Department of the Interior, and the Office of Program Analysis, Department of the Interior. The hearing will take place in Portland, Oregon beginning on January 8, 1992 at 9 a.m. at 911 Federal Building (Old Bonneville Power Administration Building), 911 Northeast 11th Street, Portland, Oregon 97208. It is anticipated that the hearing will continue until January 30, 1992. A prehearing conference will take place at the same location on January 7, 1992 at 9 a.m.

The administrative law judge conducted a prehearing conference on December 3–4, 1991, in Portland, Oregon. See 56 FR 57633, November 13, 1991. Participants in the prehearing conference were the Bureau of Land Management, the United States Fish and Wildlife Service, and the groups that timely filed petitions to intervene in accordance with 50 CFR 452.06(b). The prehearing conference dealt with the matters cited in 50 CFR 452.05(b)(1), and resulted in the issuance of a prehearing conference order on December 11, 1991, which set general discovery and hearing schedules, granted of motions to intervene, narrowed specific areas of fact and law to be addressed at the hearing, invited briefs on specific matters of law and procedure, and announced the date of a second prehearing conference to take place immediately prior to the commencement of the hearing.

On December 16, 1991, the administrative law judge issued an addendum to his prehearing order modifying several of the filing deadlines set forth in the December 11 order. Both the December 11 order (as issued by the administrative law judge) and the addendum are set forth below.

Order

A prehearing conference was held in Portland, Oregon on December 3 and 4, 1991, in the above-captioned matter pursuant to 56 FR 57633–36 (Nov. 13, 1991). The following rulings are hereby issued, reflecting and clarifying matters discussed during the conference.

(1.) *Definitions.* As used herein:

(a). "Parties" without qualification, intends parties intervenor (both full and limited) as well as the original parties (BLM and FWS) in the matter.

(b.) "Order of November 26, 1991" intends the Order of that date issued in this matter by the undersigned, a copy of which was served on all parties and potential parties.

(c.) "Filed" means received by mail or personal delivery, or by facsimile transmission, by Administrative Law Judge (ALJ), Office of Hearings and Appeals (OHA), 6432 Federal Building, Salt Lake City, Utah 84138, (801) 524–5539 (fax). If a document is filed by facsimile transmission, the ALJ shall be provided with the actual document by mail or personal delivery as soon as reasonably possible. (It is requested that each document be in duplicate.)

(d.) "Served" means received by mail, personal delivery, or facsimile transmission at the offices of each party's counsel. If by facsimile transmission, counsel shall be provided a copy of the actual document by mail or personal delivery as early as practicable. (Note that 5 copies are also to be sent to Ms. Abate pursuant to 56 FR 57634.)

(2.) *Intervenors.* (a.) Full status as parties intervenor is granted to the following organizations, their petitions to intervene having met the pertinent requirement for intervention:

(i.) The Northwest Forest Resource Council, Western Council of Industrial Workers, Northwest Forestry Association, Western Forest Industries Association, C&D Lumber Co., Swanson Brothers Lumber Co., Rogge Forest Products, Inc., and Pope & Talbot, Inc. (hereinafter collectively referred to as "NFRC");

(ii.) Portland Audubon Society, Lane County Audubon Society, Pilchuck Audubon Society, National Audubon Society, Oregon Natural Resources Council, Headwaters, Sierra Club, The Wilderness Society, Defenders of Wildlife, and National Wildlife Federation (hereinafter collectively referred to as "PAS");

(iii.) Association of O&C Counties, Coos County, Douglas County, Lake County, Polk County and Yamhill County (hereinafter collectively referred to as "O&C Counties");

(iv.) Oregon Land Coalition (OLC).

NFRC, O&C Counties, and OLC shall pool cross-examination to the end that only one counsel shall cross-examine a witness on behalf of the three entities.

(b.) Limited Intervenor status is granted to the State of Oregon (State) pursuant to the oral agreement of the State and the other parties, for the purpose of possible submission of evidence. Evidence shall not be proffered by the State until the original parties and full intervenors have completed their cases in chief, and shall be subject to cross-examination. The State shall not cross-examine witnesses, except that it may cross-examine employees of the State who are called as witnesses by other parties. Its participation in the hearing shall be governed by the same time schedule as governs the other parties.

(c.) Conditional limited intervention status is granted to the Environmental Protection Agency (EPA). Evidence shall not be proffered by EPA until the State has had opportunity to make its proffer. EPA shall not cross-examine witnesses except under extraordinary circumstances upon a showing of good cause. its participation in the hearing shall be governed by the same time schedules as govern the other parties.

(d.) By December 13, 1991, the EPA shall serve the internal memorandum regarding the separation of functions within the EPA which was filed by telefax on December 5, 1991, and shall file and serve a document setting forth:

(i.) The interest of EPA or a division thereof in this proceeding;

(ii.) The anticipated contribution to the determination of the issues in these proceeding to be made by EPA or a division thereof;

(iii.) A description of any communications between any person who has been, is, or will be involved in the representation of EPA or a division thereof in this proceeding and any member of the Endangered Species Committed (ESC) or any employee assisting such ESC member, that have taken place on or after October 1, 1991, and pertained to the substantive issues

to be reviewed and determined as result of this proceeding.

(iv.) A discussion of whether any such communications may bias any member of the ESC, and

(v.) Any other facts or law bearing upon the propriety of permitting limited intervention by EPA or a division thereof.

(e.) Within 5 days following receipt of EPA's documentation, any party may file and serve a motion for reconsideration of the above Order allowing EPA limited intervenor status.

(f.) On December 2, 1991, the Forest Conservation Council requested withdrawal of its written petition for intervenor status. The request to withdraw is granted.

(3.) *Dispositive motions.* On December 2, 1991, FWS and PAS filed questions, regarding the propriety of reaching a decision on BLM's application. FWS requested that its questions be certified to the Endangered Species Committee for rulings prior to the beginning of the hearing. At the prehearing conference, both FWS and PAS agreed that motions relating to these questions would be filed by December 9. Motions and supporting memoranda were received from FWS and PAS. Response briefs on these issues, subject to the rulings of law set forth in this paragraph, shall be filed and received no later than noon, December 24, 1991. Reply briefs shall be filed and received no later than December 27, 1991.

(4.) *Clarification of issues to be briefed.* In view of the issues raised in the December 9 submissions by FWS and PAS, the following clarifications are set forth for purposes of briefing and ruling on these motions:

(a.) Compliance with the National Environmental Policy Act (NEPA) is relevant in light of section 7(k) of the ESA only to the extent that the applicant must be able to show that "an environmental impact statement which discusses the impacts upon endangered species or threatened species or their critical habitats shall have been previously prepared with respect to any agency action exempted by such order." 16 U.S.C. 1536(k). The parties are invited to submit briefs regarding how section 7(k) is to be interpreted and the relationship of such interpretation of law to the facts to be developed at the hearing. Such briefs shall be filed by December 31, 1991.

(b.) Under the ESA and the regulations, the Secretary of the Interior was required to make specific "threshold" determinations regarding the completeness of the exemption application. 16 U.S.C. 1536(g)(3), (4); 50 CFR 452.03. The Committee may and did convene to examine BLM's application only after a finding by the Secretary that the threshold criteria were met. The ESA and the regulations prescribe the criteria by which the Committee may grant some form of exemption for the proposed action, if any. 16 U.S.C. 1536(h); 50 CFR 453.03. These criteria do not include revisiting the threshold determinations. Accordingly, reexamination of the threshold rulings are not properly within the province of the hearing to be conducted and argument or evidence pertaining thereto may be excluded on the grounds of irrelevancy.

In light of this conclusion of law, the parties are advised that they need not brief or present evidence regarding the issue of the validity or correctness of the threshold rulings, except to the extent that the facts relating to said issue may be relevant to the criteria for determining whether an exemption should be granted, as set forth in 16 U.S.C. 1536(h)(1). As further clarification, the aforementioned conclusion of law applies to the threshold determination, challenged by FWS and PAS in their motions, that BLM and FWS carried out the consultation responsibilities in good faith and made a reasonable and responsible effort to develop and fairly consider modifications or reasonable and prudent alternatives to the proposed agency action.

(c.) The question of whether the BLM should have consulted on the overall Jamison strategy is not at issue in this proceeding. Said question may not be considered in this proceeding because the question is already at issue before the Court of Appeals, Ninth Circuit, on appeal of *Lane County Audubon Society v. Jamison*, Civ. No. 91-61230-HO (D. Or. Sept. 11, 1991).

(d.) Reexamination of the validity of the FWS's jeopardy determinations regarding BLM's 44 proposed FY 1991 timber sales is not properly within the province of the hearing to be conducted.

(5.) *Rules of evidence.* Admissibility of evidence at the hearing will be consistent with the Administrative Procedure Act. See especially 5 U.S.C. 556(d). The Federal Rules of Evidence (FRE) shall be used for guidance, and shall be liberally construed. Irrelevant, immaterial, unreliable, or unduly repetitious evidence shall not be received. Rule 403 (FRE) will be employed in that "[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice [etc.] or by considerations of undue delay [etc.]" Hearsay shall be received if it appears reliable and is not otherwise improper. Where a copy of a document is offered without a proffer of the original, the accuracy and authenticity of the document may be assumed unless questioned. Where the ALJ deems an objection to proffered evidence should be considered with regard to weight to be accorded the evidence rather than to its admissibility, the evidence may be received with mention thereof for consideration by the ESC.

(6.) *Witness lists.* Witness Lists shall be filed and served by December 9, 1991. Each party's witness list shall set forth the names, addresses, and qualifications of all witnesses it intends to call at the hearing in this matter and a brief but accurate statement of each witness' expected testimony.

(7.) *Direct evidence.* Direct testimony in support of each party's case in chief shall be reduced to writing, sworn to under oath, and filed and served by December 27, 1991. A copy of each proposed exhibit, or an accurate description of the same, shall accompany said filing and service. (Any objections thereto may be made at the hearing.) Additional direct testimony and exhibits may be submitted after said date in writing or orally at hearing only upon a showing of good cause, to include an explanation of why the need for the same was not reasonably anticipated by December 27, 1991. Testimony recorded on videotape shall not be admitted except under extraordinary circumstances upon a motion demonstrating good cause for admission.

(8.) *Notification of cross-examination.* Each party shall file and serve by January 3, 1992, a list of witnesses which it intends to cross-examine at the hearing. Any witness who is not so listed, although his direct testimony is submitted as aforesaid, need not attend the hearing.

(9.) *Discovery.* Except as otherwise provided herein, rules 26, 33, 34, and 36 of the Federal Rules of Civil Procedure shall govern the conduct of discovery in this proceeding.

(a.) Depositions: Depositions shall not be taken except under extraordinary circumstances upon a motion demonstrating good cause.

(b.) Other Discovery: Any discovery shall ordinarily consist of written interrogatories, requests for production of documents, and requests for admissions. The parties are not required to move for permission to employ these methods of discovery.

(c.) Discovery Requests: Discovery requests shall be served on all parties but shall not be filed with the ALJ nor

with the ESC staff. Initial and supplemental discovery requests shall be served by December 9, 1991, and by December 30, 1991, respectively.

(d.) Responses to Discovery Requests: Responses to initial and supplemental discovery requests shall be served by December 20, 1991, and by January 3, 1992, respectively; except that responses to a discovery request filed and served prior to December 5, 1991, shall be filed and served by December 9, 1991.

(e.) Objections to Discovery Requests: Objections to any discovery request shall be filed and served on or before the earlier of January 3, 1992, or 5 days after service of such request upon the party objecting to the request; except that objections to a discovery request filed and served prior to December 5, 1991, shall be filed and served no later than December 9, 1991.

(f.) Responses to Discovery Objections: Responses to such objections shall be filed with and received by the ALJ no later than 3 days following receipt of the objections.

(10.) *Motions; Communications with the Administrative Law Judge.*

(a.) All motions or any other communications by the parties with the ALJ prior to the hearing shall be in writing and duly served. See 50 CFR 452.05(d)(2)(iii).

(b.) Any response to a motion (except a motion relating to discovery) filed with the ALJ shall be filed and served within 5 days after receipt of the motion.

(c.) Any reply to such a response shall be filed and served within 5 days after receipt of the response.

(11.) *Stipulations of fact and law.* The parties and intervenors were unable to agree to any stipulations of fact or law at the prehearing conference. Such stipulations are strongly encouraged, and should be filed as soon as possible.

(12.) *Prehearing conference.* Another prehearing conference shall be held on January 7, 1992, commencing at 9 a.m., in Conference Room C, 911 Federal Building (Old Bonneville Power Administration Building), 911 NE. 11th Street, Portland, Oregon. The prehearing conference shall deal with any additional matters which may aid in the disposition of the proceeding.

(13.) *Time table governing discovery, required documents, and the conduct of the hearing.* For clarity and convenience, the dates for filing and serving certain documents are reiterated in the schedule set forth below, which schedule shall govern the conduct of this proceeding:

(a.) Final witness lists.	December 9, 1991.
(b.) Responses and objections to pre-12/5/91 discovery requests.	December 9, 1991.
(c.) Initial discovery requests.	December 9, 1991.
(d.) Objections to initial discovery requests.	Within 5 days of receipt of request.
(e.) Responses to objections.	Within 3 days of receipt of objection.
(f.) Responses to initial discovery.	December 20, 1991.
(g.) Pre-filed direct testimony & exhibits.	December 27, 1991.
(h.) Supplemental discovery requests.	December 30, 1991.
(i.) Responses and objections to supplemental discovery.	Earlier of January 3, 1992, or 5 days after receipt.
(j.) Lists of witnesses to be called at cross-examination at hearing.	January 3, 1992.
(k.) Pre-hearing conference.	January 7, 1992.
(l.) Hearing commences.	January 8, 1992.

Presentation of evidence and cross-examination shall take place pursuant to the following schedule:

6 days (maximum)	Case in chief of proponents (i.e., BLM, NFRC, O & C Counties, and OLC).
6 days (maximum)	Case in chief of opponents (i.e., FWS and PAS).
1 day (maximum)	Opponents' rebuttal.
1 day (maximum)	Proponents' rebuttal.
1 day (maximum)	Limited intervenors.
1 day (maximum)	Other matters.
(m.) Hearing closes	No later than January 30, 1992.
(n.) Posthearing briefs.	February 7, 1992.

(14.) *Posthearing brief.* Each party may file a posthearing brief. Any such brief shall be filed and served by February 7, 1992. No responses to such briefs shall be allowed.

(15.) *Applicability of November 26, 1991, order.* The Order of November 26, 1991, is vacated to the extent that it is inconsistent with this Prehearing Conference Order. To the extent not so inconsistent, it remains in effect.

(16.) *Reminder.* The parties are strongly encouraged to consult the November 13, 1991, **Federal Register** notice (56 FR 57633, 57634–57636) for guidance regarding the kind of empirical and analytical evidence that should be most beneficial to the ESC in its analysis of the criteria for determination of whether or not an exemption is appropriate.

Harvey C. Sweitzer,
Administrative Law Judge.

Addendum to Prehearing Order

Following review of the prehearing conference order dated December 11, 1991, FWS' motion (filed December 11, 1991) to extend the deadline for filing its response brief regarding the two jurisdictional questions raised by FWS, PAS' motion (filed December 11, 1991) to extend the deadline for filing a reply brief regarding PAS' motion to terminate the proceedings, and FWS' motion (filed December 13, 1991) to clarify said order, and NFRC's opposition (filed December 16, 1991) to the latter motion, the following rulings are entered clarifying, supplementing, and modifying the said order.

1. The docket number for this proceeding is "ESA 91–1" and all future applicable documentation should reference this docket number. An additional letter or number utilized in reference to the petitions for intervention which were filed is now unnecessary.

2. FWS' motion to extend from December 27 to December 30, 1991, the deadline for filing a response brief regarding the two jurisdictional questions raised by FWS is granted.

3. PAS' motion to extend from December 27 to December 30, 1991, the deadline for filing a reply brief regarding PAS' motion to terminate the proceedings is granted.

4. To conform said order to the content of the discussions during the prehearing conference, FWS' motion to clarify said order is granted in that the concluding phrase of paragraph 9(d) of the order is omitted; paragraph 9(d) is thus modified to read: "Responses to Discovery Requests. Responses to initial and supplemental discovery requests shall be served by December 20, 1991, and by January 3, 1992, respectively."

5. As clarification of paragraph 10(a) of said order, the parties are advised that communications with the office of the administrative law judge (ALJ) regarding nonsubstantive matters, such as an inquiry regarding whether a document was received by OHA, may be made by telephone and need not be in writing nor served on other parties or Ms. Barbara Abate of the Office of the Solicitor in Washington, DC.

6. Only one copy, rather than five, of any motion to compel discovery, objection to discovery, or response to objection to discovery, need be provided to Ms. Barbara Abate. For all other

motions and documents filed with the ALJ, five copies thereof should continue to be sent to Ms. Abate, as provided at 56 FR 57833, 57834.

7. The following sentence is added to paragraph 7 of the order: "Exhibits should be identified by the offering party's abbreviation followed by the applicable number, e.g., 'BLM–1,' 'FWS–1,' etc.

Harvey C. Sweitzer,

Administrative Law Judge.

ADDRESSES: Motions should be filed with Administrative Law Judge Sweitzer, Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 6432 Federal Building, Salt Lake City, Utah 84138. Five copies of all motions and other documents required to be filed with the administrative law judge must be sent to Ms. Barbara Abate, room 6531, U.S. Department of the Interior, Washington, DC 20240. Any documents filed with the administrative law judge must also be served on all participants. The participants' addresses are: (1) Bureau of Land Management, c/o Paul Smyth, Esq., room 6311, Office of the Solicitor, U.S. Department of the Interior, Washington, DC 20240; (2) U.S. Fish and Wildlife Service, c/o Dan Shillito, Esq., room 6560, Office of the Solicitor, U.S. Department of the Interior, Washington, DC 20240; Northwest Forest Resource Counsel, c/o Mark C. Rutzik, Esq., Preston, Thorgrimson, Shidler, Gates & Ellis, 111 SW. Fifth Avenue, suite 3200, Portland, OR 97204–3688; Portland Audubon Society, c/o Victor M. Sher, Esq., Sierra Club Legal Defense Fund, Inc., 203 Hoge Bldg., 705 Second Avenue, Seattle, WA 981–4–1711; Association of O&C Counties, c/o Kevin Q. Davis, Esq., Stoel, Rives, Boley, Jones & Grey, Standard Insurance Bldg., 900 SW. Fifth Avenue, Suite 2300, Portland, OR 97204–1268; Oregon Lands Coalition, c/o William Perry Pendley, Esq., Mountain States Legal Foundation, 1660 Lincoln Street, suite 2300, Denver, CO 80264; State of Oregon, c/o Melinda L. Bruce, Esq., Assistant Attorney General, Department of Justice, State of Oregon, 1162 Court Street, Salem, OR 97310–0560; Environmental Protection Agency, c/o Anthony F. Guadagno, Esq., Grants Law Branch, Office of General Counsel (LE–132G), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Correspondence to the Chairman or the Committee should be addressed to the Executive Secretariat, U.S. Department of the Interior, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Copies of the exemption application may be inspected without charge and may be obtained for a fee of $221.00 at the Natural Resources Library, 1st floor, Department of the Interior, 1849 C St., NW., Washington, DC 20240. The Administrative Record can also be reviewed on a laser image storage device at the Library, from 1 p.m. until 5 p.m. Monday through Friday, Federal holidays excepted. In addition, copies of the application are being offered for sale by the Superintendent of Documents, and will also be available for examination free of charge at all U.S. Government Depository libraries. Further, the application and the Administrative Record can be reviewed in Portland, Oregon at the following location from 8–11 a.m. and 1–3 p.m. Pacific time, Monday through Friday, Federal holidays expected: Office of Environmental Affairs, Department of the Interior, 500 NE. Multnomah, St., suite 600, Portland, Oregon 97232–2036. Because of the small size of the reviewing facility, persons wishing to review the documentation should telephone the facility at (503) 231–6157 or FTS 429–6157 to establish a time for the review. Questions concerning the exemption process may be addressed to Jon H. Goldstein at (202) 208–4077 or FTS 268–4077.

Thomas L. Sansonetti,

Counsel, Endangered Species Committee.

[FR Doc. 91–30483 Filed 12–17–91; 2:18 pm]

BILLING CODE 4310–RIS–M

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Secretary of Energy Advisory Board.

Date and Time: Wednesday, January 8, 1992, 8:30 a.m.–4:30 p.m.

Location: Crystal Ballroom, Sheraton Carlton Hotel, 923 16th Street and K Street NW., Washington, DC 20006.

Contact: Dr. Robert M. Simon, Designated Federal Officer, 1000 Independence Avenue SW., Washington, DC 20585 (202) 586–7092.

Purpose: The Board was established to serve as the Secretary of Energy's primary mechanism for long-range planning and analysis of major issues facing the Department of Energy. The Board will advise the Secretary on the research, development, energy and national defense responsibilities, activities, and operations of the Department and provide expert guidance in these areas to the Department.

Tentative Agenda

Location: Crystal Ballroom, Sheraton Carlton Hotel, 923 16th Street and K Street, NW., Washington, DC 20006.

Wednesday, January 8, 1992, 8:30 a.m.–4:30 p.m.

8:30 a.m.—Call to order and introductions Welcoming remarks.
8:45 a.m.—Interim reports by task forces and working group.
10:30 a.m.—Break.
10:45 a.m.—Interim report by task forces and working group.
Noon-1:00 p.m.—Lunch.
1:00 p.m.—Interim reports by task forces and working group.
2:45 p.m.—Break.
3:00 p.m.—Discussion of future SEAB activities.
4:15 p.m.—Public Comment.
4:30 p.m.—Adjourn.

Public Participation: The Chairman of the Task Force is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business.

Any member of the public who wishes to make an oral statement pertaining to agenda items should contact the Designated Federal Officer at the address or telephone number listed above. Requests must be received before 3 p.m. (e.d.t.) Friday, January 3, 1992, and reasonable provision will be made to include the presentation during the public comment period. It is requested that oral presenters provide 15 copies of their statements at the time of their presentations.

Written testimony pertaining to agenda items may be submitted prior to the meeting. Written testimony must be received by the Designated Federal Officer at the address shown above before 5 p.m. (e.d.t.) Friday, January 3, 1992, to assure that it is considered by Task Force members during the meeting.

Minutes: A transcript of the meeting will be available for public review and copying approximately 30 days following the meeting at the Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW. Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday except Federal holidays.

Issued: Washington, DC.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 91–30361 Filed 12–18–91; 8:45 am]

BILLING CODE 6450–01–M

Secretary of Energy Advisory Board, Task Force on Radioactive Waste Management; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Secretary of Energy Advisory Board Task Force on Radioactive Waste Management.

Date and Time: January 9, 1992, 8:30 a.m.–4 p.m.

Place: Kimball Conference Room, First Floor, National Wildlife Federation, 1400 16th Street, NW. Washington, DC 20036.

Contact: Dr. Daniel S. Metlay, AC–1, Designated Federal Officer. 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–3903.

Purpose: The Secretary of Energy Advisory Board Task Force on Radioactive Waste Management was established in October 1990 to: (1) identify the factors that affect the level of public trust and confidence in Department of Energy programs; (2) assess the effectiveness of alternative financial, organizational, legal, and regulatory arrangements in promoting public trust and confidence; (3) consider the effects on other programmatic objectives, such as cost and timely acceptance of waste, of those alternative arrangements; and (4) provide the Secretary with recommendations and guidance for implementing those recommendations.

Tentative agenda

Thursday, January 9, 1992 8:30 a.m–4 p.m.

8:30 a.m.–9 a.m.—Introduction and Welcome.
9:00 a.m.–10:45 a.m.—Presentations by Office of Civilian Radioactive Waste Management.
10:45 a.m.–11:00 a.m.—Break.
11:00 a.m.–12:00 p.m.—Presentation by Assistant Secretary of Environmental Restoration and Waste Management Leo Duffy.
12:00 p.m.–1:30 p.m.—Lunch break.
1:30 p.m.–3:30 p.m.—Presentations by Office of Environmental Restoration and Waste Management.
3:30 p.m.–4 p.m.—Public comment.
4:00 p.m.—Adjourn.

Public Participation: The Chairman of the Task Force is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business.

Members of the public are welcome to comment at the meeting on any of these presentations or to provide views on other matters that fall within the scope of the Task Force's Work. It is requested that those individuals provide 15 copies of their statements at the time of their presentation. Members of the public may also submit written comments to Dr. Metlay at the address given above.

Minutes: A transcript of the meeting will be available for public review and copying approximately 30 days following the meeting a the Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m. Monday through Friday except Federal holidays.

Issued: Washington, DC.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 91–30362 Filed 12–18–91; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of request submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96–511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (a DOE component which term includes the Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed within 30 days of publication of this notice. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254–5348.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC–556
3. 1902–0075
4. Cogeneration and Small Power Production
5. Extension
6. On occasion
7. Required to obtain or retain a benefit
8. State or local governments, Businesses or other for-profit, Small businesses or organizations
9. 344 respondents
10. 1 reponse
11. 6 hours per response
12. 2,064 hours
13. To encourage small power production and cogeneration, the Public Utilities Regulatory Policies Act of 1978 confers certain benefits on small power production and cogeneration facilities that meet particular ownership and technical criteria. FERC–556 specifies the criteria that must be met and the process for which such benefits may be obtained.

Statutory Authority

Sec. 5(a), 5(b), 13(b), and 52, Pub. L. No. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, December 13, 1991.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 91–30363 Filed 12–18–91; 8:45 am]

BILLING CODE 6450–01–M

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Notice of a request submitted for emergency processing by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection listed at the end of this notice to the Office of

Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96–511, 44 U.S.C. 3501 *et seq.*).

The entry contains the following information: (1) The sponsor of the collection; (2) Collection number; (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation. i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Under the provisions of 5 CFR 1320.15 and 1320.18, the Agency has requested that the Office of Management and Budget take action within three days of receipt.

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254–5348.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Energy Information Administration
2. EIA-819
3. N/A
4. Monthly Oxygenate Telephone Report
5. New
6. Monthly
7. Mandatory
8. Businesses or other for-profit; Federal agencies or employees
9. 101 respondents
10. 3 responses
11. .50 hour per response
12. 152 hours
13. This collection will be used to measure the availability of oxygenates in 1992 which can be used to produce finished motor gasoline that meets the Clean Air Act of 1990 requirements.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. No. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, December 13, 1991.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 91–30364 Filed 12–19–91; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. RP91–161–005]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 13, 1991.

Take notice that Columbia Gas Transmission Corporation (Columbia) on December 4, 1991, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, with the proposed effective date of December 1, 1991:

Second Substitute Eleventh Revised Sheet No. 26C
Second Substitute Second Revised Sheet No. 26D

On November 27, 1991, Columbia filed to place its motion rates in Docket No. RP91–161–000, et al., into effect on December 1, 1991. Subsequent to that filing, Columbia determined that the retainage percentage and the charge for Fuel as set forth on the tariff sheets were inadvertently stated at 2.40% and 5.32c per Dth, respectively, instead of the filed for 2.33% retainage percentage and the revised Fuel Charge of 5.15c per Dth. Therefore, the instant filing is being submitted to reflect the proper retainage percentage and Fuel Charge to be effective December 1, 1991.

Columbia states that copies of the filing were served upon Columbia's jurisdictional customers and interested State commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before December 20, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–30236 Filed 12–18–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM92–6–21–001]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 13, 1991.

Take notice that Columbia Gas Transmission Corporation (Columbia) on December 4, 1991, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, with the proposed effective date of January 1, 1992:

Substitute Second Revised Eleventh Revised Sheet No. 26C
Substitute Second Revised Second Revised Sheet No. 26D

On November 27, 1991, Columbia filed tariff sheets to implement the 1992 Gas Research Institute (GRI) funding unit, as authorized by FERC Opinion No. 365. Subsequent to that filing, Columbia filed to correct an error on certain tariff sheets filed November 27, 1991 at Docket No. RP91–161, to be effective December 1, 1991, which are the underlying sheets to the GRI filing. The instant filing is being submitted to correct those errors and reflect the proper retainage percentage of 2.33% and revised Fuel Charge of 5.15¢ per Dth.

Columbia states that copies of the filing were served on Columbia's jurisdictional customers and interested State commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before December 20, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–30238 Filed 12–18–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CI92-9-000]

Grace Petroleum Corp.; Application for Certificate

December 13, 1991.

Take notice that the Applicant listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce as described herein, all as more fully described in the application which is on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 2, 1992, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Description
CI92-9-000 (CI78-143) F 11-15-91.	Grace Petroleum Corporation, 6501 North Broadway, Oklahoma City, Oklahoma 73116.	NGC Energy, Inc., Lakeside Field, Bryan County, Oklahoma.	Acreage acquired 4-1-90 from Chevron U.S.A. Inc.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Assignment of acreage; E—Succession; F—Partial Succession.

[FR Doc. 91-30230 Filed 12-18-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-144-002]

Great Lakes Gas Transmission Limited Partnership; Proposed Changes on FERC Gas Tariff

December 13, 1991.

Take notice that Great Lakes Gas Transmission Limited Partnership ("Great Lakes") on December 3, 1991 tendered for filing Substitute Eleventh Revised Sheet No. 53-B to its FERC Gas Tariff, Original Volume No. 2, to be effective June 1, 1991.

Great Lakes states that this tariff sheet is being filed as a substitute to a tariff sheet filed on October 30, 1991 which inadvertently contained an incorrect pagination reference.

Great Lakes states that copies of the filing were served on all of Great Lakes' customers and the Public Service Commissions of Minnesota, Michigan and Wisconsin.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before December 20, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-30239 Filed 12-18-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA92-1-53-002 and TA92-2-53-001]

K N Energy, Inc.; Proposed Changes in FERC Gas Tariff

December 13, 1991.

Take notice that K N Energy, Inc. ("K N") on December 9, 1991 tendered for filing proposed changes in its FERC Gas Tariff to adjust the rates charged to its jurisdictional customers in order to comply with the Commission's Order in K N's Annual PGA requiring restatement of rates to correctly reflect pipeline supplier rates from Colorado Interstate Gas Company. The filing proposes increases (decreases) to K N's rates per Mcf as set forth in the table below:

	Zone 1	Zone 2
CD, SF and WPS Commodity	$(0.0099)	$(0.0099)
D1 Demand	.0002	.0002
D2 Demand	.0006	.0008
WPS Demand	.0004	.0004
IOR Commodity	(0.0091)	(0.0089)

The proposed revisions in PGA gas cost also require refiling tariff sheets filed with K N's annual GRI filing (Docket No. TM92-2-53-000).

K N states that copies of the filing were served upon K N's jurisdictional customers and interested public bodies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before December 20, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-30242 Filed 12-18-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-181-002]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

December 13, 1991.

Take notice that Northern Natural Gas Company (Northern) on December 6, 1991, tendered for filing to become part of Northern's FERC Gas Tariff, the following tariff sheets:

Third Revised Volume No. 1

Fifth Revised Sheet No. 70B

Original Volume No. 2

Seventh Revised Sheet No. 11.2

Northern states that such tariff sheets, with a proposed effective date of July 26, 1991, are being submitted in compliance with the Commission's November 21, 1991 Order in Docket Nos. RP91-181-000 and RP91-181-001, which amends Northern's Purchased Gas Adjustment clause (PGA) to provide notice to Northern's customers that it intends to

direct bill or refund its balance in Account 191 in the event of termination or suspension of its PGA.

Northern further states that copies of the filing have been mailed to each of its customers and interested State commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 20, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois C. Cashell,

Secretary.

[FR Doc. 91-30237 Filed 12-18-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-166-000]

Northwest Pipeline Corp.; Informal Settlement Conference

December 13, 1991.

Take notice that an informal settlement conference will be convened in this proceeding on Wednesday, January 15, 1992, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC 20426, 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 Marc G. Denkinger (202) 208-2215 or Joan Dreskin (202) 208-0738.

Lois D. Cashell,

Secretary

[FR Doc. 91-30233 Filed 12-18-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-4-17-001]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 13, 1991.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on December 3, 1991 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheet:

Sub Fortieth Revised Sheet No. 50.2

Texas Eastern states that this substitute tariff sheet is being filed for the sole purpose of reflecting the correct Rate Schedule ISS-1 rate on the tariff sheet previously filed on November 25, 1991.

The proposed effective date of the tariff sheet listed above is January 1, 1992.

Texas Eastern states that copies of the filing served on Texas Eastern's jurisdictional customers and interested State commissions. Texas Eastern further states that copies of the filing have also been mailed to all Rate Schedule FT-1 and IT-1 Shippers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before December 20, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-30241 Filed 12-18-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA92-2-18-000]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 13, 1991.

Take notice that Texas Gas Transmission Corporation (Texas Gas), on December 10, 1991, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Forty-ninth Revised Sheet No. 10
Forty-ninth Revised Sheet No. 10A
Thirtieth Revised Sheet No. 11
Twentieth Revised Sheet No. 11A
Twentieth Revised Sheet No. 11B

Texas Gas states that these tariff sheets are being filed to comply with the Commission's Letter Order dated December 4, 1991, rejecting Texas Gas's original Annual PGA filing (Docket No. TA92-1-18). Texas Gas states that these tariff sheets reflect changes in projected purchased gas costs and the unrecovered purchased gas cost surcharge pursuant to the Annual PGA provision of the Purchased Gas Adjustment clause of its FERC Gas Tariff and are proposed to be effective February 1, 1992. Texas Gas further states that the proposed tariff sheets reflect a current commodity rate increase of $.1288 per MMBtu from the rates set forth in the quarterly PGA filed September 30, 1991 (Docket No. TQ92-1-18), and a decrease of $(.1193) per MMBtu in the Unrecovered Purchased Gas Cost surcharge. No changes in the demand rates or SGN standby rates are proposed in the instant filing. Texas Gas states that these tariff sheets reflect the same rates as those contained in the Annual filing (Docket No. TA92-1-18) rejected by the Commission.

Copies of the filing were served upon Texas Gas's jurisdictional customers and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests or motions should be filed on or before January 6, 1992. 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-30235 Filed 12-18-91; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2239-004-Wisconsin]

Tomahawk Power & Pulp Co.; Notice Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

December 13, 1991.

The license for the Kings Dam Hydro Project No. 2239, located on the Wisconsin River in Lincoln County, Wisconsin expires on July 31, 1993. The statutory deadline for filing an application for new license was July 31, 1991. An application for new license has been filed as follows:

Project No.	Applicant	Contact
P-2239-004	Tomahawk Power & Pulp Company, 610 Jackson Street, Wausau, WI 54401.	John Laughlin, 610 Jackson St., Wausau, WI 54401, (715) 842-4613.

The following is an approximate schedule and procedures that will be followed in processing the application:

Date	Action
Sept. 19, 1991	Commission notified applicant that its application is deficient.
Dec. 19, 1991	Commission's deadline for applicant's response to deficiency request.
Jan. 30, 1992	Commission notifies applicant that its application has been accepted.
Feb. 15, 1992	Commission issues public notice of the accepted application establishing dates for filing motions to intervene and protests.
Dec. 30, 1991	Commission's deadline for applicant for filing a final amendment, if any, to its application.
Mar. 15, 1992	Commission notifies all parties and agencies that the application is ready for environmental analysis.

Upon receipt of all additional information and the information filed in response to the public notice of the acceptance of the application, the Commission will evaluate the application in accordance with applicable statutory requirements and take appropriate action on the application.

Any questions concerning this notice should be directed to Ed Lee at (202) 219-2809.

Lois D. Cashell,

Secretary.

[FR Doc. 91-30231 Filed 12-18-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-8-29-003]

Transcontinental Gas Pipe Line Corp.; Compliance Filing

December 13, 1991.

On December 6, 1991, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing First Revised Sheet No. 144 to its FERC Gas Tariff, Third Revised Volume No. 1.

Transco proposes to notify its customers via its electronic bulletin board of any rate change proposal filed by North Penn which Transco will track under its Rate Schedule SS-1 within 3 business days following Transco's receipt of notice of such filing.

Transco proposes to file to track a North Penn rate change no later than 15 days following the date Transco receives a copy of the Commission order which accepts and makes effective North Penn's rate change.

Transco has requested that this revised tariff sheet be effective January 5, 1992.

Transco states that copies of the filing were served upon all interested state commissions and all parties to the captioned proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before December 20, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-30243 Filed 12-18-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-15-001]

Wyoming Interstate Co., Ltd.; Tariff Filing

December 13, 1991.

Take notice that Wyoming Interstate Company, Ltd. (WIC), on December 6, 1991, tendered for filing Substitute Original Sheet Nos. 23 and 46 of its First Revised Volume No. 2 Gas Tariff.

WIC states that this filing was made to comply with a Commission Order issued on November 22, 1991, in Docket Nos. RP91-177-003 and RP92-15-000.

This Compliance Filing corrects a reference on Substitute Original Sheet No. 23 and clarifies that changes in receipt point(s) on a firm transportation agreement do not change priority of service date of said agreement. Substitute Original Sheet No. 46 also clarifies that changes in delivery point(s) or an increase in maximum daily quantity trigger a new priority date for those changes to the agreement.

WIC asked for an effective date of October 25, 1991, which is coincidental with the Commission's acceptance of WIC's First Revised Volume No. 2 Tariff.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 20, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-30240 Filed 12-18-91; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4084-4]

Clean Air Act Advisory Committee; Open Meeting

SUMMARY: On November 8, 1990, the U.S. Environmental Protection Agency (EPA) gave notice of the establishment of a Clean Air Act Advisory Committee (CAAAC) (55 FR, No. 217, 46993). This Committee was established pursuant to the Federal Advisory Committee Act (5 U.S.C. app. I) to provide advice to the Agency on policy and technical issues related to the development and implementation of the requirements of the Clean Air Act Amendments of 1990.

OPEN MEETING DATES: Notice is hereby given that the Clean Air Act Advisory Committee will hold an open meeting on January 16, 1992 from 8:30 a.m. to 4:30 p.m., at the Washington Hilton Hotel, 1919 Connecticut Avenue NW., Washington, DC. Seating will be available on a first come, first served basis but should be fully adequate for all members of the public interested in attending.

The meeting will include a discussion of the status of Clean Air Act implementation efforts, and the effective implementation of the Clean Air Act at the state and local level.

INSPECTION OF COMMITTEE DOCUMENTS: Documents relating to the above noted topics will be publicly available at the meeting. Thereafter, these documents, together with the CAAAC meeting minutes will be available for public inspection in EPA Air Docket No. A-90-39 in room 1500 of EPA Headquarters, 401 M Street SW., Washington, DC. Hours of inspections are 8:30 a.m. to 12

noon and 1:30 to 3:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION concerning the CAAAC or its activities please contact Mr. Paul Rasmussen, Designated Federal Official to the Committee at (202) 260–7430, FAX (202) 260–4185, or by mail at U.S. EPA, Office of program Management Operations (ANR–443), Office of Air and Radiation, Washington, DC 20460.

Dated: December 12, 1991.

William G. Rosenberg,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 91–30324 Filed 12–18–91; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

FCC Establishes Advisory Committee to Enhance Network Reliability

December 13, 1991.

The Federal Communications Commission has established an Advisory Committee, called the Network Reliability Council, to provide recommendations to the Commission that will help prevent network outages or limit their impact.

In order to ensure a balanced membership on the Council, the Commission will carefully select members on the basis of their technical knowledge and the impact of their activities on network reliability. The members will be chosen so that the largest possible diversity of interests, given the function to be performed, will be represented.

The formation of the Advisory Committee is necessary and in the public interest to prepare and evaluate recommendations to the industry and to the FCC for avoiding, and minimizing the impact of, future network outages.

For additional information, contact Robert Kimball (202) 634–4215.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91–30212 Filed 12–19–91; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Port of Oakland et al.;

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200599.

Title: Port of Oakland/NYK Line Nonexclusive, Preferential Assignment Agreement.

Parties:
Port of Oakland,
Nippon Yusen Kaisha.

Synopsis: The Agreement, filed December 11, 1991, provides for the assignment, on a nonexclusive preferential basis, of premises in the Port's Outer Harbor Terminal to Nippon Yusen Kaisha. The term of the Agreement is 15 years, with options to extend the term for two (2) additional periods of two (10) years each. The assigned premises are to be used primarily as a containership terminal.

By Order of the Federal Maritime Commission.

Dated: December 13, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91–30226 Filed 12–18–91; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarded License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

RRSH Group, Inc., 8010 NW 66th St., Miami, FL 33166, Officers: Ronald Rivas, Director, Jose Alejandro Hernandez, Director

Seair Export Import Services, Inc., 800 NW 14th St., Miami, FL 33126, Officers: Nicholas I. Tawil, President/Secretary, Rafael Pellerano, Vice President/Treasurer, Manuel J. Rojas, Vice President, Maria Lamadrid, Asst. Treasurer, Erwin Velez, General Manager

American Business Forwarders Corp., 1573 N.W. 93rd Ave., Miami, FL 33172. Officers: Oscar A. Cedeno, President, Maria Angelica Sanchez, Stockholder, Itzel E. Beliz, Stockholder

AMCRO-International Shipping Company, 7503 2nd Ave., North Bergen, New Jersey 07047, Officers: Antun Tomislav Beric, Sole proprietor

S. Johnson & Associates, Inc., 313 E. Beach Ave., Inglewood, CA 90302, Officers: George Barton Johnson, President, Tracy L. Angle, Vice President, Sharon C. Johnson, Secretary/Treasurer

Super Cargo International Services Inc., 2281 NW 82nd Ave., Miami, FL 33126, Officers: Guillermo Giraldo, President, Ligia Giraldo, Stockholder

Air Sea Cargo Corp., 8343 NW 66th St., Miami, Fl 33166, Officers: Hugo Piaggio, President, Winston Salas, Vice President, German Sorni, Stockholder, Ricardo Eliel, Manager

Caliber Customs Brokers and Freight Forwarders, Inc., 1731 Adrian Road, Unit 1, Burlingame, CA 94010, Officer: Frances McRann, President

Gentry International, 14138 Common, Warren, MI 48093, Officers: Steven Gentry, President, Lucy Paplin, Vice President

Spartan Worldwide Delivery, Inc., 206 Front Street, Brooklyn, NY 11201, Officers: Nicholas Rozakis, President, Constantine Vassilakos, Senior Vice President, Vincent Malerba, Senior Vice President, Evan Makar, Vice President

Worldwide International Forwarders, Inc., 11688 150th Court North, Jupiter, FL 33478, Officers: Enrique Carrasco, President/Stockholder, Teresita C. Carrasco, Secretary/Treasurer/Manager.

Dated: December 13, 1991.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91–30245 Filed 12–18–91; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Lee Anne Lewis, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 9, 1992.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Lee Anne Lewis, Englewood, Colorado, and Jerrold G. Hauptman, Lakewood, Colorado; to each acquire an additional 49.76 percent of the voting shares of Centennial National Bank, Englewood, Colorado, for totals of 49.92 percent each.

Board of Governors of the Federal Reserve System, December 13, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-30258 Filed 12-18-91; 8:45 am]

BILLING CODE 6210-01-F

Mid-Wisconsin Financial Services, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 9, 1992.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Mid-Wisconsin Financial Services, Inc., Medford, Wisconsin; to acquire Premier Insurance Services, Inc., Neillsville, Wisconsin, and thereby engage in general insurance agency activities in the cities of Medford, Colby and Neillsville, Wisconsin, all towns with a population not exceeding 5,000 pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 13, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-30259 Filed 12-18-91; 8:45 am]

BILLING CODE 6210-01-F

San Bancorp, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 9, 1992.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. San Bancorp, Sanborn, Iowa; to acquire 100 percent of the voting shares of Ocheyedan Bancorporation, Ocheyedan, Iowa, and thereby indirectly acquire Ocheyedan Savings Bank, Ocheyedan, Iowa.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. F.S.B., Inc., Superior, Nebraska; to merge with Hardy Insurance Agency, Inc., Hardy, Nebraska, and thereby indirectly acquire Hardy State Bank, Hardy, Nebraska.

Board of Governors of the Federal Reserve System, December 13, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-30260 Filed 12-18-91; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[File No. 871 0045]

Roberto Fojo, M.D.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Miami, Florida obstetrician/gynecologist from agreeing with any other physician to withhold or threaten to withhold emergency room services at any hospital, and, for a period of five years, from threatening that any physician would or might withhold such services at any hospital.

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

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Mark Horoschak, FTC/S-3115, Washington, DC 20580, (202) 326-2756.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade

Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the Matter of Roberto Fojo, M.D.

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Roberto Fojo, M.D., hereinafter sometimes referred to as proposed respondent, and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from engaging in the acts and practices being investigated.

It is hereby agreed by and between proposed respondent and his duly authorized attorney and counsel for the Federal Trade Commission That:

1. Proposed respondent Roberto Fojo, M.D. ("Dr. Fojo") is a physician licensed and doing business under and by virtue of the laws of the State of Florida. The mailing address and principal place of business of Dr. Fojo is 1190 Northwest 95th Street, Suite 107, Miami, Florida 33150.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address stated in this agreement shall constitute service. Proposed respondent waives any right he may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. He understands that once the order has been issued, he will be required to file one or more compliance reports showing that he has fully complied with the order. Proposed respondent further understands that he may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered That for the purposes of this order, the following definitions shall apply:

1. "Respondent" means Roberto Fojo, M.D., and his employees, agents and representatives.

2. "Emergency room call services" means being available, as determined by a hospital, to come to the hospital and treat emergency room patients needing medical or surgical services.

II

It is further ordered That respondent, directly or indirectly, or through any corporate or other device, in connection with the provision of health care services in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

A. Entering into, continuing, or attempting to enter into or continue, any agreement or understanding, either express or implied, with any physician to withhold or threaten to withhold emergency room call services at any hospital; and

B. For a period of five (5) years from the date this order becomes final, expressly or impliedly threatening that any physician would or might, in concert with any other physician, withhold emergency room call services at any hospital.

Provided that nothing in this order shall prohibit respondent from entering into any agreement with any physician with whom respondent practices medicine in partnership or as a professional corporation, or who is employed by such partnership or professional corporation or by respondent.

III

It is further ordered, That respondent:

A. Distribute a copy of this order and the accompanying complaint, by first class mail within thirty (30) days after this order becomes final, to each hospital at which he has hospital privileges at the time this order becomes final;

B. File a written report with the Commission within sixty (60) days after this order becomes final, and at such other times the Commission may by written notice require, setting forth in detail the manner and form in which respondent has complied and is complying with this order; and

C. Notify the Commission within thirty (30) days of any change in his business address.

In the Matter of Roberto Fojo, M.D., Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an

agreement to a proposed consent order from an obstetrician/gynecologist ("Ob/Gyn") who practices in Miami, Florida. The agreement, which has been placed on the public record, has been signed by Roberto Fojo, M.D. ("proposed respondent"). The agreement with the proposed respondent would settle charges by the Federal Trade Commission that he violated section 5 of the Federal Trade Commission Act by conspiring to withhold and threaten to withhold emergency room call services from North Shore Medical Center, Inc. ("North Shore" or "the hospital"), a hospital located in Miami, Florida.

The proposed consent order has been placed on the public record for 60 days for reception of comments by interested persons. Comments received during this period will become part of the public record. After 60 days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Complaint

A complaint has been prepared for issuance by the Commission along with the proposed order. It alleges that at the time of the alleged conspiracy, proposed respondent was an Ob/Gyn with medical staff privileges at North Shore and was chairman of North Shore's department of obstetrics and gynecology. The complaint alleges that, as is typically the case at hospitals, in exchange for being allowed to use North Shore's facilities and support personnel without making any payment to the hospital, the physicians on the medical staff of North Shore agree to take emergency room call without receiving payment from the hospital.

The complaint alleges that beginning as early as November 1986, proposed respondent conspired with other Ob/Gyns to withhold and threaten to withhold emergency room call services from North Shore and its patients. It alleges that the aim of the conspirators was to improve their economic arrangement with North Shore by coercing the hospital to release them from their obligation to take emergency room call and to pay in some manner those Ob/Gyns who were willing to take call.

The complaint alleges that, in furtherance of the conspiracy, proposed respondent and other Ob/Gyns voted to remove their names from North Shore's emergency room call roster and to inform North Shore's administration that they would not take emergency room call at North Shore after a certain date. It alleges that the proposed respondent communicated this threat to North Shore's administration. The complaint alleges that by acting in concert, proposed respondent and other conspirators sought to enhance their bargaining power and to reduce the risk that the hospital would terminate their individual hospital privileges if they refused to take call. Loss of medical staff privileges at North Shore would have placed the conspirators at a competitive disadvantage vis-a-vis other Ob/Gyns. The complaint alleges that in January, 1987, all but two members of the Ob/Gyn department at North Shore stopped taking emergency room call.

The complaint alleges that, as a result of the conspiracy, North Shore altered its economic arrangement with the Ob/Gyns and paid them, as well as other physicians on its staff, to take emergency room call from February 1 through June 30, 1987. The complaint alleges that, thereafter, North Shore decided that this arrangement was too expensive and as of July 1, 1987, staffed its emergency room with those few Ob/Gyns who were will to take call in exchange for hospital privileges.

The complaint alleges that proposed respondent's conspiracy has restrained trade unreasonably in the following ways:

a. Restraining competition among the proposed respondent and other Ob/Gyns on the medical staff of North Shore;

b. Coercing North Shore to provide proposed respondent and other Ob/Gyns access to its facilities on more favorable economic terms; and

c. Depriving consumers of the benefits of competition.

The Proposed Consent Order

The consent order is designed to prevent a recurrence of the allegedly illegal conduct. Part I of the proposed order contains definitions of the terms "respondent" and "emergency room call services."

Part II of the proposed order prohibits proposed respondent from entering into or attempting to enter into any agreement or understanding, either express or implied, with any physician to withhold or threaten to withhold emergency room call services at any hospital. Part II of the proposed order also prohibits respondent, for a period of five years, from expressly or impliedly threatening that any physician would or might, in concert with any other physician, withhold emergency room call services at any hospital. Part II of the proposed order provides that the order does not prohibit proposed respondent from entering into any agreement with his employees or with partners in his medical practice.

Part III of the proposed order requires proposed respondent, within thirty days after the proposed order becomes final, to distribute a copy of the order and complaint to certain hospitals. Part III of the proposed order also requires proposed respondent to file a written compliance report with the Commission within sixty days after the order becomes final and to notify the Commission within thirty days of any change in his business address.

The purpose of this analysis is to facilitate public comment on the proposed order, and is not intended to constitute an official interpretation of the agreement and proposed order or to modify their terms in any way.

The proposed consent order has been entered into for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the complaint.

Donald S. Clark,

Secretary

[FR Doc. 91-30315 Filed 12-18-91; 8:45 am]

BILLING CODE 6750-01-M

[File No. 902 3268]

Sun Company, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the misrepresentation of the efficacy claims for Sunoco Ultra octane gasoline and would require respondents to maintain materials to substantiate such claims in the future.

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

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Joel Winston, FTC/S-4002, Washington, DC 20580, (202) 326-3153.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent

agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the matter of Sun Company, Inc., a corporation, and Sun Refining and Marketing Company, a corporation.

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Sun Company, Inc., and Sun Refining and Marketing Company, corporations ("proposed respondents"), and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

It is hereby agreed by and between Sun Company, Inc., and Sun Refining and Marketing Company, by their duly authorized officers, and their attorneys, and counsel for the Federal Trade Commission That:

1. Proposed respondent Sun Company, Inc. is a Pennsylvania corporation with its office and principal place of business located at 100 Matsonford Road, Radnor, Pennsylvania 19087.

Proposed respondent Sun Refining and Marketing Company is a Pennsylvania corporation with its office and principal place of business located at Tenn Penn Center, 1801 Market Street, Philadelphia, Pennsylvania 19103.

2. Proposed respondents admit all the jurisdictional facts set forth in the attached draft complaint.

3. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All right to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this Agreement; and

(d) All claims under the Equal Access to Justice Act, 5 U.S.C. 504.

4. This Agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission, it, together with the attached draft Complaint, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This Agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the attached draft complaint.

6. This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may without further notice to proposed respondents: (1) Issue its complaint corresponding in form and substance with the attached draft Complaint and its decision containing the following Order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the Order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to Order to proposed respondents' address as stated in this Agreement shall constitute service. Proposed respondents waive any right they might have to any other manner of service. The Complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or in the Agreement may be used to vary or contradict the terms of the Order.

7. Proposed respondents have read the attached draft Complaint and the following Order. They understand that once the Order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the Order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

Part I

It is ordered That respondents Sun Company, Inc., and Sun Refining and Marketing company, corporations, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labelling, packaging, offering for sale, sale or distribution of SUNOCO ULTRA 93.5 and 94 gasolines or any other gasoline in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, directly or by implication, about:

(1) The superiority of ULTRA 93.5 and 94 in providing engine power or acceleration for any automobile; or

(2) The relative or absolute attributes or performance of any gasoline with respect to vehicle engine power, acceleration, or any other performance characteristic,

unless at the time of making such representation, respondents possess and rely upon a reasonable basis consisting of competent and reliable scientific evidence which substantiates the representation. For the purposes of this Order, "competent and reliable scientific evidence" shall mean tests, experiments, analysis, research, studies, or other evidence based on the expertise of professionals in the relevant area conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession or science to yield accurate and reliable results.

Provided That, nothing in this Order shall prohibit respondents from truthfully representing the numerical octane rating of any gasoline.

Part II

It is further ordered That for three (3) years after the date of the last dissemination of the representation to which they pertain, respondents shall maintain and upon request make available to the Federal Trade Commission or its staff for inspection and copying:

A. All materials relied upon to substantiate any claim or representation covered by this Order; and

B. All tests, reports, studies or surveys in respondents' possession or control that contradict any representation of respondents covered by this Order.

Part III

It is further ordered That respondents shall forthwith distribute a copy of this Order to all operating divisions, subsidiaries, franchisees, officers, managerial employees, and all of their employees or agents engaged in the preparation and placement of advertisements or promotional materials covered by this Order and shall obtain from each such employee a signed statement acknowledging receipt of the order.

Part IV

It if further ordered That respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation(s) such as a dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation(s) that may affect compliance obligations under this Order.

Part V

It is further ordered That respondents shall, within sixty (60) days after service upon them of this Order and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order form Sun Company, Inc. and its wholly-owned subsidiary, Sun Refining and Marketing Company ("respondents" or "Sun").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns Sun's advertisements for Sunoco Ultra 93.5 and 94 octane gasolines ("Ultra"). The Commission's complaint alleges that Sun's ads represented that Ultra provides superior engine power and acceleration, that would be significant to consumers, for automobiles generally as compared to any other gasoline. According to the complaint, Sun falsely represented that it has a reasonable basis that substantiated that claim.

The consent order contains provisions designed to remedy the violation charged and to prevent respondents from engaging in similar unfair or deceptive practices in the future.

Part I of the order prohibits Sun from making any representation about (1) the superiority of Ultra in providing engine power or acceleration, or (2) the relative or absolute attributes or performance of any gasoline with respect to power, acceleration, or any other performance characteristic, unless respondents have a reasonable basis, consisting of competent and reliable scientific evidence, at the time the claim is made. Part I further provides that nothing in the order prohibits Sun from truthfully representing the numerical octane rating of any gasoline.

Part II of the order requires respondents to maintain and make available to the Commission materials they rely upon to substantiate any claim covered by the order, and tests, reports, studies or surveys that contradict any such claim.

Part III of the order requires respondents to distribute a copy of the order to their corporate branches, officers, and managerial and advertising employees, and to obtain from each such employee a signed statement acknowledging receipt of the order.

Part IV of the order requires respondents to notify the Commission prior to any change in the corporation that may affect compliance obligations arising out of the order.

Part V of the order requires respondents to file compliance reports with the Commission.

This matter does not involve any alleged mislabeling in the posting of octane ratings at service station pumps, and has no relation to the Commission's ongoing investigation to determine compliance by gasoline distributors with the Commission's Octane Posting and Certification Rule, 16 CFR part 306.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify in any way their terms.

Benjamin I. Berman,

Acting Secretary.

Dissenting Statement of Commissioner Deborah K. Owen in Sun Company, Inc. and Sun Refining and Marketing Company, File No. 902–3268

Deciding whether to accept a consent agreement for public comment involves weighing, among other factors, the potential benefits of securing stronger relief, against the costs and risks inherent in further negotiation and possible litigation. Pinpointing where the correct balance lies is often a formidable challenge, and people who share a dedication to tough law enforcement may reasonably disagree as to where it appropriately falls. In this matter, I believe that the relief obtained is grossly insufficient in light of the respondents' past conduct, and because the total consumer injury arising from the claims involved may be very costly. Accordingly, I dissent from the Commission's decision to accept this consent agreement for public comment.

This is the second time that respondents have tangled with the Commission over ads linking octane and automobile engine performance. In 1974, the Commission ordered respondents' corporate predecessor, Sun Oil Co., to cease and desist from making false performance and uniqueness claims for its gasoline.[1] Since these respondents have a history of self-proclamation as the industry's octane king, I am skeptical that a second, mere "go and do more" consent agreement will have much useful deterrent effect.

Securing stronger relief is certainly called for when there are indications that consumer injury is particularly significant. Consumer injury due to misperceptions about the relation between octane and performance, and the resultant "overbuying" of octane, may be very great. A report released last February by the U.S. General Accounting Office,[2] though cautioning that the existing evidence is not conclusive, suggested that consumers may be spending hundreds of millions of dollars, or more, yearly on unnecessary purchases of higher octane gasolines. Such dollar figures may not be surprising in view of the huge size of the gasoline market. In addition, recognizing the widespread nature of consumer misunderstanding about octane and performance, the Commission recently issued a "Facts for Consumers" bulletin, with the cooperation of the American Automobile Association to help consumers select the octane grade most appropriate for their needs.

I suspect, however, that this admirable effort represents only a small corrective to the consumer misperceptions that ads such as Sunoco's have not merely taken

[1] 84 F.T.C. 247 (1974).

[2] U.S. General Accounting Office, Gasoline Marketing: Premium Gasoline Overbuying May Be Occurring, but Unknown, Report to the Chairman, Subcommittee on Antitrust, Monopolies and Business Rights, Committee on Judiciary, U.S. Senate, February 1991.

advantage of, but have strongly reinforced.

Based on these considerations, I conclude that the public interest would have been better served if the remedy in this matter had provided stronger incentives to insure compliance with the FTC Act, or had provided other relief that would truly benefit consumers. Query why in this instance, unlike others,[3] the Commission is content to have consumer enlightenment financed with taxpayers' dollars, rather than with the ill-gotten gains of a company that the Commission has found reason to believe has violated the FTC Act—more than once.

[FR Doc. 91-30314 Filed 12-18-91; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Availability of Draft 1992 Revised Classification System for Human Immunodeficiency Virus Infection and Expanded AIDS Surveillance Case Definition for Adolescents and Adults; Extension of Comment Period

AGENCY: Centers for Disease Control (CDC), Public Health Service (PHS), Department of Health and Human Services.

ACTION: Extension of public comment period.

SUMMARY: This notice announces the extension of the review and comment period of a draft document entitled "1992 Revised Classification System for Human Immunodeficiency Virus Infection and Expanded AIDS Surveillance Case Definition for Adolescents and Adults," prepared by the Centers for Disease Control.

DATES: To ensure consideration, written comments on this draft document must be received on or before February 14, 1992.

ADDRESSES: Requests for copies of the draft HIV classification system and expanded AIDS surveillance case definition must be submitted to the National AIDS Clearinghouse, P.O. Box 6003, Rockville, MD 20849-6003; telephone (800) 458-5231. Written comments on this draft document should be sent to the same address for receipt by February 14, 1992.

FOR FURTHER INFORMATION CONTACT: Technical Information Activity, Division of HIV/AIDS, National Center for Infectious Diseases, Centers for Disease Control, Mailstop E-49, 1600 Clifton Road, NE., Atlanta, Georgia, 30333; telephone: (404) 639-2076.

SUPPLEMENTARY INFORMATION: A notice of availability and request for comments on the "1992 Revised Classification System for Human Immunodeficiency Virus Infection and Expanded AIDS Surveillance Case Definition for Adolescents and Adults," was published in the **Federal Register** on November 15, 1991 (56 FR 58059). This notice extends the comment period for written comments on the draft document from December 16, 1991, to February 14, 1992.

Dated: December 13, 1991.

Walter R. Dowdle,

Acting Director, Centers for Disease Control.

[FR Doc. 91-30256 Filed 12-18-91, 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 91F-0391]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of *N*-phenylbenzenamine reaction products with 2,4,4-trimethylpentenes, as an antioxidant and/or stabilizer in pressure-sensitive adhesives in contact with food.

FOR FURTHER INFORMATION CONTACT: Richard H. White, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street, SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 1B4286) has been filed by Ciba-Geigy Corp., Seven Skyline Dr., Hawthorne, NY 10532-2188. The petition proposes to amend the food additive regulations in § 178.2010, Antioxidants and/or Stabilizers for Polymers (21 CFR 178.2010), to provide for the safe use of *N*-phenylbenzenamine reaction products with 2,4,4-trimethylpentenes, as an antioxidant and/or stabilizer in pressure-sensitive adhesives in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: December 9, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-30217 Filed 12-18-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89P-0329]

Eggnog Deviating From Identity Standard; Amendment of Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FAD) is announcing that it amending a temporary permit issued to H.P. Hood, Inc., to market test a product designated as "light eggnog" that deviates from the U.S. standard of identity for eggnog (21 CFR 131.170) by (1) increasing the amount of test product to be distributed, (2) adding one additional plant, and (3) increasing the area of distribution. This amendment will provide the permit holder with a broader base for the collection of data on consumer acceptance of the product.

FOR FURTHER INFORMATION CONTACT: Frederick E. Boland, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-485-0117.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 29, 1989 (54 FR 35725), FDA announced the issuance of a temporary permit under the provisions of 21 CFR 130.17 to H.P. Hood, Inc., 500 Rutherford Ave., Boston, MA 02129, to market test a product designated as "light eggnog." The agency issued the permit to facilitate interstate market testing of a food that deviates from the requirements of a standard of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341).

The permit covers limited interstate market testing of "light eggnog" that deviates from the U.S. standard of identity for eggnog in 21 CFR 131.170 in that: (1) The fat content of the product is reduced from 6 percent to 0.75 percent, and (2) sufficient vitamin A palmitate is

[3] *United States* v. *Sears, Roebuck and Co.*, Civil Action No. 89-3383 TAF (D.C.C. 1989); American Life Nutrition, Inc., *et al.*, FTC Docket No. C-3310.

added to ensure that a 4-fluid-ounce serving of the product contains 8 percent of the U.S. Recommended Daily Allowance for vitamin A. The product meets all requirements of the standard with the exception of these deviations.

The permit was amended April 2, 1991 (56 FR 13480), to allow the permit holder to continue experimental market testing of the product pending agency action on a petition to establish a standard of identity for "light (or lite) eggnog." The April 2, 1991, notice invited other firms to participate in the extended market testing under the conditions that applied to H.P. Hood, Inc. FDA also stated in the notice that the market testing includes all products where the milkfat content is reduced by at least 50 percent and the calorie content is reduced by at least ⅓ as compared to regular eggnog.

H.P. Hood, Inc., has requested that FDA amend its temporary permit to provide for an increase of 225,000 quarts (qt) (212,918 liters (L)) of the test product per year and to increase the area of distribution of the product. The company requested this increase to enable it to obtain information about consumer attitudes toward the product in a broader geographic area. This increase will raise the total quantity involved in market testing from 1,300,650 qt (1,230,805 L) to 1,525,650 qt (1,443,723 L) per year. The increase of 225,000 qt (212,918 L) will be processed and packaged at H.P. Hood Plant No. 36–5631, Oneida, NY 14321, and will be distributed in Florida, Georgia, New Jersey, New York, North Carolina, Pennsylvania, South Carolina, and Virginia. FDA finds that this amendment will not alter the substance of the temporary permit (54 FR 35725) and consumers will benefit from continued tests to determine whether a product that is nutritionally equivalent to eggnog but contains fewer calories and less fat is acceptable.

Therefore, under the provision of 21 CFR 130.17(f), FDA is amending the temporary permit by (1) increasing the amount of test product to be distributed by 225,000 qt (212,918 L) per year, (2) adding one additional plant, and (3) increasing the area of distribution. All other terms and conditions of this permit remain the same.

Dated: December 6, 1991.

Douglas M. Archer,

Deputy Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91–30215 Filed 12–18–91; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 91N–0457]

Parexel International Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Parexel International Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of glycerides and polyethylene glycol esters of fatty acids of vegetable origin as excipients in vitamin tablets and liquid formations.

FOR FURTHER INFORMATION CONTACT: C. James Shen, Center for Food Safety and Applied Nutrition (HFF–333), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that Parexel International Corp., One Alewife Place, Cambridge, MA 02140, has filed a petition (FAP 9A4155) on behalf of Gattefosse S. A., Saint-Priest, France. The petition proposes to amend the food additive regulations to provide for the safe use of glycerides and polyethylene glycol esters of fatty acids of vegetable origin as excipients in vitamin tablets and liquid formulations.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: December 9, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91–30214 Filed 12–18–91; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 91F–0449]

Polysar Rubber Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food And Drug Administration (FDA) is announcing that Polysar Rubber Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of hydrogenated butadiene/acrylonitrile copolymers in repeated use food-contact articles.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C Street NW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2B4299) has been filed by Polysar Rubber Corp., 1265 South Vidal St., Sarnia, Ontario, Canada N7T 7MI. The petition proposes to amend the food additive regulations in § 177.2600, Rubber Articles Intended for Repeated Use, (21 CFR 177.2600) to provide for the safe use of hydrogenated butadiene/acrylonitrile copolymers in repeated use food-contact articles.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: December 9, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91–30216 Filed 12–18–91; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 91F–0439]

The Shepherd Color Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that The Shepherd Color Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of cobalt aluminate as a colorant for all polymers intended to contact food.

FOR FURTHER INFORMATION CONTACT: Mitchell Cheeseman, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic

Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2B4296) has been filed by The Shepherd Color Co., P.O. Box 465627, Cincinnati, OH 45246. The petition proposes to amend the food additive regulations in § 178.3297, Colorants for Polymers, (21 CFR 178.3297) to provide for the safe use of cobalt aluminate as a colorant for all polymers intended to contact food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: December 9, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-30218 Filed 12-18-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91E-0377]

Determination of Regulatory Review Period for Purposes of Patent Extension; Plendil®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Plendil® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, room 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John S. Ensign, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase beings. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Plendil®. Plendil® (felodipine) is indicated for the treatment of hypertension. Plendil® may be used alone or concomitantly with other antihypertensive agents. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Plendil® (U.S. Patent No. 4,264,611) from Aktiebolaget Astra, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated September 18, 1991, advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Plendil® represented the first commercial marketing of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Plendil® is 2,494 days. Of this time, 1,248 days occurred during the testing phase of the regulatory review period, while 1,246 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* September 27, 1984. The applicant claims January 16, 1986, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND became effective September 27, 1984, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* February 26, 1988. FDA has verified the applicant's claim that the new drug application (NDA) for Plendil® (NDA 19-834) was filed on February 26, 1988.

3. *The date the application was approved:* July 25, 1991. FDA has verified the applicant's claim that NDA 19-834 was approved on July 25, 1991.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 2 years of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before February 18, 1992, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before June 17, 1992, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 9, 1991.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 91-30219 Filed 12-18-91; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Notice of Hearing: Reconsideration of Disapproval of Oklahoma State Plan Amendments (SPAs)

AGENCY: Health Care Financing Administration, HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on January 23, 1992, at 10 a.m.; room 1230; 12th Floor; 1200 Main Tower; Dallas, Texas 75202 to reconsider our decision to disapprove Oklahoma SPAs 89–19 and 90–03.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk by January 3, 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 Oklahoma State plan amendments (SPAs) number 89–19 and 90–03.

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.

Oklahoma sought approval of SPA 89–19 which would, among other things, limit providers of outpatient psychiatric services for individuals under 21 to hospitals and psychiatric facilities which have inpatient psychiatric programs.

The issue in this matter is whether the State's proposal constitutes a reasonable standard relating to the qualification of providers of outpatient psychiatric services, and thus complies with section 1902(a)(23) of the Act and Federal regulations at 42 CFR 431.51(b). These provisions require that a State plan must provide that any recipient may obtain Medicaid services from any institution, agency, pharmacy, person or organization that is qualified to perform the services. An exception to these requirements is found at 42 CFR 431.51(c), which allows a State to set reasonable standards relating to the qualification of providers.

Oklahoma's proposal to limit providers of outpatient psychiatric services for individuals under 21 to hospitals and psychiatric facilities which have inpatient psychiatric programs is predicated upon a belief that providers of outpatient psychiatric services cannot meet staffing and other program requirements unless they also offer inpatient psychiatric services. HCFA does not agree that it is reasonable to presume that providers of outpatient psychiatric services cannot meet staffing and program requirements relating to these services unless they also provide inpatient psychiatric services. Therefore, HCFA disapproved the amendment because the State's limitation of providers in this manner does not constitute a reasonable standard relating to the qualification of providers of inpatient psychiatric services, in violation of section 1902(a)(23) of the Act and Federal regulations at 42 CFR 431.51(b).

Oklahoma also sought approval of SPA 90–03 which would modify outpatient hospital treatment services under its Medicaid program. Although, this SPA amends material previously submitted in SPA 89–19, the revisions made by SPA 90–03 incorporate the same deficiencies found in SPA 89–19 upon which HCFA based its disapproval. That is, Oklahoma SPA 90–03 similarly proposes to limit providers of outpatient psychiatric hospital services to those hospitals and psychiatric facilities which have inpatient psychiatric programs.

The issue in this matter is whether the State's proposal constitutes a reasonable standard relating to the qualification of providers of outpatient psychiatric services and thus complies with section 1902(a)(23) of the Act and Federal regulations at 42 CFR 431.51(b).

SPA 90–03 revises the material submitted in SPA 89–19, but HCFA believes it does not correct the deficiencies upon which it based the recommendation to disapprove SPA 89–19. HCFA believes Oklahoma's proposal to limit coverage of outpatient psychiatric services to hospitals or facilities which have inpatient psychiatric programs impermissibly restricts providers who may participate under the program because this limitation does not constitute a reasonable standard relating to the qualifications of providers, consistent with 42 CFR 431.51(c). Therefore, HCFA disapproved the amendment because it violates section 1902(a)(23) of the Act and Federal regulations at 42 CFR 431.51(b).

The notice to Oklahoma announcing an administrative hearing to reconsider the disapproval of its SPA's reads as follows:

Mr. Benjamin Demps, Jr.,
Director, Oklahoma Department of Human Services, P.O. Box 25352, Oklahoma City, Oklahoma 73125

Dear Mr. Demps: I am responding to your request for reconsideration of the decision to disapprove Oklahoma State Plan Amendments (SPAs) 89–19 and 90–03.

Oklahoma SPA 89–19 would limit providers of outpatient psychiatric services for individuals under 21 to hospital and psychiatric facilities which have inpatient psychiatric programs. Although, Oklahoma SPA 90–03 amends material previously submitted in SPA 89–19, the revisions made by SPA 90–03 to SPA 89–19 do not correct the deficiencies upon which the Health Care Financing Administration based its disapproval. That is, Oklahoma SPA 90–03 would similarly limit providers of outpatient psychiatric hospital services to those hospitals and psychiatric facilities which have inpatient psychiatric programs.

The issue in the disapproval of SPAs 89–19 and 90–03 is whether the State's proposal constitutes a reasonable standard relating to qualification of providers of outpatient psychiatric services and thus complies with section 1902(a)(23) of the Social Security Act (the Act) and regulations at 42 CFR 431.51(b) and (c). Section 1902(a)(23) of the Act and Federal regulations at 42 CFR 431.51(b) require that a State plan must provide that any recipient may obtain Medicaid services from any institution, agency, pharmacy, person or organization that is qualified to perform the services. 42 CFR 431.51(c) provides an exception to this requirement by allowing a State to set reasonable standards relating to the qualifications of providers.

I am scheduling a hearing on your request for reconsideration to be held on January 23, 1992, at 10:00 a.m.; Room 1230; 12th Floor; 1200 Main Tower; Dallas, Texas 75202. 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 communication 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. section 1316); 42 CFR 430.18)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: December 13, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 91–30354 Filed 12–18–91; 8:45 am]

BILLING CODE 4120–03–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–620–02–4110–2410]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1004–0160), Washington, DC 20503, telephone (202) 395–7340.

Title: Geothermal Leasing Reports, 43 CFR 3203.

OMB Approval Number: 1004–0160.

Abstract: Respondents supply information on diligent efforts toward utilization of geothermal resources; bona fide efforts made to produce geothermal resources; and significant expenditure of funds made on the geothermal lease. This information allows the Bureau to determine if the lessee qualifies for a lease extension.

Bureau Form Numbers: None.

Frequency:

Diligent Efforts Report—Yearly

Bona Fide Efforts Report—Every five years

Significant Expenditures Report—Yearly.

Description of Respondents: Individuals, small businesses, and large corporations.

Estimated Completion Time: 2 hours each report.

Annual Responses: 75.

Annual Burden Hours: 150.

Bureau Clearance Officer (Alternate): Gerri Jenkins (202) 653–6105.

Dated: November 5, 1991.

A.A. Sokoloski,

Acting AD, Energy and Mineral Resources.

[FR Doc. 91–30225 Filed 12–18–91; 8:45 am]

BILLING CODE 4310–84–M

[WY–040–92–4320–02]

Rock Springs District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Rock Springs District Grazing Advisory Board.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the Rock Springs District Grazing Advisory Board. Notice of this meeting is required under Pub. L. 92–463.

DATE: February 20, 1992, 9:30 a.m. until 4 p.m.

ADDRESS: Bureau of Land Management District Office, Highway 191 North, Rock Springs, Wyoming.

FOR FURTHER INFORMATION CONTACT: Marlowe E. Kinch, District Manager, Rock Springs District Bureau of Land Management, P.O. Box 1869, Rock Springs, Wyoming 82902–1869, (307) 382–5350.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include:

1. Introduction and opening remarks.
2. Election of a Chairman and Vice-Chairman.
3. District rangeland monitoring.
4. Lyman Cattle AMP development.
5. Bench Corral Individual AMP development.
6. Henry's Fork AMP revision.
7. Record of Decision—Vegetation Treatment on BLM Lands in Thirteen Western States.
8. Improvements proposed for completion in FY 92 with range betterment (8100) funds.
9. Update on wild horse gathering.
10. Public comment period.

The meeting is open to the public. Interested persons may make oral statements to the Board between 3:30 p.m. and 4 p.m., or file written statements for the Board's consideration. Anyone wishing to make an oral presentation should notify the District Manager, Bureau of Land Management, Highway 191 North, P.O. Box1869, Rock Springs, Wyoming 82902–1869, by February 18, 1992. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Minutes of meeting will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Marlowe E. Kinch,

District Manager.

[FR Doc. 91–30320 Filed 12–18–91; 8:45 am]

BILLING CODE 4310–22–M

Bureau of Land Management

ACTION: Emergency Vehicle Closure, Mohave County, Arizona.

SUMMARY: Notice is hereby given that effective immediately all vehicle usage will be limited to existing roads and trails designed and constructed for vehicle traffic, on all public lands within the following described lands, in the Hualapai Mountains, Mohave County, Arizona:

Gila and Salt River Meridian

T. 18 N., R. 16 W.,
Secs. 13, 24, 25, 26, 35, 36.
T. 18 N., R. 15 W.,
Secs. 6, 7, 18.
T. 19 N., R. 14 W.,
Secs. 6, 7, 18.
T. 19 N., R. 15 W.,
All.
T. 19 N., R. 16 W.,
Secs. 1, 12.
T. 20 N., R. 14 W.,
Secs. 18, 19, 30, 31.
T. 20 N., R. 15 W.,
Secs. 7, 8, 9, 10, 13, 14, 15, 17, 18, 19, 21, 22, 23, 24, 26, 27, 31, 32, 33, 34, 35, 36.
T. 20 N., R. 16 W.,
Secs. 12, 14, 24, 25, 36.

Totaling 50, 570 acres.

The purpose of this limitation is to protect the habitat of the Hualapai Mexican vole, a Federally listed endangered species from damage by indiscriminate off-road vehicle use. The action will eliminate further development of de facto roads and trails that are created only as a result of the passage of vehicles, and in so doing will help control habitat loss from erosion caused by motorized vehicles. All major ingress and egress points, along with major internal roads will be signed regarding the vehicle limitations immediately following publication of this notice. Maps of the affected area are available from the Kingman Resource Area office free of charge.

The authority for this action is 43 CFR 8341.2. The emergency order will remain in effect until off-highway vehicle designations can be implemented for the

Kingman Resource Area, Phoenix District, Arizona.

FOR FURTHER INFORMATION CONTACT: Jesse J. Juen, Acting Area Manager, Bureau of Land Management, Kingman Resource Area, 2475 Beverly Avenue, Kingman, Arizona 86401 (602) 757–3161.

Dated: December 10, 1991.

William T. Childress,

Acting District Manager.

[FR Doc. 91–30319 Filed 12–18–91; 8:45 am]

BILLING CODE 4333–13–M

[WY–930–4214–10; WYW 125723]

Proposed Withdrawal and Opportunity for Public Meeting; WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, has filed an application to withdraw 440 acres of National Forest System lands for protection of the proposed Burgess Visitor Information Center site while in the final development stages. This notice closes the lands for up to 2 years from location and entry under the United States mining laws. The lands will remain open to mineral leasing and to all other forms of disposition which may by law be made of National Forest System land.

DATE: Comments and requests for a meeting should be received on or before March 19, 1992.

ADDRESSES: Comments and meeting requests should be sent to the Wyoming State Director, BLM, 2515 Warren Avenue, Cheyenne, Wyoming 82001.

FOR FURTHER INFORMATION CONTACT: Janet Booth, BLM Wyoming State Office, (307) 775–6124.

SUPPLEMENTARY INFORMATION: On October 28, 1991, the U.S. Department of Agriculture filed an application to withdraw the following described National Forest System lands from location and entry under the United States mining laws, subject to valid existing rights:.

Sixth Principal Meridian, Wyoming

Bighorn National Forest

T. 56 N., R. 88 W.,
Sec. 29, SE¼SW¼;
Sec. 31, NE¼, NE¼SE¼;
Sec. 32, NW¼, NW¼SW¼.

The areas described contain 440 acres in Sheridan County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which will be permitted during this segregative period consist of livestock grazing for that time until construction begins.

The temporary segregation of the lands in connection with this withdrawal application shall not affect the administrative jurisdiction over the land, and the segregation shall not have the effect of authorizing any use of the land by the Department of Agriculture.

Dated: December 3, 1991.

F. William Eikenberry,

Associate State Director, Wyoming.

[FR Doc. 91–30318 Filed 12–18–91; 8:45 am]

BILLING CODE 4310–22–M

Fish and wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–759978

Applicant: Omaha's Henry Doorly Zoo, Omaha, NE.

The applicant requests a permit to export 150 straws of semen taken from two captive-born gaurs (*Bos gaurus*) to Imamichi Institute for Animal Reproduction, Saitama, Japan, for artificial insemination of captive-born female gaurs.

PRT–761569

Applicant: Carl J. Hunt, Barstow, CA.

The applicant requests a permit to import two male and two female captive-hatched white-eared pheasants (*Crossoptilon crossoptilon*) from South View Aviaries, Burnaby, BC, Canada, for captive breeding.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45–4.15) in the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281)

Dated: December 13, 1991.

Margaret Tieger,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 91–30247 Filed 12–18–91; 8:45 am]

BILLING CODE 4310–55–M

Emergency Exemption; Issuance

On November 22, 1991, the U.S. Fish and Wildlife Service (Service) issued a permit (PRT–763764) to the Wildlife Waystation to import three female Siberian/Bengal tiger (*Panthera tigris*) hybrids. The 30-day public comment period required by section 10(c) of the Endangered Species Act was waived. The Service determined that an emergency affecting the health and life of the tigers existed and that no reasonable alternative was available to the applicant. The tigers would have been euthanized in New Zealand before the 30-day comment period elapsed.

Dated: December 13, 1991.

Margaret Tieger,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 91–30246 Filed 12–18–91; 8:45 am]

BILLING CODE 4310–55–M

Availability of Draft Recovery Plans for Solanum drymophilum, Calyptronoma rivalis, Daphnopsis hellerana, and Cornutia obovata for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of draft recovery plans for *Solanum drymophilum, Calyptronoma rivalis, Daphnopsis hellerana,* and *Cornutia obovata*

DATES: Comments on the draft recovery plans must be received on or before February 18, 1992 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plans may obtain copies by contacting the Southeast Regional Office, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, Georgia 30303. Written comments and materials regarding the plans should be addressed to Field Supervisor at the Caribbean Field Office, Box 491, Boquerón, Puerto Rico 00622. Comments and materials received are available upon request for public inspection, by appointment, during normal business hours at either of the above-mentioned addresses.

FOR FURTHER INFORMATION CONTACT: Susan Silander, Caribbean Field Office, Box 491, Boquerón, Puerto Rico 00622 (809/851–7297).

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised Recovery Plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

Three draft plans for four Puerto Rican plants have been prepared for review. Because *Cornutia obovata* (palo de nigua) and *Daphnopsis hellerana* (no common name) are both found in similar habitats in the limestone hills of the northwestern coast a joint recovery plan has been prepared for these two endangered trees. Only seven individuals of *Corntia obovata* are know to occur in seven different areas. A total of 50 individuals of *Daphnopsis hellerana* are found in three populations in the limestone hills to the west of the San Juan metropolitan area. Among the factors threatening these two species are extensive deforestation and complete elimination of limestone hills by quarrying.

Solanum drymophilum (enrubio) is a small spiny shrub endemic to the lower montane and evergreen seasonal forests of the central and eastern mountains of Puerto Rico. At present only one population of approximately 200 individuals is known to exist. The species has become endangered as a result of deforestation in these mountains, and apparently as a result of intentional eradication of the species in order to avoid possible injury to cattle.

Calyptronoma rivalis (palma de manaca) is an arborescent palm which may reach up to 40 feet in height. It is endemic to Puerto Rico, where it grows along streambanks in the karst region of the island. Three natural populations consisting of approximately 275 individuals are known to occur in Camuy, Quebradillas, and San Sebastian. The species is threatened by flash-flooding caused by deforestation, agricultural expansion and rural development.

All three recovery plans available for review are technical/agency drafts. Among the recovery measures suggested in these documents are land acquisition of privately-owned sites, incorporation of protection measures into Commonwealth Forest management plans, propagation and introduction, research and education.

Public Comments Solicited

The Service solicits written comments on the recovery plans described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: December 9, 1991.

James P. Oland,

Field Supervisor.

[FR Doc. 91–30321 Filed 12–18–91; 8:45 am]

BILLING CODE 4310–55–M

Environmental Assessment: Buffalo Lake National Wildlife Refuge, Umbarger, TX

AGENCY: Fish and Wildlife Service (FWS), DOI.

ACTION: Notice of availability for review.

SUMMARY: The FWS is issuing this notice to advise that an environmental assessment for the modification of Umbarger Dam at Buffalo Lake National Wildlife Refuge at Umbarger, Randall County, Texas is available for review. A public meeting will be held on January 15, 1992, in the Student Union Ballroom at West Texas State University, Canyon, Texas, at 7 p.m.

DATES: The EA will be available for public review December 19, 1991. Comments should be submitted to the Associate Manager, (OK/TX), Division of Refuges, Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico, by February 3, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. M. Kathleen Wood, Refuge Program Specialist, Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, Telephone (505) 766–2036 (ext. 29).

SUPPLEMENTARY INFORMATION: The objectives of the Umbarger Dam modification are (1) eliminate the dam safety deficiencies, and (2) maintain the amount of downstream flood protection that has historically been provided by the dam. Past studies have shown that there is a good chance that Umbarger Dam could fail under heavy flooding conditions. Such a failure would place hundreds of downstream lives in danger, cause millions of dollars in property damage, and impact other downstream resources. The dam safety deficiencies have been mainly related to an inadequate spillway.

All alternatives currently being considered are intended to protect human health and safety by elimination of the dam safety deficiencies. The preferred alternative achieves the project objectives and is one of the more economical solutions. It does not significantly change the existing

environmental conditions and actually increases the level of downstream flood protection over that which presently exists. It is designed to provide a dam and reservoir that should not normally impound water. However, this alternative does not eliminate the possible future operation of the facility as a storage reservoir if a viable water supply is located that could be imported into the basin and if the dam is further modified to perform safely as a storage reservoir. Other alternatives include breaching the dam and modifications to allow operation as a water storage reservoir.

Copies of the EA are available for review at the Buffalo lake National Wildlife Refuge, 1 mile south of Umbarger, P.O. Box 179, Umbarger, Texas 79091; FWS Bridge/Dam Safety Office, 145 Union Avenue, Lakewood, CO 80228; the Southwest Regional Office, FWS, 500 Gold SW, P.O. Box 1306, Albuquerque, NM 87103, and the public libraries in Amarillo and Canyon, Texas.

M. Kathleen Wood,

Refuge Program Specialist, Albuquerque, New Mexico.

[FR Doc. 91-30322 Filed 12-18-91; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree

In accordance with section 122 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622, and the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a complaint was filed on December 3, 1991, in *United States* v. *Anderson, Greenwood & Co. (for Keystone), et al.*, Civil Action No. H-91-3529, in the United States District Court for the Southern District of Texas, Houston Division, and, simultaneously, three Consent Decrees between the United States, Duane Sheridan, and 116 defendants were lodged with the court. These Consent Decrees settle the government's claims in the complaint pursuant to sections 106 and 107 of CERCLA, 42 U.S.C. 9606, 9607, for (1) injunctive relief to abate an imminent and substantial endangerment to the public health, welfare or the environment because of actual or threatened releases of hazardous substances from a facility located near Hempstead, Waller County, Texas, and known as the "Sheridan Site," and for (2) recovery of response costs incurred by the United States. The complaint alleged, among other things, that certain defendants were owners or operators of the facility at the time of disposal of hazardous substances at the Sheridan Site and that certain defendants were persons who by contract, agreement or otherwise arranged for disposal of hazardous substances at the Site or who arranged for transport of hazardous substances to the Site. The complaint further alleged that the United States has incurred response costs in response to actual or threatened releases of hazardous substances at or from the Sheridan Site.

Under the terms of the proposed Source Control Operable Unit Consent Decree, 111 defendants agree to fund and implement a remedy at the Site that includes bioremediation of sludges and contaminated soil, residue stabilization, installation of a RCRA compliant cap over the pond and dike area, installation of a flexible spur jetty to control erosion of the Brazos River bank, groundwater monitoring, decontamination of all on-site tanks and processing equipment, and treatment of storm water and wastewater before discharge into the Brazos River. The Consent Decree also calls for the defendants to reimburse the United States for $430,000 in past government response costs incurred through December 31, 1988 for oversight at the source control operable unit, and $20,000 for all costs incurred, and to be incurred, with regard to a wildlife mitigation plan.

Under the terms of the proposed Groundwater Operable Unit Consent Decree, 117 defendants (the 111 signatories to the Source Control Operable Unit Consent Decree plus six additional defendants) agree to fund and implement the remedy (i.e., monitor the natural attenuation of contaminants through natural processes such as sorption, dispersion and biodegradation) and pay one hundred percent of the past, present and future costs to the Environmental Protection Agency ("EPA").

Under the terms of the proposed De Minimis Source Control Operable Unit Consent Decree, five defendants (five defendants (five of the six signatories of the Groundwater Operable Unit Consent Decree which failed to sign the Source Control Operable Unit Consent Decree) agree to pay the United States $32,160.00 to be applied toward EPA's future oversight costs.

The Department of Justice will receive comments relating to the proposed Consent Decrees 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, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. All comments should refer to *United States* v. *Anderson, Greenwood & Co. (for Keystone), et al.*, D.J. Ref. No. 90-11-2-445.

The proposed Consent Decrees may be examined at the following offices of the United States Attorney and the Environmental Protection Agency:

EPA Region VI

Contact: E. Anne Miller, Office of Regional Counsel, U.S. Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202-2733, (214) 655-2120

United States Attorney's Office

Assistant United States Attorney Civil Division, U.S. Courthouse's & Federal Building, 515 Rusk, 3rd floor, Houston, Texas 77002, (713) 229-2600.

Copies of the proposed Consent Decrees may also be examined 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 Decrees may be obtained in person or by mail from the Document Center. In requesting a copy of the Decree, please enclose a check in the amount of $202.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Barry M. Hartman,

Acting Assistance Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-30102 Filed 2-18-91, 8:45 am]

BILLING CODE 4410-01-M

Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given, that on December 2, 1991, a proposed Partial Consent Decree ("Decree") was lodged with the United States District Court for the Northern District of Illinois in *United States* v. *Standard T. Chemical Company, Inc., et al.*, Civil Action No. 89 C 5730 (N.D. Ill.), between the United States—on behalf of the Environmental Protection Agency ("EPA")—and thirteen of the fourteen entities named as parties defendant in this cost recovery action brought under section 107 of the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA), 42 U.S.C. 9607.

The subject of the Decree is a CERCLA site located on South Cottage Grove in Chicago, Illinois, known as the

U.S. Scrap Site ("Site"). The proposed Decree provides, *inter alia*, that the settling defendants pay EPA's Hazardous Substance Trust Fund $310,000 (plus interest) in partial reimbursement of past costs incurred by the United States in undertaking various response actions at the Site. Also, the U.S. Army will cause $5,700 to be paid to the Hazardous Substance Trust Fund in reimbursement of costs incurred by EPA at the Site and in resolution of the CERCLA counterclaims threatened and asserted against the United States in this civil action.

The Department of Justice will receive comments relating to the proposed Decree for 30 days following the publication of this Notice. 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. *Standard T. Chemical Company, Inc., et al.*, D.J. Ref. No. 90–11–3–465. The proposed Decree may be examined at the Office of the United States Attorney for the Northern District of Illinois, Everett McKinley Dirksen Building, room 1500–S, 219 South Dearborn Street, Chicago, IL 60604, or at the Environmental Enforcement Section Document Center, 601 Pennsylvania Ave. NW., Box 1097, Washington, DC 20004 (202–347–7829). A copy of the proposed 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 $6.25 (25 cents per page reproduction costs) payable to Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environmental & Natural Resources Division, United States Department of Justice.

[FR Doc. 91–30317 Filed 12–18–91; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act Title III: State Designations of Entities as Dislocated Worker Units

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor is publishing for public information an update of a listing of names, addresses, and telephone numbers of entities designated by States as Dislocated Worker Units.

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Colombo, Director, Office of Employment and Training Programs, Employment and Training Administration, Department of Labor, room N–4469, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202–535–0577 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Title III of the Job Training Partnership Act (JTPA) provides that the Department of Labor (Department) shall fund programs for States to assist dislocated workers. Section 311(b)(2) of JTPA provides that a State will designate or create an identifiable State Dislocated Worker Unit (DWU) or office with the capability to respond rapidly, onsite, to permanent plant closures and substantial layoffs throughout the State. The DWU is a key feature of the States' implementation of programs under Title III.

Periodic updates of this listing will be published, based on revisions received by the Department.

Signed at Washington, DC, this 26th day of November, 1991.

Dated:

Roberts T. Jones,

Assistant Secretary of Labor.

Dislocated Worker Units Nationwide

Alabama

Mr. Kenneth A. Trucks, Chief
Employment & Training Division
Alabama Department of Economic and Community Affairs
P.O. Box 250347
Montgomery, Alabama 36125–0347
Telephone: 205–284–8800

Alaska

Mr. William Mailer
JTPA Program Manager
Rural Development Division
Department of Community and Regional Affairs
949 East 36th Avenue, suite 403
Anchorage, Alaska 99508
Telephone: 907–563–1955

Arizona

Mr. manuel F. Mejia
Assistant Director
Division of Employment and Rehabilitation Services
Department of Economic Security
1300 West Washington, Site Code 901A
Phoenix, Arizona 85005
Telephone: 602–542–4910

Arkansas

Mr. William D. Gaddy
Administrator
Arkansas Employment Security Division
P.O. Box 2981
Little Rock, Arkansas 72203
Telephone: 501–682–2121

California

Ms. Virginia Hamilton
Acting Chief, Job Training Partnership Division
Employment & Training Branch
Employment Development Department
800 Capitol Mall
Sacramento, California 95814
Telephone: 916–654–7110

Colorado

Mr. Dick Rautio
Planner, Dislocated Worker Unit
Governor's Job Training Office
Suite 550
720 South Colorado Boulevard
Denver, Colorado 80222
Telephone: 303–758–5020

Connecticut

Mr. Authur Franklin
Title III Coordinator
State Department of Labor
Dislocated Worker Unit
200 Folly Brook Boulevard
Wethersfield, Connecticut 06109
Telephone: 203–566–7433

Delaware

Ms. Alice Mitchell
Technical Service Manager
Delaware Department of Labor
Division of Employment & Training
University Plaza
P.O. Box 9499
Newark, Delaware 19714–9499
Telephone: 302–368–6913

Florida

Mr. Hayden Gray
Asst. Chief, Bureau of Job Training
Division of Labor, Employment & Training
Department of Labor & Employment Security
1320 Executive Center Drive
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Georgia

Mr. Robert Davis
Title III Coordinator
Georgia Department of Labor
Sussex Place
148 International Boulveard, NE.
Atlanta, Georgia 30303
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Hawaii

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830 Punchbowl Street, room 204
Honolulu, Hawaii 96813
Telephone: 808–548–3150

Idaho

Ms. Cheryl Brush
Bureau Chief, Employment and Training Programs
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317 Main Street
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Illinois

Mr. Herbert Dennis
Manager, Job Training Programs Division
Department of Commerce and Community Affairs
620 East Adams Street
Springfield, Illinois 62704
Telephone: 217–785–6006

Indiana

Mr. Richard Sewell
Deputy Director
Indiana Department of Employment and Training Services
Program Operations Division
10 N. Senate Street
Indianapolis, Indiana 48909
Telephone: 317–232–0196

Iowa

Mr. Jeff Nall
Administrator, Div. of Job Training
Iowa Dept. of Economic Development
200 East Grand Avenue
Des Moines, Iowa 50309
Telephone: 515–242–4779

Kansas

Mr. Jim Richardson
EDWAA Director
Department of Human Resources
Division of Employment & Training
401 SW Topeka Boulevard
Topeka, Kansas 66603
Telephone: 913–296–5060

Kentucky

Ms. Kathy McDonald
Branch Manager, Dislocated Workers Unit
Department of Employment Services
275 East Main, 2-West
Frankfort, Kentucky 40621
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Louisiana

Mr. Dale Miller
Assistant Director
Louisiana Department of Labor
Federal Training Program Division
P.O. Box 94094
Baton Rouge, Louisiana 70804–9094
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Maine

Mr. Michael Bourret
Special Assistant to Commissioner
Maine Department of Labor
20 Union Street
Augusta, Maine 04330
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Maryland

Mr. Ron Windsor
Office of Employment & Training
Department of Economic and Employment Development
1100 N. Eutaw Street, room 310
Baltimore, Maryland 21201
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Massachusetts

Ms. Suzanne Teegarden
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One Ashburton Place, room 1413
Boston, Massachusetts 02108
Telephone: 617–727–8158

Michigan

Mr. Roy Roulhac, Manager
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Bureau of Employment Training
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Lansing, Michigan 48909
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Minnesota

Mr. Edward Retka
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Employment and Training
Minnesota Department of Jobs & Training
Community Based Services Division
690 American Center Building
150 East Kellogg
St. Paul, Minnesota 55101
Telephone: 612–296–7918

Mississippi

Ms. Jane Black
DWU Director
Department of Job Development and Training
Governor's Office of Federal-State Programs
301 West Pearl Street
Jackson, Mississippi 39203–3089
Telephone: 601–949–2128

Missouri

Mr. Larry Earley
Director, Div. of Job Development and Training
221 Metro Drive
Jefferson City, Missouri 65109
Telephone: 314–751–7796

Montana

Mr. Dan Miles
DWU Supervisor
Research, Safety & Training Division
Montana Department of Labor & Industry
P.O. Box 1728
Helena, Montana 59624
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Nebraska

Mr. Edward Kosark
Nebaska Department of Labor
Job Training Program Division
550 South 16th Street
Box 95004
Lincoln, Nebraska 68509–5004
Telephone: 402–471–2127

Nevada

Ms. Jan Pirozzi
DWU, State Job Training Office
Capitol Complex
400 West King Street
Carson City, Nevada 89710
Telephone: 702–687–4310

New Hampshire

Mr. James Taylor
DWU Director
New Hampshire Job Training Coordinating Council
64B Old Suncock Road
Concord, New Hampshire 03301
Telephone: 603–228–0381

New Jersey

Mr. Thomas Drabik, Director Response Team/Labor Management Committees
New Jersey Department of Labor
CN 058
Trenton, New Jersey 08625–0058
Telephone: 609–984–3519

New Mexico

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DWU Supervisor
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Job Training Division
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P.O. Box 4218
Santa Fe, New Mexico 87502
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New York

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Albany, New York 12240
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North Carolina

Mr. Joel C. New
Director, Div. of Employment & Training
Department of Economic and Community Development
111 Seaboard Avenue
Raleigh, North Carolina 27611
Telephone: 919–733–7546

North Dakota

Mr. James Hirsch
Director, Job Training Division
Job Service North Dakota
1000 E. Divide
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Bismark, North Dakota 58501

Telephone: 701–224–2843

Ohio

Ms. Patricia Green
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Ohio Bureau of Employment Services
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Oklahoma

Mr. Joe Glenn, Chief, EDWAA Unit
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Oregon

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South Dakota

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Tennessee

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Texas

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Work Force Development Division
Texas Department of Commerce
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Utah

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Vermont

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Wisconsin

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Wyoming

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American Samoa

Mr. Don Ah Sue
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Pago Pago, American Samoa 96799
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District of Columbia

Mrs. Ruby Washington
Chief, Branch of Federal Programs
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Washington, DC 20001
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Federated States of Micronesia

Mr. Kohne K. Ramon
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Guam

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Northern Marianas

Ms. Flory de le Cruz
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Office of the Governor
Commonwealth of the Northern Mariana Islands
Saipan, Mariana Islands 96950
Telephone: 9–1–0288–670–322–9511

Puerto Rico

Mr. Jose Reyes Herrerro
Director, DWU
Right to Employment Administration
5 Mayaguez Building
Hato Rey, Puerto Rico 00918
Telephone: 809–754–3962

Republic of Palau

Mr. Augustine Mesebeluu
Executive Director

Private Industry Council/SJTCC
Post Office Box 100
Koror, Republic of Palau 96940
Telephone: 488–2507

Virgin Islands

Ms. Carol M. Burke
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Employment and Training
V.I. Department of Labor
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St. Croix, Virgin Islands 00820
Telephone: 809–773–1994

[FR Doc. 91–30301 Filed 12–18–91; 8:45 am]
BILLING CODE 4510–30–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

Performance Review Board

AGENCY: National Endowment for the Humanities, National Foundation on the Arts and the Humanities.

ACTION: Notice.

SUMMARY: This notice announces a new appointment of the National Endowment for the Hunamities' Performance Review Board

DATES: Effective January 1, 1992, George Farr, Director of the Division of Preservation and Access, has been designated to replace Don Gibson, Director of the Division of Public Programs, as a Member of the SES Performance Review Board until December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Timothy G. Connelly, Director of Personnel, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Lynne Cheney,
Chairperson.

[FR Doc. 91–30252 Filed 12–18–91, 8:45 am]
BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Biotic Systems and Resources; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for award. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with proposals, the meeting is closed to the public. These matters are within exemptions (4) and (6) of U.S.C. 552b (c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Biotic Systems and Resources.

Dates & Times: January 13–15, 1992; 8:30 a.m. to 5 p.m.

Location: National Science Foundation, 1800 G Street, NW., Washington, DC 20550; room 543.

Type of Meeting: Closed.

Agenda: Review and evaluate Conservation and Restoration Biology Proposals.

Contact Person: Joann Roskoski, Associate Program Manager, Ecology Program, room 215, National Science Foundation, Washington, DC 20550, (202) 357–9734.

Dated: December 16, 1991.

M. Rebecca Winkler,
Committee Management Officer.

[FR Doc. 91–30283 Filed 12–18–91; 8:45 am]
BILLING CODE 7555–01–M

Special Emphasis Panel in Cross-Disciplinary Activities; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Cross-Disciplinary Activities

Date and Time: January 9, 1992; 8:30 a.m. to 5 p.m.

Place: University of Michigan, Department of Electrical Engineering and Computer Science, Ann Arbor, Michigan 48109.

Type of Meeting: Closed.

Contact Person: John C. Cherniavsky, Head, Office of Cross-Disciplinary Activities, room 436, National Science Foundation, Washington, D.C. 20550. Telephone: (202) 357–7349.

Purpose of Meeting: To provide advice and recommendations concerning a research proposal submitted to NSF for financial support.

Agenda: Site visit to review and evaluate the University of Michigan's research proposal.

Reason for Closing: The proposal being reviewed includes information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552 b. (c) (4) and (6) the Government in the Sunshine Act.

Dated: December 16, 1991.

M. Rebecca Winkler,
Committee Management Officer.

[FR Doc. 91–30284 Filed 12–18–91; 8:45 am]
BILLING CODE 7555–01–M

Special Emphasis Panel in Design and Manufacturing Systems; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Design and Manufacturing Systems

Date/Time: January 14, 1992—8:30 a.m. to 5 p.m.

Place: Rooms 500-D & E, 1110 Vermont Ave., NW., Washington, DC.

Type of Meeting: Closed.

Agenda: Review and evaluate Manufacturing Processes and Equipment unsolicited proposals.

Contact: Dr. Bruce Kramer, Program Director, Materials Processing and Manufacturing or Dr. Suren Rao, Program Director, Manufacturing Machine and Equipment, Division of Design and Manufacturing Systems, National Science Foundation, room 1128, Washington, DC 20550 (202) 357-7676.

Dated: December 16, 1991.

M. Rebecca Winkler,
Committee Management Officer.

[FR Doc. 91–30289 Filed 12–18–91; 8:45 am]
BILLING CODE 7555–01–M

Special Emphasis Panel in Design and Manufacturing Systems; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because

the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Design and Manufacturing Systems.

Date/Time: January 21 & 22, 1992—8:30 a.m. to 5 p.m.

Place: Room 500–A, 1110 Vermont Ave., NW., Washington, DC.

Type of Meeting: Closed.

Agenda: Review and evaluate Engineering Design and Computer-Integrated Engineering unsolicited proposals.

Contact: Dr. Louis Martin-Vega, Program Director, Engineering Design or Dr. F. Hank Grant, Program Director, Computer-Integrated Engineering, Division of Design and Manufacturing Systems, National Science Foundation, 1800 G St., NW., room 1128 Washington, DC 20550 (202) 357–5167.

Dated: December 16, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–30296 Filed 12–18–91; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design and Manufacturing Systems; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Design and Manufacturing Systems.

Date/Time: January 28 & 29, 1992—8:30 a.m. to 5 p.m.

Place: National Science Foundation, room 1243, 1800 G St., NW., Washington, DC.

Type of Meeting: Closed.

Agenda: Review and evaluate Operations Research and Production Systems unsolicited proposals.

Contact: Dr. F. Hank Grant, Program Director, Operations Research or Louis A. Martin-Vega, Program Director, Production Systems, Division of Design and Manufacturing Systems, National Science Foundation, 1800 G St., NW, room 1128, Washington, DC 20550 (202) 357–5167.

Dated: December 16, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–30297 Filed 12–18–91; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Earth Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Earth Sciences.

Date and Time: January 27–30, 1992; 8:30 a.m. to 5 p.m.

Place: Room 1242, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Open.

Contact Person: Dr. James F. Hays, Division Director, National Science Foundation, rm. 602, Washington, DC 20550, Telephone: (202) 357–7958.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning support for research in the Division of Earth Sciences.

Agenda: Reviews of NSF program performance; Long Range Planning for Earth Sciences program.

Dated: December 16, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–30285 Filed 12–18–91; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Earth Sciences; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a properietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Earth Sciences.

Date: January 30, 31, 1992.

Time: 8:30 a.m. to 5 p.m. on Thurs., Jan. 30; 8:30 a.m. to 12 Noon on Fri., Jan. 31.

Place: Room 253, National Science Foundation, 1800 G St., NW., Washington, DC.

Type of Meeting: Closed.

Agenda: Review and evaluate postdoctoral applications.

Contact: Dr. Marvin E. Kauffman, Program Director, Education and Human Resources Program, National Science Foundation, room 602, Washington, DC 20550 (202–357–7958).

Dated: December 16, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–30294 Filed 12–18–91; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis in Earth Sciences; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposal being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Earth Sciences.

Date: January 10, 1992.

Time: 8:30 a.m. to 5 p.m.

Place: Room 536, National Science Foundation, 1800 G Street, NW., Washington, DC.

Type of Meeting: Closed.

Agenda: Review and evaluate Research Experiences for Undergraduates Site Applications.

Contact: Dr. Marvin Kauffman, Program Director, Education and Human Resources Program, National Science Foundation, room 602, Washington, DC 20550, (202) 357–7958.

Dated: December 16, 1991.

M. Rebecca Winkler,

Committee Management Officer

[FR Doc. 91–30298 Filed 12–18–91; 8:45 am]

BILLING CODE 7555–01–M

Committee on Equal Opportunities in Science and Engineering; Meeting

Name: Committee on Equal Opportunities in Science and Engineering.

Place: National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Dates: January 16 and 17, 1992.

Times/Room: January 16: 8:30 a.m.–5 p.m., room 540, January 17: 8:30 a.m.–3 p.m., room 540.

Type of Meeting: Open.

Contact: Mary M. Kohlerman, Executive Secretary of the CEOSE, National Science Foundation, room 1225, Telephone Number: 202–357–7461.

Purpose of Meeting: To focus on the pipeline issues with presentations by persons familiar with the data and studies related to the issues; to discuss concerns regarding data collection; and to learn of NSF's initiatives.

Agenda:

January 16
Presentations/Discussions: 8:30 a.m.–12 p.m.
Lunch: 12 noon
Presentations/Small Group Sessions: 1:30 p.m.–4:15 p.m.
Full Committee Meeting: 4:15 p.m.

January 17
Full Committee Meeting: 8:30 a.m.–9 a.m.
Presentations: 9:00–12 noon
Lunch: 12 noon
Presentations: 1:30 p.m.–2:30 p.m.
Adjournment: 3 p.m.

Summary Minutes: May be obtained from the Executive Secretary at the above address.

Dated: December 16, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–30295 Filed 12–18–91; 8:45 am]

BILLING CODE 7555–01–M

International Programs Review Panel; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: International Programs Review Panel.

Date and Time: January 23–24, 1992, 8:30 a.m. to 5 p.m.

Place: 1110 Vermont Avenue, NW., room 500–B, Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Janice Cassidy, Program Manager; 1110 Vermont Avenue, NW., room 501, Washington, D.C. 20550. Telephone: (202) 655–5862.

Purpose of Meeting: To provide advice and recommendations concerning applications submitted to NSF for financial support.

Agenda: Review and evaluate applications for the Japanese Language Study Program.

Reason for Closing: The applications being review include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: December 16, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–30293 Filed 12–18–91; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Mechanical and Structural Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Mechanical and Structural Systems.

Date and Time: January 16–17, 1992, 8:30 a.m. to 5 p.m.

Place: 1110 Vermont Avenue, NW., rooms 500–A, 500–B, and 500–C, Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. John Scalzi, Program Director, 1800 G Street, NW., room 1108. Washington, DC 20550. Telephone: (202) 357–9542.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Review and evaluate Mechanical and Structural Systems unsolicited proposals.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552 b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: December 16, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–30292 Filed 12–18–91; 8:45 am]

BILLING CODE 7555–01–M

Ocean Sciences Review Panel; Meeting

The National Science Foundation announces the following meeting:

Name: Ocean Sciences Review Panel.

Date and Time: January 21–24, 1992; 8:30 a.m. to 5 p.m.

Place: St. James Hotel, 950 24th Street, NW., Washington, DC 20037, Embassy Room, Board Room, St. James Room, room 116 and room 117.

Type of Meeting: Closed.

Contact Person: Dr. Michael R. Reeve, Head, Ocean Sciences Research Section Room 609, National Science Foundation, Washington, DC 20550, Telephone (202) 257–9601.

Purpose of Meeting: To provide advice and recommendations concerning support for research in oceanography.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary of confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of U.S.C. 552b(c), Government in the Sunshine Act.

Dated: December 16, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–30282 Filed 12–18–91; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Research Career Development; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Research Career Development.

Date and Time: February 2–4, 1992; 8:30 a.m. to 5 p.m.

Place: Holiday Inn (Crowne Plaza at Metro Center), 775 12th Street, NW., Washington, DC 20005.

Type of Meeting: Closed.

Contact Person: Mary F. Sladek, Program Director, 1800 G Street, NW., room 630, Washington, DC 20550, Telephone: (202) 357–9466.

Purpose of Meeting: To provide advice and recommendations concerning nominations to the Presidential Faculty Fellows Program (PFF).

Agenda: Review and evaluate PFF Program nominations.

Reason for Closing: The nominations being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552 b. (c) (4) and (6) of the Government in the Sunshine Act.

Dated: December 16, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–30286 Filed 12–18–91; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Research Career Development; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Research Career Development

Date and Time: January 9–11, 1992.
January 9, 1992; 7 p.m. to 9 p.m.
January 10, 1992; 8 a.m. to 5:30 p.m.
January 11, 1992; 8 a.m. to 3:30 p.m.
Place: The River Inn, 924 25th Street, NW., suite 105, Washington, DC 20037.
Type of Meeting: Closed.
Contact Person: Dr. Michael M. Frodyma, Program Director, National Science Foundation, room 643, Washington, DC 20550. Telephone: (202) 357-9486.
Purpose of Meeting: To provide advice and recommendations concerning applications submitted to NSF for financial report.
Agenda: Review and evaluate NSF–NATO Postdoctoral Fellowship applications.
Reason for Closing: The applications being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552b. (c) (4) and (6) the Government in the Sunshine Act.

Dated: December 16, 1991.

M. Rebecca Winkler,
Committee Management Officer.

[FR Doc. 91–30288 Filed 12–18–91; 8:45 am]
BILLING CODE 7555-01-M

Proposal Review Panel for Undergraduate Science, Engineering, and Mathematics Education; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meetings:

Name: Proposal Review Panel for Undergraduate Science, Engineering, and Mathematics Education.
Date and Time: January 22–25, 1992.
January 22nd—7:30 p.m. to 9 p.m.,
January 23rd–24th—8 a.m. to 5 p.m.,
January 25th—8 a.m to 3 p.m.
Place: Holiday Inn (Crowne Plaza), 300 Army Navy Drive, Arlington, VA 22202.
Type of Meeting: Closed.
Contact Person: Dr. Duncan E. McBride, Program Director, 1800 G Street, NW., room G–0639, Washington, DC 20550 Telephone: (202) 357–7051.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: Phase I: Review and evaluate proposals submitted to the Instrumentation and Laboratory Improvement Program.
Reason for Closing: The proposals reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552 b. (c) (4) and (6) the Government in the Sunshine Act.
Name: Proposal Review Panel for Undergraduate Science, Engineering, and Mathematics Education.
Date and Time: January 29 to February 1, 1992.
January 29th—7:30 p.m. to 9 p.m.,
January 30th–31th—8 a.m. to 5 p.m.,
January 1st—8 a.m to 3 p.m.
Place: Holiday Inn (Crowne Plaza), 300 Army Navy Drive, Arlington, VA 22202.
Type of Meeting: Closed.
Contact Person: Dr. Duncan E. McBride, Program Director, 1800 G Street, NW., room G–0639, Washington, DC 20550 Telephone: (202) 357–7051.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: Phase II: Review and evaluate proposals submitted to the Instrumentation and Laboratory Improvement Program.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552 b. (c) (4) and (6) the Government in the Sunshine Act.

Dated: December 16, 1991.

M. Rebecca Winkler,
Committee Management Officer.

[FR Doc. 91–30287 Filed 12–18–91; 8:45 am]
BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the Office of Management and Budget (OMB) review of information collection.

SUMMARY: The NRC has recently submitted to 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: Personal Qualification Statement—Licensee
3. The form number if applicable: NRC Form 398
4. How often the collection is required: On occasion and every six years (at renewal).
5. Who will be required or asked to report: Individuals requiring a license to operate the controls at a nuclear facility.
6. An estimate of the number of responses: 1667 annually
7. An estimate of the total number of hours needed to complete the requirement or request: 2,333; approximately 1.4 hours per response.
8. An indication of whether section 3504(h), Public Law 96–511 applies: Not applicable
9. Abstract: NRC Form 398 requests detailed information that should be submitted by a licensing candidate when applying for a new or renewal license to operate the controls at a nuclear facility. This information, once collected, would be used for licensing actions and for generating reports on the Operator Licensing Program.

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 20555.

Comments and questions should be directed to the OMB reviewer: Ronald Minsk, Office of Information and Regulatory Affairs (3150–0090), NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda J. 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. 91–30310 Filed 12–18–91; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50–213]

Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment of Facility Operating License No. DPR–61, issued to Connecticut Yankee Atomic Power Company (CYAPCO, the licensee), for operation of the Haddam Neck Plant, located in Middlesex County, Connecticut.

Environmental Assessment

Identification of the Proposed Action

The proposed amendment will revise various sections of the Technical Specifications (TS) to reflect the conversion to a Zircaloy-clad fuel assembly design and the prohibition of three loop operation for Modes 1 and 2. The Technical Specification changes will allow for the use of Zircaloy-clad fuel assemblies in the reactor core. The proposed action is in accordance with

the licensee's amendment request dated June 27, 1991.

The Need for the Proposed Action

During the upcoming refueling for Cycle 17 CYAPCO will begin to use Zircaloy-clad fuel instead of stainless steel clad fuel. The plan needs these TS changes to support the operation of the Haddam Neck Plant for Cycle 17.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the TS. The acceptability of the use of Zircaloy-clad fuel for Cycle 17 was based on NRC's review of considerations in the areas of mechanical, nuclear, and thermalhydraulic design. In addition, the non-loss-of-coolant accident (LOCA) transient analyses have been reevaluated for the Zircaloy-clad fuel design and the plant response has been found to be unaffected. The small and large break analyses is being reviewed by the staff for conformance with 10 CFR 50.46 and appendix K. These TS changes will only allow the Zircaloy-clad fuel to be loaded into the core. The plant will not be allowed to operate with the Zircaloy-clad fuel until the small and large break LOCA analyses are reviewed and approved. In addition, since the reanalyses were not performed for three-loop operation, three-loop operation is not allowed for Cycle 17.

The TS change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the prod TS amendment.

With regard to potential nonradiological impacts, the proposed amendment does involve features located entirely within the restricted area as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed amendment, any alternatives with equal or great environmental impact need not be evaluated. The principal alternative to the amendment would be to deny the amendment request. Such action would not enhance the protection of the environment.

Alternative Use of Resources

This action does not involve the use of resources not considered previously in the Final Environmental Statement for Haddam Neck.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of no Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this proposed action, see the licensee's letter dated June 27, 1991. This letter is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Russell Library, 123 Broad Street, Middletown, Connecticut 06547.

Dated at Rockville, Maryland, this 11th day of December 1991.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91–30308 Filed 12–18–91; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommittees on Safety Philosophy, Technology, and Criteria/ Severe Accidents/Regulatory Policies and Practices; Meeting

The Subcommittees on Safety Philosophy, Technology, and Criteria, Severe Accidents/Regulatory Policies and Practices will hold a joint meeting on January 7–8, 1992, room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, January 7, 1992—8:30 a.m. until the conclusion of business

Wednesday, January 8, 1992—8:30 a.m. until the conclusion of business.

The Subcommittees will discuss a number of interrelated proposed staff position papers as follows: (1) Proposed Revision to 10 CFR part 100, Decoupling Siting from Design, (2) Site Characteristics to be Used in part 100 Revision and Large Release Determination, (3) Proposed Definition of a Large Release for Safety Goals Implementation (tentative) and (4) Proposed Revision to TID–14844 to Update Source Term.

Oral statements may be presented by members of the public with the concurrence of the Subcommittees Chairmen; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittees, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairmen's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Designated Federal Official, Mr. Dean Houston (telephone 301/492–9521) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: December 13, 1991.

Gary R. Quittschreiber,

Chief, Nuclear Reactors Branch.

[FR Doc. 91–30311 Filed 12–18–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50-213]

In the Matter of Connecticut Yankee Atomic Power Co. (Haddam Neck Plant); Exemption

I

The Connecticut Yankee Atomic Power Company (CYAPCO, the licensee) is the holder of Facility Operating License No. DPR-61 which authorizes operation of the Haddam Neck Plant. The license provides, among other things, that the Haddam Neck Plant is subject to all rules, regulations, and Orders of the Commission now or hereafter in effect.

The plant is a single-unit pressurized water reactor at the licensee's site located in Middlesex County, Connecticut.

II

One of the conditions of all operating licenses for water-cooled power reactors, as specified in 10 CFR 50.54(o), is that primary reactor containments shall meet the containment leakage test requirements set forth in 10 CFR part 50, appendix J. More specifically, Section III.C, in part, requires that:

Section III.C, Type C tests—1. Test method

Type C tests shall be performed by local pressurization. The pressure shall be applied in the same direction as that when the valve would be required to perform its safety function, unless it can be determined that the results from the tests for a pressure applied in a different direction will provide equivalent or more conservative results.

By letters dated April 28 and September 8, 1989 as amended by letter dated October 19, 1990, CYAPCO requested exemptions for eight penetrations from the above requirements. For penetrations P-3 and P-8, CYAPCO has requested an exemption from all requirements of Section III.C and for penetrations P-4, P-14, P-33, P-62, P-78 and P-80, CYAPCO has requested an exemption from Section III.C.1 to allow reverse direction testing.

III

By letters dated April 28 and September 8, 1989, the licensee requested exemptions from the requirements of 10 CFR part 50, appendix J, Section III.C, for 18 penetrations. By letter dated October 19, 1990, the licensee withdrew the exemption request for 10 penetrations. The licensee stated that the 10 penetrations would be modified to meet the requirements in Section III.C. In this section, the staff has evaluated the penetrations separately. Most of these eight penetrations were previously reviewed in the staff's Safety Evaluation for a schedular exemption from Appendix J dated September 29, 1987. The staff's conclusions for each penetration is addressed below. More details are contained in the NRC staff's related Safety Evaluation issued concurrent with this Exemption.

Section III.C, Type C tests

The licensee has requested permanent exemptions for the following penetrations:

P-3—High-Pressure Safety Injection
P-4—Pressurizer Relief Tank Vent
P-14—Vapor Seal Head Tank
P-80—Auxiliary Spray From Fire System

1. Penetration P-3

The containment isolation valves (CIVs) for this penetration consist of five valves in parallel inside containment, four of which are check valves and the fifth a locked-closed manual valve, SI-V-860. The licensee has requested an exemption from the requirement that the check valves be tested with air instead of water and that valve SI-V-860 be exempted from all Type C requirements.

The licensee has shown that all four check valves will be sealed with water at a pressure greater than 1.1 Pa (calculated peak containment pressure during design basis loss of coolant accident [LOCA]) and that the water seal can be maintained for at least 30 days. Based on the above, the staff has concluded that these check valves need not be exempted from the requirements of Section III.C.2 and III.C.3. Local leak rate testing of these check valves with water is an acceptable test for appendix J.

SI-V-860 is a locked-closed manual valve. It is water sealed with an ultimately unlimited supply of seal water from the containment sump. The configuration of the system is such that all leakage through this valve during a LOCA would be water going back into containment. The NRC concludes that any leakage through this valve is of no consequence since it is returned to the containment. Based on the above, the staff concludes that a permanent exemption from all Type C testing requirements of appendix J for valve SI-V-860 is acceptable.

2. P-4—Pressurizer Relief Tank Vent

The licensee has proposed to test CIV WG-TV-1845 in the reverse-direction. The orientation of this valve is such that the reverse-direction testing tends to push the disk out of its seat and therefore tends to provide a more conservative or at least equivalent result when compared to the forward direction testing. However, reverse-direction testing does not include leak testing of the stem packing, body-to-bonnet joint, or a flanged pipe joint on the containment side of the valve.

The licensee has stated there are two compensating factors:

a. The stem/bonnet will be exposed to the Type A test (containment integrated leak rate test) pressure every 3 to 4 years, and

b. The containment side of WG-TV-1845 is normally exposed to the pressurizer relief tank nitrogen blanket pressure of approximately 3 psig during normal power operation.

The staff agrees that the containment integrated leak rate test and the maintenance of the 3 psig overpressure in the pressurizer relief tank during power operation will provide reasonable assurance of the leak-tight integrity of the stem/bonnet boundaries. In addition, the licensee has agreed to soap bubble test the pressurized stem/bonnet boundaries of the valve at the frequency for the Type C test at the pressurizer relief tank pressure and during each Type A tests at Pa. Based on the above, the staff finds that a permanent exemption from the requirement of Section III.C.1, "equivalent of more conservative results" of appendix J is acceptable and, therefore, CIV WG-TV-1845 can be tested in the reverse-direction.

3. P-14—Vapor Seal Head Tank

The licensee has proposed to test CIV DH-TV-1843 in the reverse-direction. This is a 1½-inch double-seated valve with socket weld ends (thus, no pipe flanges to test). It is oriented such that the stem packing and body-to-bonnet joint are included in the reverse-direction testing. The licensee states since this value has a balanced port design, being a double-plug flow control valve, the direction of the pressurization should have no effect on disc/seat leak-tightness. The staff agrees with the licensee's assertion that testing in either direction should give equivalent results. Based on the above, the staff concludes that the reverse-direction testing of this valve is in accordance with the requirements of appendix J and no exemption is needed.

4. P-80—Auxiliary Spray From Fire System

By letter dated September 29, 1987, the staff granted a permanent exemption for this penetration. This exemption did not

consider the possibility that the stem/bonnet boundaries on the containment side of CIV RH–MOV–31 may be omitted from reverse-direction testing. The licensee has concluded that this potential leak path needs to be addressed and therefore requested this modification to their exemption. The Type A test procedure blanks and vents the outboard side of RH–MOV–31 to establish proper differential pressure across penetration P–80. However, the inboard side of the RH–MOV–31 may not be exposed to the Type A pressurization if check valve RH–CV–35 (which is not a CIV) inside containment is leak tight. The licensee proposes to amend its Type A test procedures to open a capped line inside containment between RH–MOV–31 and RH–CV–35 to assure direct pressurization of CIV RH–MOV–31 in future containment integrated leak rate tests. In addition, the licensee has agreed to soap bubble check the pressurized stem/bonnet boundaries of the CIV RH–MOV–31 during Type A test. Based on the above, the staff concludes that the previously granted permanent exemption from appendix J is still valid with the added condition that licensee be required to soap bubble check the pressurized stem/bonnet boundaries during the Type A test. The typical acceptance criterion of zero bubbles for such checks would provide a direct indication of the leak-tightness of the stem/bonnet.

IV

Pursuant to 10 CFR 50.12(a)(2), the Commission will not consider granting an exemption unless special circumstances are present. Item (ii) of the subject regulation includes special circumstances where application of the subject regulation is not necessary to achieve the underlying purpose of the rule.

As discussed previously, the NRC has concluded for penetration P–3 that the valve is under a constant water seal during a LOCA by the safety injection systems. The leak rate does not affect the radiological consequences to the public during a LOCA because the system configuration is such that all leakage is returned to the containment. Therefore, the staff concludes that Type C leak testing of penetration P–3 is not necessary to meet the underlying purpose of the rule in that all leakage during a LOCA would be water going into containment rather than air coming out.

For Penetration P–4, the NRC has concluded that the reverse-direction testing in conjunction with the containment integrated leak rate test and the fact that the system design in such that the penetration must maintain a 3 psig overpressure in the pressurizer relief tank, provides adequate assurance that this valve is leak tight. Additionally, the licensee has agreed to soap bubble the stem/bonnet boundaries of the valve at a frequency for the Type C test at the pressurizer relief tank pressure and during the Type A test at Pa. Based on the above, the staff concludes that a permanent exemption for penetration P–4 for reverse-direction testing with the compensatory measures satisfies the underlying purpose of the rule.

For penetration P–80, the staff has concluded that given the system configuration, any significant leakage through this valve into containment would be detected because it would lead to spray down of containment. In a sense this valve is under continuous test (maintenance of the fire water system pressure boundary). The staff has concluded that this system configuration with the reverse-direction Type C test with water provides adequate assurance that this valve is leak tight. The licensee has stated they will flange the fire water system outside of containment and open a capped line inside of containment during the containment integrated leak rate test to assure the CIV RH–MOV–31 will be exposed to the required Type A test differential pressure. In addition, the licensee has agreed to soap bubble the stem/bonnet boundaries during the Type A test. Based on the above, the staff concludes that a permanent exemption for penetration P–80 for reverse-direction testing with the compensatory measures satisfies the underlying purpose of the rule.

V

Accordingly, the Commission has determined that pursuant to 10 CFR 50.12, the exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby approves the following exemption request.

Permanent exemptions are hereby granted from the requirement of 10 CFR part 50, appendix J, Section III.C for penetration P–3 and Section III.C.1 for penetrations P–4 and P–80.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the environment (56 FR 64528).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 11th day of December 1991.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91–30309 Filed 12–18–91; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF STATE

[Public Notice 1537]

Secretary of State's Advisory Committee on Private International Law; Study Group on Intercountry Adoption; Meeting

The second meeting of the Study Group on Intercountry Adoption will take place on Friday, January 10, 1992 from 9:30 a.m. to about 5 p.m. in Conference Room 1107 of the State Department building in Washington, DC.

The purpose of the meeting is to review the tentative draft convention on international cooperation and protection of children in respect of intercountry adoption prepared by a special commission on intercountry adoption of the Hague Conference on Private International Law. The tentative draft convention, prepared by this special commission at its session in April/May 1991 and modified by a drafting committee in September 1991, will form the basic working document for the third and last preparatory session of The Hague Conference's special commission on February 3–14, 1992. The results of the February session will be the draft convention that will form the basic working document of the session of The Hague Conference itself (diplomatic conference) in Spring 1993.

Among the questions to be reviewed at the Study Group meeting in January for the purpose of providing guidance to the U.S. delegation to sessions at The Hague are the scope of application of the convention, how to deal with simple adoptions under the law of certain states of origin, how the convention may deal with "independent" or "private" adoptions, the criteria and flexibility of the convention with regard to licensing or accreditation of adoption services providers, the required procedures set out for intercountry adoptions, the recognition of adoptions pursuant to the convention, and the possible need for provisions to deal with the law applicable to certain aspects of intercountry adoptions.

Copies of the relevant documents for the meeting may be requested from the Legal Adviser's Office by contacting Peter H. Pfund at (202) 653–9851, by fax at (202) 632–5283, or by writing the Office of the Legal Adviser (L/PIL),

Suite 501, 2100 K Street NW., Washington, DC 20037–7180.

The meeting will be held in Conference Room 1107 at the State Department; participants should use only the diplomatic entrance at 22nd and C Streets, NW., for this meeting. Members of the general public may attend up to the capacity of the meeting room. As the room capacity is limited and access to the building is controlled, the office indicated above should be notified no later than Friday, January 3, 1992 of the name, affiliation, address and phone number of persons wishing to attend. Persons whose names have been so notified will be helped in gaining admission to the building on January 10 for the beginning of the meeting. In order to facilitate planning, members of the public are requested to indicate particular issues on which they expect to comment. Persons interested but unable to attend the meeting are welcome to submit written comments or proposals to the address/fax number indicated above.

Dated: December 11, 1991.

Peter H. Pfund,

Vice-Chair, Secretary of State's Advisory Committee on Private International Law.

[FR Doc. 91–30316 Filed 12–18–91; 8:45 am]

BILLING CODE 4710–08–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Fitness Determination of Aviation Services West, Inc.; d/b/a Lake Powell Air Service, d/b/a Cedar City Air Service, d/b/a Kanab Air Service, d/b/a Arizona Air, d/b/a St. George Air Service

AGENCY: Department of Transportation.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 91–12–23, Order to Show Cause.

SUMMARY: The Department of Transportation is proposing to find that Aviation Services West, Inc. d/b/a Lake Powell Air Service d/b/a Cedar City Air Service d/b/a Kanab Air Service d/b/a Arizona Air d/b/a St. George Air Services is fit, willing, and able to provide commuter air service under section 419(e) of the Federal Aviation Act.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P–56, Department of Transportation, 400 Seventh Street, SW., room 6401, Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than December 30, 1991.

FOR FURTHER INFORMATION CONTACT: Mrs. Kathy Lusby Cooperstein, Air Carrier Fitness Division (P–56, room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2337.

Dated: December 13, 1991.

Patrick V. Murphy, Jr.,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 91–30264 Filed 12–18–91; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

Proposed Advisory Circular 25.1523–1, Minimum Flightcrew

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Availability of Proposed Advisory Circular (AC) 25.1523–1 and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular (AC) which provides a method of compliance with the requirements of § 25.1523 of the Federal Aviation Regulations (FAR) which contain the certification requirements for the determination of minimum flightcrew on transport category airplanes. This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

DATES: Comments must be received on or before April 20, 1992.

ADDRESSES: Send all comments on proposed AC to: Federal Aviation Administration, attention: Transport Standards Staff, ANM–110, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at the above address between 7:30 a.m. and 4 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jan Thor, Transport Standards Staff, at the address above, telephone (206) 227–2127.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the draft AC may be obtained by contacting the person named above under **"FOR FURTHER INFORMATION CONTACT."** Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters should identify AC 25.1523–1 and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the Transport Standards Staff before issuing the final AC.

Background

In early 1981, the President established a task force on aircraft crew complement which was directed to make "its recommendation whether operation of the new generation of commercial jet transport airplanes by two-person crews is safe and certification of such airplanes is consistent with the Secretary's duty under the certification provisions of the Federal Aviation Act of 1958 to promote flight safety." Several recommendations were made in the Report of the President's Task Force on Aircraft Crew Complement, dated July 2, 1981, including one that suggested that the agency complete and keep current section 187 (Minimum Flightcrew) of FAA Order 8110.8, Engineering Flight Test Guide for Transport Category Airplanes. The agency decided to publish the entire contents of the Order in advisory circulars to make such material formally available to the general public. Advisory Circular 25.1523–1 is one of the ACs developed as a result of this decision.

A notice announcing the availability of and requesting comments on draft AC 25.1523 was published in the **Federal Register** on May 12, 1986 (51 FR 17435). The comment period closed on August 11, 1986. In mid-1987, the FAA met with pilot groups, aircraft manufacturers, operators, and flight attendants to solicit comments and ideas related to crew complement issues. This was done in anticipation of two major certification programs involving new two-pilot aircraft; the McDonnell Douglas MD–11 and the Boeing 747–400. The knowledge gained through this process was effectively used in the 747–400 and MD–11 minimum flightcrew evaluations. As a result of the comments received from industry (both from the original publication of the subject AC and the above-referenced meetings), and recommendations that resulted from the USAF/FAA-sponsored "Workload Measurement Techniques" contract, the draft AC was revised extensively, and is being made available once again for public comment.

Issued in Renton, Washington, on December 11, 1991.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM-100.

[FR Doc. 91-30272 Filed 12-18-91; 8:45 am]

BILLING CODE 4910-13-M

Huntsville International Airport, AL; Notice of Intent To Rule on Application

AGENCY: Federal Aviation Administration, DOT.

ACTION: Correction to Notice of Intent to Rule on Application to Impose a Passenger Facility Charge (PFC) at the Huntsville International Airport, Huntsville, Alabama.

SUMMARY: This correction incorporates information from the public agency's application and date which FAA action is required.

In notice document 91-26915 beginning on page 61471 in the issue of Tuesday, December 3, 1991, make the following corrections:

1. In the first column, "March 12, 1992" should read "March 7, 1992".

2. In the second column, "Total Estimated PFC Revenue: $24,617,126" should read "Total Estimated PFC Revenue: $36,472,657".

Issued in Atlanta, Georgia, on December 11, 1991.

Marisue Haigler,

Assistant Manager, Airports Division, Southern Region.

[FR Doc. 91-30270 Filed 12-18-91; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Docket No. 91-64-IP-No. 1]

Mazda (North America), Inc.; Receipt of Petition for Determination of Inconsequential Noncompliance

Mazda (North America), Inc. (Mazda) of Washington, DC, has determined that some of its vehicles fail to comply with 49 CFR 571.108, "Lamps, Reflective Devices, and Associated Equipment" (Standard No. 108), and has filed an appropriate report pursuant to 49 CFR part 573. Mazda has also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgement concerning the merits of the petition.

During the period of April 1990 to May 1991, Mazda installed certain rear combination lamps on 43,239, 1990 and 1991 model year MX-5 passenger cars. In the manufacturing process of these rear combination lamps, some lamps lack a sufficient quantity of reflecting paint on the inner surface of the turn signal lamp body. As a result, there is the possibility that the turn signal lamps on these vehicles do not comply with the photometric requirements of Standard No. 108.

Paragraph S5.1.1.11 of Standard No. 108 specifies that a turn signal lamp shall meet a minimum percentage of a corresponding minimum value of lighting intensity for each of 19 designated test points. Paragraph S.5.1.1.12 of Standard No. 108 specifies that a turn signal lamp is not required to meet this minimum photometric value at each test point, if the sum of the percentages of the minimum lighting intensity measured at the test points is not less than those specified for each of five different groups of the test points.

Mazda provided test data on three samples of the subject turn signal lamps, which show that the lamps do not meet minimum intensity requirements at five of the 19 test points specified in S5.1.1.11 of Standard 108. At test point 5U-V the minimum intensity is 113.8 candela (cd), while the minimum values measured on the three lamps ranged from 75.3 cd to 89.6 cd. At test points H-5L, H-V, and H-5R the minimum required value is 130 cd, while the minimum values measured on the three lamps ranged from 108.9 cd to 116.6 cd. At test point 5D-V the minimum required value is 113.8 cd, while the minimum values measured on the three lamps ranged from 94.5 cd to 103.1 cd. In addition to not meeting minimum lighting intensity requirements at these five test points, the data provided by Mazda show that the turn signal lamps do not meet minimum requirements when the test points are grouped as specified in S5.1.1.12.

Mazda supports its petition for inconsequential noncompliance with the following:

1. The overall candela output level provided by the subject turn signal lamps exceeds the minimum value required by Standard 108.

Of the 19 test points, only 5 are below the minimum candela output level, ranging from 66.0 percent to 90.4 percent of the required value. However, the sum of the candela measured at all 19 test points is 22.7 percent to 26.8 percent more than the sum of the required value. The sum of the measured candela ranges from 1365.9 cd to 1410.6 cd, and the sum of the required candela is 1112.4 cd.

Of the five groups of test points specified in S5.1.1.12, only Group Three has a total candela output level which is below the required value. Group Three is 14.2 percent to 17.6 percent less than the required value. However, the sum of the candela output for Group Three, along with that of Groups Two and Four which are close to Group Three, exceeds the required value. The sum of the measured candela for Groups Two, Three, and Four ranges from 1014.2 cd to 1065.6 cd, and the sum of the required values for these three groups is 943.2 cd.

2. "The performance of the subject turn signal lamps is adequate in all regards. To confirm the photometric performance of the subject lamp, Mazda conducted jury evaluation comparing the illumination visibility of the subject lamp with a proper one which provides candela output marginally exceeding [Standard] 108 minimum requirements. In this evaluation, ten observers evaluated the subject lamp with the light turned on and by viewing from each 2, 5, 10, and 30 [meters] backward. There was no difference * * *, and it was judged that [the turn signal lamp] has no problem on visibility and signaling performance."

3. Mazda has not received any owner complaints, field reports, or allegation of hazardous circumstances relating to the illumination or signaling capability of these turn signal lamps.

4. There is no possibility that the performance of the lamps will worsen with vehicle usage.

5. Existence of the manufacturing error which produced this problem was eliminated in May 1991, because an exclusive manufacturing line was set up for the subject lamp at that time.

Interested persons are invited to submit written data, views, and arguments on the petition of Mazda, 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 six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the

Federal Register pursuant to the authority indicated below.

Comment closing date: January 21, 1992.

(15 U.S.C. 1417; delegation of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on December 16, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-30355 Filed 12-18-91; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: December 21, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Comptroller of the Currency

OMB Number: 1557-0186.

Form Number: None.

Type of Review: Extension.

Title: Agricultural Loan Loss Amortization (12 CFR part 35).

Description: Title VIII of the Competitive Equality Banking Act of 1987 permits eligible agricultural banks to amortize losses on qualified agricultural loans. Information to be collected from banks participating in the program is needed to monitor their eligibility, condition and amortization and activities.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 1.

Estimated Burden Hours Per Response: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1 hour.

Clearance Officer John Ference (202) 447-1177, Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

OMB Reviewer: Gary Waxman (202) 395-7340, Officer of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 91-30299 Filed 12-18-91; 8:45 am]

BILLING CODE 4810-33-M

Public Information Collection Requirements Submitted to OMB for Review

Date: December 13, 1991.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0052.

Form Number: ATF F. 5130.9.

Type of Review: Extension.

Title: Brewer's Monthly Report of Operations.

Description: ATF F 5130.9 is a periodic report detailing specific operations and activities to account for taxable commodities used in operations. For this reason, ATF F 5130.9 is a method to safeguard tax revenue. ATF F 5130.9 shows taxable and nontaxable removals, overages, shortages and losses at breweries. ATF can pinpoint problems at breweries on a timely basis and take steps to protect the revenue.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 286.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: Monthly.

Estimated Total Reporting Burden: 3,432 hours.

Clearance Officer: Robert N. Hogarth (202) 927-8930, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 91-30300 Filed 12-18-91; 8:45 am]

BILLING CODE 4810-31-M

Bureau of Alcohol, Tobacco and Firearms

Granting of Relief, Federal Firearms Privileges

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF).

ACTION: Notice of granting of restoration of federal firearms privileges.

SUMMARY: The persons named in this notice have been granted restoration of their Federal firearms privileges by the Director, Bureau of Alcohol, Tobacco and Firearms.

As a result, these persons may lawfully acquire, transfer, receive, ship, and possess firearms if they are in compliance with applicable laws of the jurisdiction in which they live.

FOR FURTHER INFORMATION CONTACT: Special Agent in Charge Karl Stankovic, Firearms Enforcement Branch, Firearms Division, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, (202-927-7770).

SUPPLEMENTARY INFORMATION: In accordance with 18 U.S.C. 925(c), the persons named in this notice have been granted restoration of Federal firearms privileges with respect to the acquisition, transfer, receipt, shipment, or possession of firearms. These privileges were lost by reason of their convictions of crimes punishable by imprisonment for a term exceeding one year or because they otherwise fell within a category of persons prohibited by Federal law from acquiring, transferring, receiving, shipping or possessing firearms.

It has been established to the Director's satisfaction that the circumstances regarding the applicants' disabilities and each applicant's record and reputation are such that the applicants will not be likely to act in a manner dangerous to public safety, and that the granting of the restoration will not be contrary to the public interest.

The following persons have been granted restoration:

Affeldt, Robert Douglas, 203 Wass Street, Fenton, Michigan, convicted on July 9, 1986, in the United States District Court, Flint, Michigan.

Albright, Walter John, 83 Bigelow Street, Pittsburgh, Pennsylvania, convicted on

March 11, 1964, in the Court of Oyer, Alleghany County, Pennsylvania.

Barnes, Calvin Wade, Rural Route 5, Box 9, Kemps Trailer Court, Fulton, Missouri, convicted on December 19, 1983, in the Calloway County Circuit Court, Fulton, Missouri.

Beckman, Richard August, 1101 Pearson Parkway, Brooklyn Park, Minnesota, convicted on September 9, 1980, in the Circuit Court of Eau Claire County, Wisconsin.

Bentivegna, Jack Michele, 2444 Cambridge Road, York, Pennsylvania, convicted on September 19, 1980, in the United States District Court, Middle Judicial District of Pennsylvania, Williamsport, Pennsylvania.

Blick, Jerry A., Route 1, Box 209–A, Princeton, Kentucky, convicted on June 12, 1976, in the Caldwell County Circuit Court, Princeton, Kentucky.

Bordner, Daniel Keith, 21725 East Wellesley, Apartment 22, Otis Orchards, Washington, convicted on March 13, 1978, in the Superior Court of Kitsap County, Washington.

Bozung, DeWayne Charles, 921 Jefferson Avenue, Midland, Michigan, convicted on October 28, 1974, in the Twenty-first Judicial Circuit Court of Isabella County, Mt. Pleasant, Michigan.

Burtner, John Marvin, W5404–29 Highway 82E, Mauston, Wisconsin, convicted on October 1, 1985, in the Circuit Court of Juneau County, Mauston, Wisconsin.

Clark, Blake Paul, 13485 Lindsley Road, Saline, Michigan, convicted on April 26, 1985, in the Washtenaw County Court, Ann Arbor, Michigan.

Cobb, Ashley Junior, 728 Decatur Street, Brooklyn, New York, convicted on May 13, 1985, in the United States District Court, Eastern Judicial District of New York.

Coleman, Richard Allen, 1356 North Main Street, Colville, Washington, convicted on August 26, 1983, in the Stevens County Superior Court, Washington.

Colson, Barrington Maxwell Junior, HCR 80, Box 159, Belfast, Maine, convicted on February 28, 1984, in the Waldo County Superior Court, Maine.

Cook, Nicholas John, 5162 North Irish Road, Davison, Michigan, convicted on July 8, 1986, in the United States District Court, Flint, Michigan.

Cox, Coleman Lee, 16 Independence Circle, Forest, Virginia, convicted on July 29, 1985, in the United States District Court, Western Judicial District of Lynchburg, Virginia.

Cravens, James Huel, Route 2, Box 207, Princeton, Kentucky, convicted on November 29, 1971, in the United States District Court, Paducah, Kentucky.

Cromley, John David, 4540 Miramur Northeast, Grand Rapids, Michigan, convicted on May 6, 1988, in the United States District Court, Western Judicial District of Michigan.

Daoust, Conrad Joseph, Box 215, Danforth, Maine, convicted during February 1963, and also on October 10, 1974, in the Franklin County Superior Court, Farmington, Maine.

Davis, Benjamin Roger, Rural Delivery 3, 203 Crestwood Drive, Ebensburg, Pennsylvania, convicted on July 6, 1987, in the United States District Court, Western Judicial District of Pennsylvania.

Dewitt, Gerald Burke, 211 Backer Street, Selma, Alabama, convicted on January 9, 1986, in the Dallas County Circuit Court, Alabama.

Dotzel, Edward Charles, 150 Cedar Street, Cedarville, Illinois, convicted during September 1959, in the United States District Court, Northern Judicial District of Illinois.

Ferguson, Robert Brewster, Seamans Union, Federal Station, Seattle, Washington, convicted on December 4, 1981, in the United States District Court, Western Judicial District of Washington.

Fowler, Dewaine Lee, 2607 Third Street, Woodward, Oklahoma, convicted on January 2, 1959, in the District Court of Woodward County, Oklahoma, and also on January 23, 1962, in the District Court of Blaine County, Watonga, Oklahoma.

Francolini, Leonard, 56 Morgan Road, Canton, Connecticut, convicted on December 4, 1984, in the United States District Court, Bridgeport, Connecticut.

Gartmann, Anthony Edmund, N72 W18706 Good Hope Road, Menomonee Falls, Wisconsin, convicted on April 19, 1981, in the Ozaukee County Circuit Court, Port Washington, Wisconsin.

Goodale, Arthur Uel, 2792 Southeast Helms Avenue, Port St. Lucie, Florida, convicted on May 17, 1974, in the Southern Judicial District Court, Broward County, Florida.

Graham, Keith Leroy, 28919 158th Avenue East, Graham, Washington, convicted on July 14, 1982, in the Western District Court, Tacoma, Washington.

Hilmer, Keith Richard, 1223 Eleventh Street, Beloit, Wisconsin, convicted on November 7, 1974, in the Circuit Court of Oneida County, Rhinelander, Wisconsin.

Horner, Robert Gene, 514 Vintage Trail, Waukee, Iowa, convicted on December 3, 1982, in the United States District Court, Southern Judicial District of Iowa.

Hough, Timothy Joseph, 2611 West 200 Street, Warsaw, Indiana, convicted on November 4, 1979, in the Allen County Superior Court, Fort Wayne, Indiana.

Hudson, Randy Lugene, 1116 West First, Pittsburg, Kansas, convicted on February 11, 1988, in the Eleventh Judicial District Court of Pittsburgh, Crawford County, Kansas.

Hurley, Bobby Dale, 117 Spring, Sikeston, Missouri, convicted on March 14, 1978, in the Circuit Court of Mississippi County, Missouri.

Hutchinson, Harold Bryan, 106 Wilhite, West Monroe, Louisiana, convicted on February 19, 1985, in the United States District Court, Western Judicial District, Monroe, Louisiana.

Jones, Paul E. Junior, Route 1, Box 274, Clinton, Kentucky, convicted on September 25, 1986, in the Fulton County Circuit Court, Hickman, Kentucky.

Kees, C.B., Route 4, Huntingdon, Tennessee, convicted on August 24, 1983, in the United States District Court, Western Judicial District of Tennessee, Jackson, Tennessee.

Kellogg, Terry Glen, E10215 North Reedsburg Road, Baraboo, Wisconsin, convicted on May 29, 1984, in the Sauk County Circuit Court, Baraboo, Wisconsin.

Kunkel, Dennis Allen, Route 2, Box 99, Ellsworth, Wisconsin, convicted October 28, 1982, in the Pierce County Circuit Court, Ellsworth, Wisconsin.

Landry, Reginald Louis, 505 Mire Street, Houma, Louisiana, convicted on August 22, 1984, in the United States District Court, Eastern Judicial District of Louisiana.

Lantrip, Charles Lonnie, 19621 133 Avenue Court East, Graham, Washington, convicted on January 18, 1967, in the Superior Court of Yakima County, Washington.

Lee, Eugene Harvard, 3664 Park Road, Hollywood, Florida, convicted on July 11, 1969, in the United States District Court, Eastern Division, Northern Judicial District of Illinois.

Lee, Russell Wayne, 800 Coulter Road, Sherwood, Arkansas, convicted on January 26, 1986, in the United States District Court, Eastern Judicial District of Arkansas.

Lucas, Robert Donald, 1522 Limetree Lane, Duncanville, Texas, convicted on April 25, 1986, in the United States District Court, Dallas, Texas.

Lund, Charles Albert, 516 South 8th Street, Thermopolis, Wyoming, convicted on June 19, 1981, in the United States District Court of Wyoming.

Mayer, Steven Mark, E10037 Xanadu Road, Wisconsin Dells, Wisconsin, convicted on July 24, 1987, in the Winnebago County Courthouse, Oshkosh, Wisconsin.

Monnot, Dean Francis, Box 637A, River Road, Pickerel, Wisconsin, convicted on September 4, 1985, in the Langlade County Court, State of Wisconsin.

Moore, John Wesley, 134 Westway, Pontiac, Michigan, convicted on September 28, 1953, in the Circuit Court of Genesee County, Flint, Michigan.

Nemmers, Jeffrey Joseph, 5311 South Spruce, Wichita, Kansas, convicted on October 20, 1986, in the District Court of Cowley County, Kansas.

Noel, Theodore Roosevelt, Route 2, Box 346, Florence, Alabama, convicted on November 5, 1963, in the Circuit Court of Lauderdale County, Alabama; and also on March 13, 1972, in the United States District Court, Northern Judicial District of Alabama.

Palecek, David James, 308A Prospect Avenue, Oshkosh, Wisconsin, convicted on January 8, 1980, in the Circuit Court of Winnebago County, Oshkosh, Wisconsin.

Porrazzo, Joseph Robert Junior, 1705 South Irving Place, Carson City, Nevada, convicted on August 11, 1980, in the United States District Court, Central District of California, Los Angeles, California.

Prevette, Lee Edward, Route 4, Box 404, China Grove, North Carolina, convicted on February 21, 1973, in the United States District Court, Chattanooga, Tennessee.

Raminger, Thomas Edward, 234 Oak Street, Binghamton, New York, convicted on June 24, 1960, in the Onondaga County Court, Syracuse, New York.

Renner, Bert Roger, Post Office Box 242, Ridgeland, Wisconsin, convicted on November 6, 1978, and also on May 28, 1982, in the Marathon County Circuit Court, Wausau, Wisconsin.

Rizzo, Franklin Phillip, 27 Rochaway Turnpike, Lawrence, New York, convicted on April 23, 1987, in the United States District Court, Southern Judicial District of New York.

Rodgers, Richard Wayne, 1134 Rogers Road, Cassett, South Carolina, convicted on June 13, 1983, in the United States District Court, Columbia, South Carolina.

Rolfe, Richard Edwin, 115 North Third Street, Tooele, Utah, convicted on October 11, 1977, in the Third District Court of Tooele County, Utah.

Sanders, Joe Robert, Route 1, Box 197, Red Level, Covington County, Alabama, convicted on March 4, 1988, in the Covington County Circuit Court, Ahdalusia, Alabama.

Skrinjorich, Dorothy Marie, 434 Old Clairton Road, Clairton, Pennsylvania, convicted on March 1, 1985, in the United States District Court, Western Judicial District of Pennsylvania.

Skrinjorich, Sylvester, 434 Old Clairton Road, Clairton, Pennsylvania, convicted on March 1, 1985, in the United States District Court, Western Judicial District of Pennsylvania.

Smith, Ronald Vincent, 13823 Motter Station Road, Rocky Ridge, Maryland, convicted on July 20, 1978, in the United States District Court, Baltimore, Maryland.

Sovie, Charles James, Box 162, Scotts Bridge Road, Fine, New York, convicted on December 2, 1982, in a General Court Martial, Homestead Air Force Base, Florida.

Stevens, James Clyde, 1030 Church Street, Tiptonville, Tennessee, convicted on October 31, 1963, in the Shelby County Court, Memphis, Tennessee; and also on December 15, 1965, in the Davidson County Court, Nashville, Tennessee.

Stockwell, Barry Lyle, W3890 370th Avenue, Ellsworth, Wisconsin, convicted on August 9, 1984, in the Pierce County Circuit Court, Ellsworth, Wisconsin.

Unkraut, Kenneth Allen, 8216 North Dilcrest Street, Florence, Kentucky, convicted on August 19, 1980, in the United States District Court, Covington, Kentucky.

Van Meter, Beulah Ann, 229 C.L. Ray Road, Smith Grove, Kentucky, convicted on June 27, 1986, in the United States District Court, Bowling Green, Kentucky.

Vincent, Terry Ronald, 3265 Egner Road, Cedar Springs, Michigan, convicted during 1958 and also on August 8, 1960, in the Circuit Court of Montclaim County, Michigan.

Ward, Ronald Fred, 5816 Northwest County Avenue, Canton, Oklahoma, convicted on November 7, 1956, in the District Court of Oklahoma County, Oklahoma.

Wartner, David Melvin, 902 Saddle Ridge, Portage, Wisconsin, convicted on March 13, 1985, in the Columbia County Circuit Court, Portage, Wisconsin.

West, Frank Junior, 14624 179th Avenue, Southeast, Apartment 24, Monroe, Washington, convicted on September 2, 1986, in the Snohomish County Superior Court, Washington.

Wetsell, Raymond Eugene, Rural Delivery 1, Box 223, Venango, Pennsylvania, convicted on December 19, 1986, in the United States District Court for the Western Judicial District of Pennsylvania, Erie, Pennsylvania.

Wojtowicz, Anthony Edward, 480 Lawrence, Prescott, Wisconsin, convicted on November 2, 1987, in the United States District Court, Minneapolis, Minnesota.

Wolfe, Harold Boyd, Box 797, Welch, West Virginia, convicted on February 1, 1984, in the United States District Court, Southern District of West Virginia, Charleston, West Virginia.

Woodford, Melvin Ray Junior, 4646 A.T. Massa Drive, Paducah, Kentucky, convicted on November 5, 1985, in the McCracken County Court, Paducah, Kentucky.

Woods, Roderick Douglas, 401 South 37th Avenue, Hattiesburg, Mississippi, convicted on October 28, 1982, in the United States District Court, Southern Judicial District of Mississippi.

Compliance With Executive Order 12291

It has been determined that this notice is not a "major rule" within the meaning of Executive order 12291, because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Signed: November 26, 1991.

Stephen E. Higgins,

Director.

[FR Doc. 91-30347 Filed 12-18-91; 8:45 am]

BILLING CODE 4810-31-M

UNITED STATES INFORMATION AGENCY

Library/Book Fellows Program

AGENCY: United States Information Agency.

ACTION: Notice of intent to negotiate a grant renewal with the American Library Association.

SUMMARY: Subject to the availability of funds, the United States Information Agency (USIA) intends to negotiate a grant renewal, on a noncompetitive basis, with the American Library Association. This grant, in the amount of approximately $400,000, will enable the American Library Association to continue the management of the Library/Book Fellows Program, which places American library and publishing professionals in foreign institutions for periods of four to twelve months to carry out projects important to long-term U.S. and host-country interests. Projects are designed to increase international access to information, and to strengthen mutual understanding between the U.S. and other societies through sharing of professional knowledge and through the development of personal and institutional linkages between American professionals and those of other countries. Under this grant, the American Library Association will recruit, evaluate, and select participants, arrange participants' travel and orientation, and monitor progress and evaluate the effectiveness of each fellowship project.

Overall authority for these exchanges is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87-256 (Fulbright-Hays Act).

PUBLIC RESPONSE: This announcement is not a request for competitive proposals. However, interested persons may indicate their interest and capability to respond to the requirement. Information received as a result of the notice will be considered solely for the purpose of determining whether to open the requirement to competition. A determination not to open the requirement to competition based upon responses to this notice is within the discretion of the United States Information Agency.

DATES: Public response to this notice must be received at the United States Information Agency by 5 p.m., Eastern Standard Time on January 10, 1992. Faxed documents will not be accepted, nor will documents postmarked on January 10, 1991, but received at a later date. The grant period is to begin in January 1992.

ADDRESSES: Public response should be addressed to: United States Information Agency; Reference: Library/Book Fellows Program; Office of the Executive Director E/X; room 336; 301 4th Street SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Mary Boone or Helen Amabile, United States Information Agency; Library Programs Division E/CL; room 314; 301 4th St. SW., Washington, DC 20547. Telephone (202) 619-4915.

Dated: December 12, 1991.

Barry Fulton,

Deputy Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 91-30253 Filed 12-18-91; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 244
Thursday, December 19, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, January 31, 1992.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 91–30406 Filed 12–16–91; 4:52 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m. Friday, January 24, 1992.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 91–30407 Filed 12–16–91; 4:52 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, January 17, 1992.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 91–30408 Filed 12–16–91; 4:52 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11:00 a.m. Friday, January 10, 1992.

PLACE: 2033 K St., N.W., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 91–30409 Filed 12–16–91; 4:52 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, January 3, 1992.

PLACE: 2033 K St., N.W., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 91–30410 Filed 12–16–91; 4:52 pm]
BILLING CODE 6351–01–M

Corrections

Federal Register
Vol. 56, No. 244
Thursday, December 19, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 768, 771, 772, 773, 774, 775, and 787

[Docket No. 911182-1282]

Establishment of Import Certificate/ Delivery Verification Procedure for Switzerland and Liechtenstein; Removal of Swiss Blue Import Certificate Requirement for Special and General Licenses

Correction

In rule document 91-29440, beginning on page 64478, in the issue of Tuesday, December 10, 1991, make the following correction:

On page 64478, in the third column, under **SUMMARY:**, in the third paragraph, in the first line, "not" should read "now".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Center for Devices and Radiological Health

Correction

In rule document 91-24463 beginning on page 51169 in the issue of Thursday, October 10, 1991, make the following correction:

1. On page 51170, in the second column, in the authority citation for part 5, in the first line, insert "5" in front of "U.S.C. 504,".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 356 and 369

[Docket No. 81N-0033]

RIN 090-AA06

Oral Health Care Drug Products for Over-the-Counter Human Use; Amendments to Tentative Final Monograph to Include OTC Relief of Oral Discomfort Drug Products

Correction

In proposed rule document 91-22749 beginning on page 48302 in the issue of Tuesday, September 24, 1991, make the following corrections:

1. On page 48302, in the second column, in the **SUPPLEMENTARY INFORMATION**, in the first paragraph, in the sixth line from the bottom, "the" should read "this".

2. On page 48305, in the third column, under *B. Comments* ***, in the second full paragraph, in the seventh line, "phenolic" was misspelled.

3. On page 48308, in the second column, in the second full paragraph, in the eighth line, "options" should read "opinions".

4. On page 48314, in the third column, in the paragraph numbered 15, in the tenth line from the bottom, "and" should read "at".

5. On page 48317, in the second column, in the first full paragraph, in the fifth line from the bottom, "even" should read "event".

6. On page 48318, in the first column, in the second full paragraph, in the third line, "the" should read "for".

7. On page 48321, in the first column, in the first full paragraph, in the ninth line, "Panel" was misspelled.

8. On page 48323, in the 3rd column, in the 17th and 18th lines from the top, remove the phrase "that package size limitations supports the comment's contention".

9. On page 48337, in the third column, in the paragraph numbered 33, in the second line from the bottom, "256.62(a)" should read "356.62(a)".

§ 356.56 [Corrected]

10. On page 48345, in the second column, in § 356.56(b)(4)(i), in the second line, insert "oral" after "minor".

11. On page 48346, in § 356.58(c)(1), the heading should read "*For all products containing any ingredient identified in § 356.18.*".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91N-0291]

Order for Transitional Class III Devices; Submission of Safety and Effectiveness Information Under Section 520(l)(5)(A) of the Federal Food, Drug, and Cosmetic Act

Correction

In notice document 91-27426 beginning on page 57960 in the issue of Thursday, November 14, 1991, make the following corrections:

1. "Section 520(1)" should read "section 520(l)" in the following places:

A. On page 57960, in the first column, in the subject heading in the fourth line.

B. On the same page, in the third column, in the third line from the bottom.

C. On page 57962, in the first column, in the last paragraph, in the first line.

2. On the same page, in the third column, in the paragraph numbered 3, in the second line, "3601" should read "360(l)".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91M-0368]

Richard Wolf Medical Instruments Corp.; Premarket Approval of Richard Wolf Piezolith E.P.L. Lithotripter, Model 2300

Correction

In notice document 91-24462 beginning on page 51226 in the issue of Thursday, October 10, 1991, make the following corrections:

On page 51226:

1. In the second column, in the **SUMMARY**, in the eighth line, "Piezolith" was misspelled.

2. In the third column, under **Opportunity for *****, in the first line, "(231 U.S.C." should read "(21 U.S.C.".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-060-343-7122-10-D063; CACA 28709]

Proposed Withdrawal and Opportunity for Public Meeting; California

Correction

In notice document 91-23184, beginning on page 49792, in the issue of Tuesday, October 1, 1991, make the following corrections:

On page 49792, in the second column, in the land description for **Mount Diablo Meridian** T. 31 S., R. 46 E., Sec. 3 should read as follows:

Sec. 3, W½ lot 1 of NW¼ and W½ lot 2 of NW¼;.

And on page 49793, in the first column, in the land description for **San Bernardino Meridian** T.11 N., R. 5 E., Sec. 2 should read as follows:

Sec. 2, lot 2 of NW¼ and W½ lot 1 of NW¼;.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-010-4212-13; CACA 28551]

Realty Action: Exchange of Public Land, El Dorado County, CA

Correction

In notice document 91-19454, appearing on page 40621, in the issue of Thursday, August 15, 1991, make the following correction:

In the third column, under **ADDRESSES:**, in the first line, "45 years" should read "45 days".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program: Certification Relating to Reduced Credits Under the Federal Unemployment Tax Act for 1991

Correction

In notice document 91-28922, beginning on page 63982, in the issue of Friday, December 6, 1991, make the following correction:

On page 63982, in the third column, in the first line under the heading set forth above, "3302(c)92)" should read "3302(c)(2)".

BILLING CODE 1505-01-D

Federal Register

Thursday
December 19, 1991

Part II

Environmental Protection Agency

40 CFR Part 61

National Emissions Standards for Hazardous Air Pollutants; Polonium-210 Emissions From Elemental Phosphorus Plants; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[FRL 4034-1]

National Emission Standards for Hazardous Air Pollutants; Polonium-210 Emissions From Elemental Phosphorus Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule announces the Administrator's decision modifying 40 CFR part 61, subpart K, the National Emission Standard for Hazardous Air Pollutants ("NESHAP") for Radionuclide Emissions from Elemental Phosphorus Plants (54 FR 51699 December 15, 1989. In this final rule, subpart K is amended to permit elemental phosphorus plants an alternative means of demonstrating compliance with the standard. Under the previous standard, an elemental phosphorus plant has to ensure that total emissions of polonium-210 from that facility did not exceed 2 curies per year. Under this amendment, an elemental phosphorus plant will be in compliance if it limits polonium-210 emissions to 2 curies per year. However, in the alternative, the plant may demonstrate compliance by: (1) Installing a Hydro-Sonic® Tandem Nozzle Fixed Throat Free-Jet Scrubber System [1] including four scrubber units, (2) operating all four scrubber units continuously with a minimum average over any 6-hour period of 40 inches (water column) of pressure drop across each scrubber during calcining of phosphate shale, (3) scrubbing emissions from all calciners and/or nodulizing kilns at the plant, and (4) limiting total emissions of polonium-210 from the plant to no more than 4.5 curies per year. EPA proposed this modified standard for elemental phosphorus plants as a result of settlement discussions between EPA and the FMC Corporation ("FMC") in *FMC Corporation* v. *U.S. Environmental Protection Agency*, Docket No. 90-1057 in the D.C. Circuit Court of Appeals, a judicial action by FMC challenging subpart K as it was originally promulgated.

DATES: This rule is effective December 13, 1991. The provisions in this rule will be applied immediately to all affected facilities including existing sources. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of this amended standard is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit within 60 days of publication of this rule. Under section 307(b)(2) of the CAA, the provisions which are the subject of today's notice will not be subject to judicial review in any civil or criminal proceedings brought by EPA to enforce these requirements.

FOR FURTHER INFORMATION CONTACT: Craig Conklin, Environmental Standards Branch, Criteria and Standards Division (ANR-460W), Office of Radiation Programs, Environmental Protection Agency, Washington DC 20406. (703) 308-8755.

SUPPLEMENTARY INFORMATION:

Petition for Reconsideration

No objection to this rule which was not raised with reasonable specificity during the public comment period may be raised as part of any judicial review of this rule. If a party contends that it was impracticable to raise an objection during the comment period and that such objection is of central relevance to the outcome of the rule, that party may submit a petition for reconsideration pursuant to Clean Air Act section 307(d)(7)(B).

Docket

The rulemaking record is contained in Docket No. A-91-51 and contains information on pilot scrubber test results, the settlement agreement between EPA and FMC, information considered in determining health effects, and other information used in revising the standard. It also contains all comments received from the public during the comment period. The docket is available for public inspection and copying between 8 a.m. and 3 p.m. on weekdays. A reasonable fee may be charged for copying.

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I. Definitions

A. Terms

Activity—The amount of a radioactive material. It is a measure of the transformation rate of radioactive nuclei at a given time. The customary unit of activity, the curie, is 3.7×10^{10} nuclear transformations per second.

Half-Life—The time in which half the atoms of a particular radioactive substance transform, or decay, to another nuclear form.

Incidence—This term denotes the predicated number of fatal cancers in a population from exposure to a pollutant. Other health effects (non-fatal cancers, genetic, and developmental) are noted separately.

Maximum Individual Risk—The maximum additional cancer risk of a person due to exposure to an emitted pollutant for a 70-year lifetime.

Pathway—A way that radionuclides might contaminate the environment or reach people, e.g. air, water, food.

Radionuclide—A type of atom which spontaneously undergoes radioactive decay.

Source Term—the amount of radioactive material emitted to the atmosphere from a source, either estimated, measured or reported, that is used in the risk assessment.

B. Acronyms

CAA—The Clean Air Act, 42 U.S.C. 7401 *et seq.*

CAAA—The Clean Air Act Amendments of 1990

CFR—Code of Federal Regulations

EDF—Environmental Defense Fund

EPA—United States Environmental Protection Agency

FR—Federal Register

ICRP—International Commission on Radiological Protection

NAAQS—National Ambient Air Quality Standards

NESHAP—National Emission Standard for Hazardous Air-Pollutants

NCRP—National Council on Radiation Protection and Measurements

NRDC—Natural Resources Defense Council, Inc.

OMB—Office of Management and Budget

RCRA—The Resource Conservation and Recovery Act

[1] The Hydro-Sonic® Tandem Nozzle Fixed Throat Free-Jet Scrubber System was developed and patented by Lone Star Steel Company. It is marketed by Lone Star Steel Company and other companies, such as John Zink Company, under non-exclusive licensing agreements with Lone Star Steel Company.

II. Background

A. Standard Setting Under Section 112

On October 31, 1989, EPA promulgated under section 112 of the Clean Air Act, 42 U.S.C. 7412, National Emission Standards for Hazardous Air Pollutants (NESHAPs) to control radionuclide emissions to the ambient air from a number of different source categories, 40 CFR part 61. This rule was published in the **Federal Register** on December 15, 1989 (54 FR 51654). The NESHAPs were promulgated pursuant to a voluntary remand granted by the U.S. Court of Appeals for the DC Circuit. The purpose of the remand was to enable EPA to implement the Court's earlier ruling in *NRDC, Inc.* v. *EPA*, 824 F.2d 1146 (DC Cir. 1987) ("the Vinyl Chloride decision"), which articulated specific legal requirements for promulgation of standards under section 112.

The Vinyl Chloride decision set forth a decision-making framework for promulgation of NESHAPs in which the Administrator makes a determination under section 112 in two steps: First, determine a "safe" or "acceptable" level of risk considering only health-related factors, and second, set a standard that provides an "ample margin of safety," in which costs, feasibility, and other relevant factors in addition to health may be considered.

After proposing and receiving comments on several options by which to define "safe", the Administrator selected an approach, first announced in the final NESHAPs for certain benzene source categories (54 FR 38044 September 14, 1989). Under this approach, the Administrator established a presumption of acceptability for a risk of approximately one in ten thousand to the maximally exposed individual, and a goal to protect the greatest number of persons possible to a lifetime risk level no higher than approximately one in one million. After evaluating existing emissions against this benchmark, other risk information is then considered and a final decision is made about what risk is acceptable. The Agency then considers other information, including economic costs and technical feasibility, along with all of the health-related factors previously used to determine the "safe" level, to set a standard which protects public health with an ample margin of safety.

B. The NESHAP for Elemental Phosphorus Plants

One of the source categories governed by 40 CFR part 61 is Elemental Phosphorus Plants. Subpart K of 40 CFR part 61 ("subpart K") established a 2 curies/year standard for emissions of polonium-210 from such facilities.

Polonium-210 and lead-210 are vaporous waste byproducts that result from the high temperature calcination of phosphate ore at elemental phosphorus plants. Because phosphate ore contains relatively high concentrations of uranium and radium, it also contains significant quantities of polonium-210 and lead-210. The high calcining temperature (1,300 °C volatilizes the lead-210 and polonium-210 from the phosphate rock, resulting in the release of much greater quantities of these radionuclides than of the uranium, thorium, and radium radionuclides. Analyses of doses and risks from these emissions show that polonium-210 and lead-210 are the major contributors, 94.7% and 4.3% respectively, to the risk from radionuclide emissions from elemental phosphorus plants

During the rulemaking that resulted in promulgation of the current subpart K EPA performed a plant-by-plant risk assessment of radionuclide emissions from all eight U.S. elemental phosphorus plants. In that analysis, EPA estimated that the lifetime fatal cancer risk to the maximally exposed individual was approximately 5.7×10^{-4}. Because a reduction in the polonium-210 emissions also results in an equivalent reduction in lead-210 emissions and because polonium-210 emissions account for approximately 95% of the risk from radionuclide emissions, EPA concluded that the total risk from radionuclide emissions could be reduced to the level required by the Agency's NESHAP policy without the need for establishing an emission limit for lead-210.

In applying the Vinyl Chloride decision methodology, EPA selected an acceptable level for emissions of polonium-210 of 2 curies/year, which corresponds to an estimating maximum lifetime risk for any individual of 1×10^{-4}. When it promulgated NESHAPs for radionuclide emissions from Department of Energy facilities, Nuclear Regulatory Commission licensees, underground uranium mines, and inactive uranium mill tailings piles, EPA noted the numerous uncertainties in establishing risk assessment parameters, modelling actual emissions, and estimating the numbers of people exposed and concluded that an estimated maximum risk as high as 3×10^{-4} could be regarded as essentially equivalent to an estimated maximum risk of 1×10^{-4} for purposes of selecting an "acceptable" emission level. In selecting an "acceptable" emission level for polonium-210 emissions from elemental phosphorus plants, EPA concluded that existing emissions were higher than the level which could be deemed acceptable, but EPA did not consider whether specific alternative emission levels between existing levels and 2 curies per year might be deemed acceptable. EPA did not consider the acceptability of emission levels higher than 2 curies/year because it appeared from the available information that a level of 2 curies/year or less could be readily achieved at all facilities by proper installation and operation of available control technology and there was no technology known to the Agency that could achieve some level between existing emissions and 2 curies/year. If the baseline levels were not acceptable, then EPA believed that the next logical choice for an option to be considered was one that was achievable with existing technology and which presented risks about a factor of three below the baseline. As EPA noted when it originally proposed subpart K, see 54 FR 9612, 9625, March 7, 1989, although risks associated with radionuclide emissions exist on a continuum, the Agency selects an acceptable level by considering specific discrete alternative emission levels. The fact that EPA must choose a specific emission level as acceptable does not necessarily mean that alternatives that were not specifically considered and that present risks slightly higher than the chosen level are inherently unacceptable

After selecting an acceptable level of 2 curies/year, EPA then determined that significantly reducing emissions of polonium-210 below 2 curies/year would be very costly and would result in very small incremental risk reductions. For these reasons, EPA concluded that a standard of 2 curies/year would also protect public health with an ample margin of safety

C. Objections to Subport K by FMC Corporation

FMC Corporation operates an elemental phosphorus plant in Pocatello, Idaho, which is the single largest source affected by subpart K. Following promulgation of subpart K, FMC Corporation petitioned for judicial review of the standard pursuant to Clean Air Act section 307(b), *FMC Corporation* v. *U.S. Environmental Protection Agency*, Docket No. 90–1057, United States Court of Appeals for the DC Circuit. The Circuit Court subsequently consolidated the FMC petition with ten other petitions for review of various radionuclide NESHAPs. These consolidated cases are presently being held in abeyance pending further actions by EPA.

Following publication of the radionuclide NESHAPs on December 15, 1989, EPA received over 25 separate petitions requesting that EPA reconsider some or all of the individual standards incorporated in 40 CFR part 61 pursuant to Clean Air Act section 307(d)(7)(B). In one of these petitions, FMC requested that EPA reconsider the standard for Elemental Phosphorus Plants set forth in subpart K. In its petition, FMC argued that: (1) The Notice of Proposed Rulemaking did not provide adequate notice of the provisions in the final rule, or of the EPA methodology and its application; (2) EPA failed to properly consider intermediate emission levels and the associated acceptable risk levels; (3) EPA based the final rule upon material omitted from the administrative record; (4) new epidemiologic information calls into question EPA estimates of the health risk associated with radionuclide emissions from FMC's Pocatello, Idaho facility; and (5) the rule may not have been validly promulgated because Assistant Administrator William Rosenberg did not have the authority to sign the rule.

At the time FMC submitted its petition for reconsideration, EPA was not persuaded that any of the legal or substantive arguments advanced by FMC provided any basis for reconsideration of the rule. Although EPA acknowledged that it had not considered intermediate emission levels between the baseline emission levels and 2 curies/year in selecting an acceptable risk level, it was not clear why this alleged deficiency in the Agency's analytic process would have any effect on the final standard. EPA assumed at that time that all affected facilities, including the FMC plant in Pocatello, Idaho, could achieve compliance with the 2 curies/year standard by installation of a specific scrubber system manufactured by the John Zink Company, which had proven highly effective in reducing polonium-210 emissions at an elemental phosphorus plant operated by another company. Since EPA knew of no other technology that would achieve a level of emissions in between the baseline and 2 curies/year, EPA did not believe it was reasonable to consider an intermediate emission level as an option for the acceptable risk decision. Subsequently, on April 23, 1990, FMC submitted the results of pilot testing it had performed with the Hydro-Sonic® scrubber system. Based on the results of this pilot testing and on the size and operational characteristics of its Pocatello, Idaho facility, FMC argued that installation of this system at the Pocatello plant might not be sufficient to enable FMC to meet the 2 curies/year standard established by subpart K. These concerns regarding the capabilities of the available scrubber technology made FMC's prior argument that EPA should have considered intermediate emission levels in selecting an acceptable level seem more consequential.

After evaluating the results of the pilot testing of the Hydro-Sonic® scrubber system by FMC, EPA concluded that the pilot test results were equivocal. While it is quite probable that the 2 curies/year standard can be achieved by FMC at its Pocatello, Idaho facility following installation of the scrubber system, it is possible that the resultant reductions in emissions might not be sufficient to achieve this result. Given this uncertainty, the reluctance of FMC to make the large capital investments necessary to install and operate the scrubber system was understandable. After it became apparent to EPA that FMC would be willing to install the Hydro-Sonic® scrubber system at its Pocatello, Idaho facility if it could have reasonable assurance that it could thereby achieve compliance with subpart K, EPA decided to enter into settlement discussions with FMC.

D. Settlement Discussions Between EPA and FMC Corporation

Throughout the settlement discussions between FMC and EPA, the Agency had two principal policy objectives: (1) To have FMC install the Hydro-Sonic® scrubber system, and to achieve the resulting reductions in the risks to human health associated with exposure to polonium-210, as rapidly as possible; and (2) to resolve in a definitive manner all pending disputes between FMC and EPA concerning subpart K. It quickly became apparent that FMC would be willing to forego further litigation concerning subpart K if FMC could be assured that installation and operation of such a scrubber system would result in compliance with subpart K. At that point, the principal task for the negotiators was to establish a set of specifications for installation and operation of the scrubber system which would assure EPA that polonium-210 emissions were being reduced to a level sufficient to provide an ample margin of safety, while still affording FMC engineers an adequate range of operational flexibility.

EPA and FMC ultimately reached agreement on the detailed specifications for the scrubber system which were set forth in the Agency's proposed amendment of subpart K. If an elemental phosphorus plant installs and operates a Hydro-Sonic® scrubber system conforming to those criteria, it will be deemed to be in compliance with subpart K, even if it does not thereby achieve compliance with the underlying standard of 2 curies/year. The standard provides for some operational flexibility, but a plant must strictly adhere to the operating conditions unless it can otherwise reduce emissions to less than 2 curies/year. To ensure that the standard does not unnecessarily constrain affected facilities, alternative operating conditions which can be shown to achieve an overall removal efficiency for polonium-210 equal to or greater than the operating conditions specified by the standard can be used with the prior approval of the EPA Administrator.

Once a tentative settlement agreement was reached between EPA and FMC, EPA published a notice of settlement as required by the Section 113(g) of the 1990 Clean Air Act Amendments. (56 FR 32572, July 17, 1991). A status report and notice of the proposed settlement agreement was also filed and served on all parties in the pending Court of Appeals case, *FMC Corporation* v. *EPA*, Docket No. 90–1057 (DC Cir.), on July 19, 1991. The settlement agreement between EPA and FMC was approved by EPA on August 21, 1991.

Under the settlement agreement between FMC and EPA, and EPA granted FMC's pending petition for reconsideration for the purpose of proposing revisions to modify subpart K. Pursuant to the provisions of the settlement agreement, FMC and EPA filed a joint motion with the DC Circuit Court to sever FMC's petition for review from the remaining consolidated cases and to hold the FMC petition in abeyance pending conclusion of this rulemaking. The D.C. Circuit Court granted this joint motion on September 27, 1991.

If EPA adopts the proposed modification of subpart K set forth in the proposed rule as a final rule, or EPA adopts a final rule which contains provisions which are substantially similar to the proposed modifications, FMC has agreed that it will seek dismissal with prejudice of its pending petition for review of subpart K. In that event, FMC has further agreed that it will waive any right it would otherwise have to seek judicial review of the newly promulgated final rule.

III. Reconsideration of Standard

A. Analytic Methodology

In reconsidering the currently effective subpart K, EPA has utilized the analytic framework required by the Vinyl Chloride decision and has applied the policy concerning acceptable risk established by the Administrator's benzene decision. The Agency's decision to reconsider the emission standard in subpart K should not be construed as an indication that EPA is revisiting or reconsidering the benzene policy, the level of risk determined in that policy to be presumptively safe, or any of the health based regulations issued under that policy.

B. Decision on Acceptable Risk

As stated in the original rule promulgating subpart K, the maximum individual lifetime risk to any individual from baseline emissions is 5.8×10^{-4}. This is clearly higher than the presumptively safe level established by the Administrator's benzene decision. The estimated annual incidence from baseline emissions is 0.091 fatal cancers per year. There are an estimated 8100 people that are exposed to risk levels greater than 1×10^{-4}, and an estimated 424,000 people that are exposed to risk levels greater than 1×10^{-6}.

After examining these factors in the previous rulemaking, the Administrator determined that the risk level represented by the baseline was unacceptable. EPA then estimated that a reduction in polonium-210 emissions to 2 curies/year would reduce the incidence to 0.024, or 1 case every 40 years and expose no one to a risk level greater than 1×10^{-4}. EPA did not consider emission levels between the assumed baseline of 10 curies/year and 2 curies/year in selecting an acceptable or "safe" level. Upon reconsideration, the Agency has now performed risk estimates for five levels of emissions between 2 and 10 curies/years. These estimates are presented in Table 1, along with the risk estimates associated with a baseline emission of 10 curies/year and the current emission limit of 2 curies/year. Based upon these risk estimates a reduction in polonium-210 emissions to 4.5 curies per year would reduce the incidence to 0.048, or 1 case every 21 years and expose no one to a risk level greater than 2.6×10^{-4}. This approximately equals the level that is presumptively safe. Based upon these risk estimates and the uncertainties in establishing parameters for risk assessment and in modelling actual emissions and exposures referred to in the prior rulemaking, the Agency has concluded that the acceptable level of emissions of polonium-210 is a level that limits the maximum individual risk to any individual to 2.6×10^{-4}, represented by an emission level of 4.5 Ci/y P–210.

TABLE 1.—ACCEPTABLE LEVEL OF RISK DECISION

	Emissions (Ci/y)						
	2	3	4	4.5	5	6	10
Maximum individual risk (individual)	1×10^{-4}	1.8×10^{-4}	2.3×10^{-4}	2.6×10^{-4}	2.9×10^{-4}	3.5×10^{-4}	5.8×10^{-4}
Incidence within 80 km (deaths/y)	0.024	0.037	0.044	0.048	0.052	0.06	0.091
Risk individual:							
E–2 to E–1	0	0	0	0	0	0	0
E–3 to E–2	0	0	0	0	0	0	0
E–4 to E–3	0	384	700	709	1,950	2,160	8,100
E–5 to E–4	27,000	39,000	54,000	55,000	75,000	76,000	122,000
E–6 to E–5	390,000	380,000	370,000	368,000	347,000	346,000	294,000
less E–6	1.5M	1.4M	1.4M	1.4M	1.4M	1.4M	1.4M

Other Health Impacts: Non-fatal cancers number no more than 5 percent of deaths.

C. Decision on Ample Margin of Safety

In addition to considering the health-related factors discussed above, EPA has also examined the cost and technological feasibility of the various types of emission control technology available to lower polonium-210 emissions from elemental phosphorus plants, as well as the degree of certainty that the available technology will succeed in reducing polonium-210 emissions to 2 curies/year at all affected facilities, in selecting an emission level which will provide an ample margin of safety to protect public health.

EPA accepts the engineering judgment by FMC that a scrubber system installed and operated as specified in the proposed rule presently represents the most practicable technology capable of reducing the polonium-210 emissions at FMC's Pocatello, Idaho elemental phosphorus plant. EPA has also concluded that proper installation and operation of one of the available emission control technologies will be sufficient to reduce emissions to below 2 curies/year at all affected facilities other than the FMC Pocatello, Idaho plant, and that it is quite probable that an emission level below 2 curies/year can be achieved at the FMC Pocatello facility as well. However, even if FMC is unable to reduce polonium-210 emissions to 2 curies/year by installing and operating the specified scrubber system in the specified manner, EPA has concluded that adherence to the specified conditions will reduce polonium-210 emissions sufficiently to provide an ample margin of safety to protect public health, as required by section 112 of the Clean Air Act.

Based on this determination concerning ample margin of safety, EPA is amending the emission standard in subpart K to permit each affected facility to demonstrate compliance either by limiting total polonium-210 emissions to no more than 2 curies per year, or by: (1) Installing a Hydro-Sonic® Tandem Nozzle Fixed Throat Free-Jet Scrubber System including four scrubber units, (2) operating all four scrubber units continuously with a minimum average over any 6-hour period of 40 inches (water column) of pressure drop across each scrubber during calcining of phosphate shale, (3) scrubbing emissions from all calciners and/or nodulizing kilns at the plant, and (4) limiting total emissions of polonium-210 from the plant to no more than 4.5 curies per year. This choice of compliance mechanisms will be available to all affected facilities. However, EPA anticipates that facilities other than the FMC Pocatello, Idaho plant will likely enjoy greater operational flexibility simply by meeting the 2 curies/year limitation.

IV. Responses to Comments

On September 11, 1991, the EPA published in the **Federal Register** proposed revisions to the National Emission Standard for Hazardous Air Pollutants (NESHAP) for polonium-210

emissions from elemental phosphorus plants. The **Federal Register** notice requested public comments on the revised NESHAP, the risk management approach used to develop the standard and the technological parameters specified in the standard. A public hearing was held in Pocatello, Idaho on September 17, 1991, to give interested parties an opportunity to present their views, and written comments were solicited. Comments were received from 20 private citizens, 3 government agencies, and one affected company. Nineteen of the private citizens stated that the standard should not be relaxed. The government agencies were concerned that FMC adequately demonstrate its arguments, that sufficient information is available to evaluate the proposed rule, and that the proposed rule is reasonable and environmentally sound. FMC was the only affected company to provide comments.

This section of the preamble discusses the legal, policy-related, and technical comments received during the comment period. Many of the commenters provided similar comments and, when possible, these comments have been combined. The following sections are split into discussions of legal/policy-related comments and technical comments. The main position and concerns presented by the commenters are followed by an EPA response to the comments in the context of the final rule.

A. Legal and Policy-Related Comments

Comment: One commenter stated that this special rulemaking was not conducted as a formal negotiated rulemaking because only EPA and FMC were involved.

Response: This rulemaking was never intended to be a formal negotiated rulemaking as defined by the Negotiated Rulemaking Act of 1990. Throughout the discussions between FMC and EPA, the Agency had two principal policy objectives: (1) To reduce the risks to human health associated with polonium–210 emissions; and (2) to resolve all pending disputes between FMC and EPA concerning subpart K. The Agency believed that installation of a Hydro-Sonic® Tandem Nozzle Fixed Throat Free-Jet Scrubber System, as pilot tested by FMC, would achieve the greatest reduction in public health risk. To settle the pending disputes, the Agency believed that a settlement agreement would provide the best assurance of resolving all issues in a timely and environmentally responsible manner. It was always the Agency's intention to conduct the actual rulemaking in accordance with standard public notice and comment procedures.

Comment: A few commenters stated that the publication of the proposed rule one week prior to the public hearing did not provide them enough time to become familiar with the recommended revisions. They felt that simply meeting the legal requirements for providing public notice is not sufficient for obtaining thoughtful public input because most ordinary citizens do not read the **Federal Register**. These commenters believe that advance notification in the local newspapers would have generated more public interest in the hearing and the proposed revisions to the rule.

Response: The complete proposed rule was published in the **Federal Register** on September 11, 1991 (56 FR 46252 September 11, 1991), six days before the September 17, 1991 public hearing in Pocatello, Idaho. However, the proposed substantive changes were also published previously on August 23, 1991 (56 FR 41811 August 23, 1991) in a separate notice of public hearing. Because a public hearing was held, the period for submission of written comments continued until October 17, 1991. EPA believes that all interested parties had sufficient time in which to review the proposed revisions to the rule and provide thoughtful input into this rulemaking.

Comment: One commenter stated that EPA did not coordinate this effort with State, Tribal, or EPA Idaho Operations personnel. This commenter also indicated that EPA's Indian Policy had been violated because the Agency did not take active steps to allow input from the Shoshone-Bannock Tribes of the Fort Hall Reservation.

Response: This comment is not accurate. Personnel from EPA Region 10 were included in the Agency's deliberations concerning settlement discussions and rulemaking activities. The Region 10 Radiation Program Manager provided the Air Quality Planning Section of the Shoshone-Bannock Tribes of the Fort Hall Reservation, on which the FMC facility is located, with a copy of the proposed settlement agreement and an advance copy of the proposed rule, thereby affording the Shoshone-Bannock additional time to review and comment on the document. In fact, a representative of the Air Quality Planning Section provided comments during the public hearing and written comments during the comment period that followed the public hearing.

EPA also notified environmental groups such as the Environmental Defense Fund (EDF) and Natural Resources Defense Council (NRDC) of the proposed rule. Neither the NRDC or EDF expressed any interest in this rulemaking and did not provide any comments. FMC's largest competitor in the elemental phosphorus industry, Monsanto Corporation, was also contacted but did not provide any comments. It is clear that the Agency expended considerable effort to encourage public participation in this rulemaking.

Comment: One commenter expressed concern because the NESHAP for radionuclide emissions from elemental phosphorus plants was exempted from the 1990 Clean Air Act Amendments. Unlike the standards to be promulgated to control other hazardous air pollutants, this standard will not be automatically reviewed and revised as necessary every 8 years. Therefore, the commenter felt that the population surrounding the Pocatello, Idaho, facility will not benefit from new emission control technology developments in the future when better control technology may be reasonably available.

Response: Section 112(q)(2) of the 1990 Clean Air Act Amendments (CAAA) states that no standard shall be established under section 112, as amended by the CAAA of 1990, for radionuclide emissions from elemental phosphorus plants, grate calcination elemental phosphorus plants, phosphogypsum stacks, or any subcategory of the foregoing. Accordingly, those provisions of the new Clean Air Act under which sources emitting hazardous air pollutants will be required to install the Maximum Available Control Technology, and EPA must review such requirements in light of changes in practices, processes, and control technologies every eight years, will not apply with respect to radionuclide emissions from elemental phosphorus plants. However, this does not mean that the pollution control technology at such plants will not be subject to periodic review.

Even though subpart K is not governed by the provision of the CAAA requiring periodic reassessment of NESHAPs, the standard remains subject to review under section 112 as it was in effect prior to the 1990 Clean Air Act Amendments. The costs and capabilities of available control technology may be considered in the second step of the Vinyl Chloride methodology, and are an element in implementation of the policy which the Administrator established in the benzene decision. Thus, the present standard could be revisited in the future if necessary to protect public health

with an ample margin of safety. Moreover, to the extent that the work practice and operational provisions of this rule are construed as promulgated under section 112(e)(1) of the previous Clean Air Act, section 112(e)(4) would require EPA to repromulgate such provisions as a quantitative emission standard whenever it becomes feasible to do so.

EPA presently intends to reevaluate subpart K within approximately 2–3 years, after FMC has obtained sufficient operating history with the new scrubbers. This review will involve, at a minimum, a re-assessment of the risks associated with actual polonium–210 emissions, scrubber removal efficiency, and scrubber availability during calciner operations.

In evaluating the effect of the 1990 Clean Air Act on elemental phosphorus plants emissions, it is also helpful to remember that this source category will likely be subject to regulation under the new section 112 to control the emissions of other hazardous air pollutants. If there are substantial improvements in the future in the technology which is available to control such other air pollutants, installation of this technology on elemental phosphorus plants may also yield further reductions in radionuclide emissions.

Comment: One commenter stated that the Agency's analysis of the risks associated with radionuclide emissions from elemental phosphorous plants does not address the cumulative health effects associated with exposure to more than one source of radiation. In particular, the commenter was concerned with the additional risk associated with exposure to phosphogypsum stacks and elemental phosphorus slag.

Response: The Agency agrees that this is a legitimate concern. However, explicitly accounting for overlapping and multiple sources of exposure greatly complicates the calculation of exposures and risks. Since concentrations of radionuclides decline rapidly with distance from the source, it is highly unlikely that any individual could be the most exposed individual for more than one source. In most cases, members of the public who receive the highest dose from one source will receive an increase in risk of less than 1×10^{-6} from other sources.

B. Technical Comments

Comment: Several commenters stated that there is no justification for raising the emission limit for elemental phosphorous plants from 2 curies/year to 4.5 curies/year.

Response: Comments that EPA is raising the emission limit to 4.5 curies/year do not accurately characterize the Agency's action. An elemental phosphorus plant that is emitting more than 2 curies/year but less than 4.5 curies/year will not be in compliance with the new standard unless the facility has installed the specified scrubber technology and is consistently operating the scrubber in conformity with a set of very specific criteria. At most affected facilities, this alternative standard would actually result in emissions lower than 2 curies/year. Even at the FMC facility, EPA expects that the required technology will likely be sufficient to approach if not meet the 2 curies/year standard. The alternative standard reflects the Agency's conclusion that 4.5 curies/year is acceptable, but that sources must do very specific things to reduce exposures further in order to provide an ample margin of safety.

Comment: Several commenters expressed concern that while FMC is a large corporation with several billion dollars in annual income, it will not have to spend any money on pollution control equipment as a result of revised polonium-210 emission limit. This would provide FMC an economic advantage over its competitors that have already installed pollution control equipment and meet the existing standard.

Response: The Agency agrees that, if modification of this standard allowed FMC to forego installation of emissions control technology, FMC would have received an unfair economic advantage over its competitors who have already installed the control technology and met the standard. However, this is not the case. Installation of the Hydro-Sonic® Tandem Nozzle Fixed Throat Free-Jet Scrubber System is explicitly required by the alternative standard. Moreover, FMC is required by its existing compliance agreement with Region 10 to complete installation of the required technology by December 15, 1991. Expenditures by FMC on installation of the scrubber are expected to exceed $16,000,000.

EPA does not believe that modification of the standard provides FMC with any economic advantage over its competitors. If revision of the NESHAP for elemental phosphorus plants conferred an unfair advantage on FMC, EPA would expect that other companies who operate such plants would have objected. However, none of FMC's competitors objected to modification of the standard. Indeed, EPA expects facilities other than the FMC plant in Pocatello, Idaho will enjoy greater operational flexibility because they will be able to comply with the standard without demonstrating they are meeting the stringent operating conditions required by the alternative standard.

Comment: Several commenters discussed the fact that Pocatello is a non-attainment area for PM–10 (fine particulate) emissions and that a doubling of the polonium-210 emission limit would also result in a doubling of the visible emissions from the facility. The commenters stated that the visibility of the mountains in the distance is already obscured by dark gray or brown clouds that are caused by emissions from FMC's facility.

Response: As explained above, EPA is not doubling the limit for polonium-210 emissions. EPA expects that when FMC operates the Hydro-Sonic® scrubber system in accordance with the requirements specified in the rule, the resultant emissions will approach or meet the original limit of 2 Ci/y. EPA also expects that installation and operation of the required scrubber technology will yield substantial new reductions in particulate emissions. Moreover, this rule does not provide FMC any relief from its legal obligation to meet all other applicable standards for airborne emissions.

Comment: One commenter suggested that EPA approve the proposed revisions to the rule. This commenter stated that EPA's enforcement dollars would be better spent on other environmental issues associated with FMC's operations in Pocatello.

Response: The Science Advisory Board (SAB), in its report "Reducing Risk: Setting Priorities and Strategies For Environmental Protection" made several recommendations to the Administrator of the EPA on ways to improve the Agency's ability to address environmental protection issues. Among these was the recommendation that the EPA target its environmental protection efforts on the basis of opportunities for greatest risk reduction. This recommendation is being is aggressively instituted throughout the Agency. EPA believes that all the environmental issues associated with the FMC facility in Pocatello, Idaho, deserve Agency attention regardless of whether it is the use of elemental phosphorus slag in construction, the contamination of water, or the release of hazardous air pollutants into the atmosphere. However, the EPA also believes that, if necessary, priorities should be set in a manner consistent with the SAB's recommendation.

Comment: Many commenters addressed the fact that Monsanto

Corporation, which is FMC's largest competitor in the elemental phosphorus industry, has already installed similar pollution control equipment at one of its facilities and is meeting the existing standard. They believe that this provides adequate proof that the system can be operated in a manner which meets the existing standard.

Response: The Agency's knowledge of the successful operation of the Hydro-Sonic® scrubber system at the Monsanto facility helped it formulate the scrubber system requirements and operating parameters specified in the rule. However, it is important to remember that the total quantity of polonium-210 emitted is a function not only of the efficiency of emission reduction technology, but also of the total volume of phosphate shale which is calcined. The FMC facility is the largest elemental phosphorus plant presently operating in the U.S. Moreover, the removal efficiency of a scrubber system may vary depending on factors such as particle size, particle velocity, total surface area of the water droplets, etc. Because the particulate emissions from FMC's calciners have a smaller size distribution than those at Monsanto and the polonium-210 tends to be attached to the smaller particles, the scrubber system many not be as efficient in reducing polonium-210 emissions. EPA's analysis of the FMC pilot test results indicates uncertainty regarding whether the system will be as effective as it is at the Monsanto plant.

Comment: One commenter stated that they were not prejudiced against or for the proposed revisions. Their main concerns were; (1) That FMC adequately demonstrate their arguments, (2) that sufficient information is available to evaluate the proposal, and (3) that the proposal is reasonable and environmentally sound.

Response: The Agency believes that it has responded in a careful and responsible manner to FMC's concerns regarding its technical capability to meet the original standard. The information provided by FMC and the EPA Region 10 offices, the analysis of pilot test results analysis performed by the Industrial Studies Branch of the Office of Air Quality Planning and Standards, and the risk assessments performed by the Office of Radiation Programs provide a sound technical basis for a revised standard. If EPA had not been responsive to FMC's concerns regarding its ability to meet the standard, installation of the Hydro-Sonic® system at the FMC facility and the resultant reduction in polonium-210 emissions might have been delayed during the pendency of litigation, perhaps for years.

Comment: Many commenters expressed concern about FMC's intent and ability to operate the scrubbers as contemplated by the revised standard. Several individuals stated their belief that FMC does not operate the existing scrubbers at night. One commenter stated his belief that emissions during breakdown of the scrubber system are not included in the rule, and that uncontrolled emissions during such malfunctions would result in actual emissions greater than 4.5 curies/year. Another commenter expressed concerns about FMC's interruptable power supply and the availability of power for the emission control system during such interruptions.

Response: The Agency is also concerned about how FMC operates the scrubber system once it has been installed. To address these concerns, EPA explicitly included language in the rule that requires: (1) All four scrubber units be operated continuously during the calcining of phosphate shale; (2) the scrubber pressure drop over any 6-hour period must average at least 40 inches (water column); and (3) that emissions from all calciners and/or nodulizing kilns at the plant be scrubbed. This language prohibits FMC from either operating the calciners when the scrubbers are not operational for whatever reason or bypassing the scrubbers. Further, it means that any malfunction of the scrubber system which results in reduced pressure drop must be included in the 6-hour average. In order to meet the standard, EPA expects that FMC will normally operate the scrubbers at a pressure drop significantly exceeding 40 inches, in order to accommodate brief periods when the pressure drop falls below 40 inches, and will shut down the calciners if adequate pressure drop cannot be promptly restored. In addition, FMC has advised EPA that operation of the calciners when the scrubbers are shut down would damage the scrubbers and is therefore not feasible in any case.

Comment: Several commenters questioned the choice of 40 inches as the required average pressure drop for the system. One commenter stated he could not determine whether an average pressure drop of 40 inches represents the best available technology or is merely a negotiated specification. One commenter asserted that the Hydro-Sonic® scrubber system can handle a pressure drop of "close to 58 inches." Another suggested that EPA require an average pressure drop of 60 inches.

Response: As noted above, in order to consistently meet the required 40 inches average pressure drop, FMC will have to operate the system regularly at a pressure drop significantly exceeding 40 inches. The standard does not permit exclusion from the calculation of average pressure drop of periods when the calciners are operating but the scrubbers are malfunctioning or operating at lower efficiency. EPA considers this approach superior to a system which would allow affected facilities to exclude periods of breakdown or malfunction from the calculation, because it avoids disagreements concerning the legitimacy or frequency of reported breakdowns. If EPA were to retain the present approach to calculation of the average and also specify a higher average pressure drop, it would be necessary to verify that the system could be practically operated on a regular basis at pressure drops significantly exceeding that average. Based on the information provided by FMC, EPA has concluded that continuous maintenance of a pressure drop sufficient to achieve an average substantially greater than 40 inches would adversely affect the reliability of the system, as well as greatly increasing energy costs associated with its operation.

Comment: A few commenters expressed concern about the frequency of stack testing, the nature of the records that must be maintained by the plant, the distribution of the annual report, the persons responsible for monitoring facility compliance, and whether or not the public will have access to the annual reports.

Response: Elemental phosphorus plants are required to conduct emissions tests on an annual basis and report the results within 60 days of conducting the test. An emission test shall be performed on each calciner and/or nodulizing kiln and if the emissions are discharged through more than one stack, then each stack must be tested. Each test consists of three runs and the average of the runs is used to calculate the emissions. The phosphate rock processing rate is also determined for each run and averaged. The written test report must include the name and location of the facility; the name of the person responsible for operation of the facility and the name of the person responsible for the report (if different); a description of the effluent control system on each release point and an estimate of its efficiency; the results of the testing, including the results of each sampling run completed; the values used in calculating the emissions and the

source of these data; and a certification by a corporate officer of the accuracy and completeness of the test report. FMC will submit its annual test report to EPA's regional office in Seattle, Washington. A copy of this report is also sent to EPA Headquarters in Washington, DC. The regional offices are responsible for inspecting these facilities to determine compliance with the regulations. All annual reports and the results of all compliance monitoring activities are available for public inspection.

Comment: Several commenters recommended that the standard specify the scrubber fluid flow rate because of its importance in determining scrubber removal efficiency. They also recommended that this parameter be continuously monitored and recorded so that system performance could be better evaluated.

Response: The Agency agrees that an adequate flow rate of water into the nozzles is important in maintaining the particulate removal efficiency of the scrubber system. The Agency does not believe that is necessary at this time to specify a particular flow rate or range of flow rates. However, EPA does believe that the performance of the scrubber system can be monitored and evaluated better by FMC and EPA if the flow rate is continuously monitored and recorded by system instrumentation. Accordingly, EPA has decided to incorporate this additional monitoring requirement in the final rule. When compliance monitoring activities are conducted at the FMC facility in Pocatello, Idaho, fluid flow rates will be considered as part of the inspection process. If such inspections suggest that the effectiveness of the scrubbers has been compromised by failure to maintain an adequate flow rate, EPA will direct FMC to correct the problem.

Comment: A few commenters questioned how the radioactivity in the scrubber fluid will be removed and how the sediment in the scrubber fluid pond will be disposed of. They believe that the radionuclide content of the scrubber fluid should be limited in order to maintain a high level of removal efficiency and that disposal of the sediment should be regulated under the NESHAP since the Resource and Conservation Recovery Act (RCRA) does not address radioactivity.

Responses: The Agency agrees that the total dissolved and suspended solids, including radioactive material, in the scrubber fluid must be minimized in order to maintain a high level of efficiency. Because the level of dissolved and suspended solids in the fluid in approximately 2% of the scrubber fluid, the level of radioactive material in the scrubber fluid will also be kept at low enough levels so that the scrubber removal efficiency will not be impacted. The disposal of scrubber fluid pond sediment is of special interest to the Agency because of the naturally occurring radioactive material, polonium-210 and lead-210, which may settle in the pond sediment. Until it can be determined what level of radioactivity can be expected to be found in the pond sediment, the Agency will be closely monitoring this situation.

Comment: One commenter was concerned that the revised standard would allow the Monsanto facility to increase its emissions from less than 2 Ci/y to 4.5 Ci/y. The commenter questioned whether EPA would take action against the Monsanto facility in such circumstances.

Response: Operating experience at the Monsanto facility indicates that operation of the scrubber system at that facility in the manner required by the alternative standard would result in emissions below 2 Ci/y. Moreover, Monsanto originally installed the scrubber system at its facility in order to meet National Ambient Air Quality Standards governing the release of fine particulate material (PM–10 emissions). If Monsanto were to operate its scrubber system in a manner which neither achieved the 2 Ci/y standard nor conformed to the operating criteria specified in the alternative standard, EPA would respond to such a violation in the same manner as a comparable violation at any other facility.

V. Final Rule to Amend Subpart K

A. Description of Final Rule

In accordance with the above discussion, EPA is amending § 61.122 of 40 CFR part 61, subpart K, to permit elemental phosphorus plants an alternative means of demonstrating compliance. As under the present standard, compliance may be demonstrated by limiting total polonium-210 emissions to no more than 2 curies/year. In the alternative, compliance may be conclusively shown by: (1) Installing a Hydro-Sonic® Tandem Nozzle Fixed Throat Free-Jet Scrubber System including four scrubber units, (2) operating all four scrubber units continuously with a minimum average over any 6-hour period of 40 inches (water column) of pressure drop across each scrubber during calcining of phosphate shale, (3) scrubbing emission from all calciners and/or nodulizing kilns at the plant, and (4) ensuring total emissions of polonium-210 from the plant do not exceed 4.5 curies per year. Alternative operating conditions, which can be shown to achieve an overall removal efficiency for emissions of polonium-210 which is equal to or greater than the efficiency which would be achieved under the operating conditions described in (1), (2), and (3) above (and that ensure that total emissions of polonium-210 from the plant do not exceed 4.5 curies per year), may be used with prior approval of the Administrator. Facilities wishing to utilize alternative operating conditions will have to apply for such approval in writing, and the Administrator will act upon such requests within 30 days after receipt of a complete and technically sufficient application. To ensure that the operating conditions specified by the revised standard can be enforced and verified and to enhance the enforceability of the numerical limits in the standard, EPA is also amending § 61.126 to require the continuous measurement of system pressure drop and fluid flow rate when scrubbers are used, and primary and secondary current and voltage in each electric field when an electrostatic precipitator is used.

Although the alternative mechanism for demonstrating compliance with the standard which is incorporated in the final rule is legally available to all elemental phosphorus plants, EPA has concluded that all of the affected facilities except for the FMC plant in Pocatello, Idaho will achieve greater operational flexibility by electing to meet the underlying 2 curies/year limitation. Since the only practical effect of this proposal will be on FMC's Pocatello facility and FMC is already installing the Hydro-Sonic® system at that facility, EPA does not believe that the final rule will provide an inappropriate competitive advantage to the Hydro-Sonic® system. If a large new elemental phosphorus plant were to be constructed in the future or an existing plant were to be modified or expanded so as to raise this issue, EPA would then be prepared to consider any alternative emission control technology that could be shown to offer equivalent or improved performance.

B. Legal Authority

At the outset, it should be noted that section 112(q)(2) of the 1990 Clean Air Act Amendments provides that section 112, as in effect prior to the 1990 Amendments, continues to govern the promulgation of any NESHAP for elemental phosphorus plants. The procedures to be utilized to modify or revise a NESHAP under the old section 112 are the same as the procedures used

to promulgate the NESHAP in the first place. (Clean Air Act Sections cited in the balance of this discussion are the sections in effect prior to enactment of the 1990 Amendments.)

The revised standard set forth in the final rule affords facilities governed by the standard a choice between: (1) A simple quantitative emission limitation of 2 curies/year of polonium-210, and (2) an alternative quantitative emission limitation of 4.5 curies/year of polonium-210 which is supplemented by detailed and mandatory operation and maintenance requirements intended to provide additional emission reductions. On its face, section 112 appears to establish a dichotomy between "emission standards" promulgated under section 112(b) and "design, equipment, work practice, and operational standards" promulgated under section 112(e). Since any standard promulgated under section 112(e) is "treated as an emission standard" under section 112(e)(5), it appears that this dichotomy may have little ultimate practical significance. Nonetheless, the Agency believes it is necessary to consider which section(s) provide the legal authority to promulgate the final standard.

In those instances where a standard consists exclusively of a quantitative emission limitation, the authority to promulgate the standard is clearly provided by section 112(b). Conversely, when a standard consists exclusively of design, equipment, work practice, and/or operational requirements, such a standard must be promulgated under the authority provided by section 112(e). In the case where a standard is partially quantitative, but is supplemented by operational or work practice requirements, as in this instance, EPA believes that the better interpretation of section 112 is to construe such a "hybrid" standard as an emission standard governed by section 112(b). Nothing in section 112 compels a different conclusion. Moreover, section 302(k) expressly defines an emission standard as "including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction." Finally, since the analytic framework established by the Vinyl Chloride decision authorizes EPA to determine what constitutes an "ample margin of safety" in part on the basis of technological feasibility, it would not be logical for EPA to be precluded from writing an emission standard which reflects the hybrid character of the standard setting process.

In the alternative, the final standard here can be viewed as an emission standard supplemented by a work practice standard promulgated under section 112(e). The Administrator may promulgate a work practice standard under section 112(e) to the extent he determines that "it is not feasible to prescribe or enforce an emission standard."

Section 112(e)(2) defines the phrase "not feasible to prescribe or enforce an emission standard" to include any situation where "the application of measurement methodology to a particular class of sources is not practicable due to technological or economic limitations." EPA believes that this definition clearly encompasses the factual circumstances here. Of course, the measurement methodology is presently adequate to enable EPA to "enforce" a quantitative emission limit. However, given the uncertainties for the FMC facility regarding the quantitative emission reductions which can be achieved with the available technology, as described above, EPA has determined that it is not practicable to apply measurement methodology to "prescribe" a quantitative emission limit based on the available technology.

To the extent that the work practice and operational provisions of the final standard are construed as promulgated under the authority of section 112(e)(1), section 112(e)(4) requires EPA to repromulgate these provisions as an emission standard whenever it becomes feasible to do so. After FMC has installed the scrubber technology specified by the final rule, and has operated that technology in a variety of circumstances over a period of a few (1–3) years, EPA expects that it will be practicable to prescribe a quantitative emission limit based on the capabilities of the technology.

C. Effective Date

The revisions to the NESHAP for radionuclide emissions from elemental phosphorus plants adopted by this rule are effective immediately upon promulgation. Under section 112(c)(1)(B)(i) of the Clean Air Act, emissions from existing sources which would violate a newly promulgated or revised NESHAP are not prohibited until 90 days after the effective date of the standard. However, in this instance, EPA has decided that it will apply the provisions of the new standard immediately to all facilities including existing sources.

EPA believes that the evident purpose of the 90 day delay for compliance by existing sources embodied in section 112(c)(1)(B)(i) is to afford such sources time to prepare for the imposition of new requirements. Indeed, section 112(c)(1)(B)(i) is phrased as an exception to a general prohibition on emissions violative of a NESHAP. Therefore, EPA doubts that it was intended to apply to those revisions of a standard which relax existing requirements rather than creating new requirements. Although the Administrative Procedure Act (APA) does not formally apply in this instance, an analogous provision in the APA provides support for this interpretation. The general requirement that a substantive rule must be published or served 30 days before its effective date, which is also intended to afford affected parties time to prepare for imposition of the rule, does not apply to "a substantive rule which grants or recognizes an exception or relieves a restriction." 5 U.S.C. 553(d)(1).

In this case, any facility which would be in compliance with the prior standard for radionuclide emissions from elemental phosphorous plants would also be in compliance with the revised standard. The revisions simply offer facilities who elect to rely on them an alternate means of demonstrating compliance. Since the revisions impose no new binding requirements and serve only to create additional flexibility, there is no reason to interpret section 112 as requiring a delay in their applicability. Therefore, EPA will apply the revisions of subpart K incorporated in this rule immediately to all facilities including existing sources.

VI. Miscellaneous

EPA has determined that this action does not constitute a major rule within the meaning of Executive Order 12291 since it is not likely to result in (1) a nationwide annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, a Regulatory Impact Analysis is not being prepared for this action.

Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, requires EPA to prepare and make available for comment an "initial regulatory flexibility analysis" in connection with any rulemaking for which there is a statutory requirement that a general notice of proposed rulemaking be published. The "initial regulatory flexibility analysis" describes the effect

of the proposed rule on small business entities. However, section 604(b) of the Regulatory Flexibility Act provides that section 603 "shall not apply to any proposed * * * rule if the head of the Agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."

EPA believes that the proposed changes, as promulgated, would tend to ease the regulatory burdens associated with provisions of the existing final rule. Therefore, this rule will have no adverse effect on small businesses. For the preceding reasons, I certify that this rule will not have significant economic impact on a substantial number of small entities. This action was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA and any EPA written response to those comments are available for public inspection at Docket A–91–51.

List of Subjects for 40 CFR Part 61

Air pollution control, Radionuclides, Reporting and recordkeeping requirements.

Dated: December 13, 1991.

William K. Reilly,

Administrator.

PART 61—[AMENDED]

Part 61 of chapter I of title 40 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 61 continues to read as follows:

Authority: Secs. 101, 112, 114, 116, 301, Clean Air Act as amended (42 U.S.C. 7401, 7412, 7414, 7416, 7601).

Subpart K—National Emission Standards for Radionuclide Emissions From Elemental Phosphorus Plants

2. Subpart K is amended by revising § 61.122 to read as follows:

§ 61.122 Emission standard.

Emissions of polonium-210 to the ambient air from all calciners and nodulizing kilns at an elemental phosphorus plant shall not exceed a total of 2 curies a year; except that compliance with this standard may be conclusively shown if the elemental phosphorus plant:

(a) Installs a Hydro-Sonic® Tandem Nozzle Fixed Throat Free-Jet Scrubber System including four scrubber units,

(b) All four scrubber units are operated continuously with a minimum average over any 6-hour period of 40 inches (water column) of pressure drop across each scrubber during calcining of phosphate shale,

(c) The system is used to scrub emissions from all calciners and/or nodulizing kilns at the plant, and

(d) Total emissions of polonium-210 from the plant do not exceed 4.5 curies per year.

Alternative operating conditions, which can be shown to achieve an overall removal efficiency for emissions of polonium-210 which is equal to or greater than the efficiency which would be achieved under the operating conditions described in paragraphs (a), (b), and (c) of this section, may be used with prior approval of the Administrator. A facility shall apply for such approval in writing, and the Administrator shall act upon the request within 30 days after receipt of a complete and technically sufficient application.

3. Subpart K is amended by revising § 61.126 to read as follows:

§ 61.126 Monitoring of operations.

(a) The owner or operator of any source subject to this subpart using a wet-scrubbing emission control device shall install, calibrate, maintain, and operate a monitoring device for the continuous measurement and recording of the pressure drop of the gas stream across each scrubber. The monitoring device must be certified by the manufacturer to be accurate within ±250 pascal (±1 inch of water). The owner or operator of any source subject to this subpart using a wet-scrubbing emission control device shall also install, calibrate, maintain, and operate a monitoring device for the continuous measurement and recording of the scrubber fluid flow rate. These continuous measurement recordings shall be maintained at the source and made available for inspection by the Administrator, or his authorized representative, for a minimum of 5 years.

(b) The owner or operator of any source subject to this subpart using an electrostatic precipitator control device shall install, calibrate, maintain, and operate a monitoring device for the continuous measurement and recording of the primary and secondary current and the voltage in each electric field. These continuous measurement recordings shall be maintained at the source and made available for inspection by the Administrator, or his authorized representative, for a minimum of 5 years.

[FR Doc. 91–30307 Filed 12–16–91; 2:25 pm]

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Federal Register

Thursday
December 19, 1991

Part III

Department of Education

Fund for Improvement and Reform of Schools and Teaching, The Family-School Partnership Program; Notice Inviting Applications for New Awards for Fiscal Year 1992

DEPARTMENT OF EDUCATION

[CFDA No: 84.212A]

Fund for the Improvement and Reform of Schools and Teaching: The Family-School Partnership Program; Notice Inviting Applications for New Awards for Fiscal Year 1992

Purpose of Program: To increase the involvement of families in improving the educational achievement of their children.

Eligible Applicants: Local educational agencies eligible to receive a grant under chapter 1 of title I of the Elementary and Secondary Education Act of 1965, as amended.

Deadline for Transmittal of Applications: 3/6/92.

Deadline for Intergovernmental Review: 5/6/92.

Applications Available: 1/14/92.

Available Funds: $2,500,000 (est.)

Estimated Range of Awards: $50,000–$200,000.

Estimated Average Size of Awards: $135,000.

Estiamted Number of Awards: 19.

Note: The Department is not bound by any estimates in this notice.

Budget Period: 12 months.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 758.

Priorities—Absolute Priority: Under 34 CFR 75.105(c)(3), 34 CFR 758.4(d) and 34 CFR 758.5 (a) and (b), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Projects that provide training for families on the family's educational responsibilities at the preschool level.

Invitational Priorities: Within the absolute priority specified in this notice, the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, under 34 CFR 75.105(c)(1), an application that meets one or more of the following invitational priorities does not receive competitive or absolute preference over other applications:

Invitational Priority 1—

Projects that will increase the involvement of families in improving the educational achievement of at-risk children;

Invitational Priority 2—

Projects that assist families in their efforts to prepare at-risk children to enter school ready to learn;

Invitational Priority 3—

Projects that form family-school partnerships designed around the accomplishment of the National Education Goals.

Supplementary Information: This program and these priorities complement AMERICA 2000, the President's strategy for moving the nation toward achievement of the National Education Goals. By assisting families in preparing their children to enter school ready to learn, and increasing the family's involvement in the educational achievement of their children, this program will enhance the ability of schools to improve the academic performance of students.

The Secretary is also interested in projects that have the potential to be disseminated by the National Diffusion Network (NDN). The NDN is a dissemination system through which proven exemplary education programs and processes are made available to interested school systems or other educational institutions around the country. In order to become eligible for dissemination by NDN, a project must be proven to be effective. Evidence of project effectiveness must be collected and presented to the Department's Program Effectiveness Panel (PEP). Projects that are judged effective by PEP become eligible to compete for dissemination funds from the NDN. Therefore, the Secretary encourages applicants who are interested in having their projects disseminated by the NDN to include an evaluation plan that will assess effectiveness and impact of project activities with emphasis upon changes in school practices and student performance.

For Applications or Information Contact: Diane Hill, U.S. Department of Education, Fund for the Improvement and Reform of Schools and Teaching, 555 New Jersey Avenue, NW., room 522, Washington, DC 20208–5524. Telephone: (202) 219–1496. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800–877–8339 (in the Washington DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 4821–4823

Dated: December 13, 1991

Diane Ravitch,

Assistant Secretary and Counselor to the Secretary.

[FR Doc. 91-30370 Filed 12-18-91; 8:45 am]

BILLING CODE 4000-01-M

Federal Register

Thursday
December 19, 1991

Part IV

Nuclear Regulatory Commission

10 CFR Part 19

Exclusion of Attorneys From Interviews Under Subpoena; Rule and Proposed Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Part 19

RIN 3150-AE09

Exclusion of Attorneys From Interviews Under Subpoena

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is revoking its regulations pertaining to exclusion of attorneys from interviews under subpoena. These regulations were vacated upon judicial review by the United States Court of Appeals for the District of Columbia Circuit.

EFFECTIVE DATE: January 21, 1992.

FOR FURTHER INFORMATION CONTACT: Roger K. Davis, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington DC 20555, telephone (301) 492-1606.

SUPPLEMENTARY INFORMATION: Upon judicial review, the United States Court of Appeals for the District of Columbia Circuit vacated the attorney exclusion portion of the rule, titled "Sequestration of Witnesses Under Subpoena/ Exclusion of Attorneys," which was published by the Commission on January 4, 1990 (55 FR 243). *Professional Reactor Operator Society* v. *United States Nuclear Regulatory Commission*, 939 F.2d 1047 (DC Cir. 1991). Consequently, the NRC is revoking and removing the definition of "exclusion" appearing in 10 CFR 19.3, and the standard and procedures for attorney exclusion appearing in 10 CFR 19.18(b)-(e).

Since this action implements the ruling of the appeals court, the NRC has determined that there is "good cause" for publication of this final rule without a general notice of proposed revocation for comment. See 5 U.S.C. 553(b). However, the NRC is concurrently publishing for comment a proposed rule that would replace the vacated attorney exclusion provisions with a rule that conforms to the guidance of the court.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget approval number 3150-0044.

Regulatory Analysis

This regulatory action is taken in response to the decision of the United States Court of Appeals for the District of Columbia in *Professional Reactor Operator Society* v. *United States Nuclear Regulatory Commission*, 939 F.2d 1047 (D.C. Cir. 1991). The appeals court vacated the attorney exclusion portion of 10 CFR part 19. Consequently, the NRC is revoking the attorney exclusion provisions reported in 10 CFR part 19.

Backfit Analysis

The NRC has determined that a backfit analysis is not required because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 19

Criminal penalties, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements, Sex discrimination.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Part 19.

PART 19—NOTICES, INSTRUCTIONS AND REPORTS TO WORKERS: INSPECTION AND INVESTIGATIONS

1. The authority citation for part 19 continues to read as follows:

Authority: Secs. 53, 63, 81, 103, 104, 161, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2073, 2093, 2111, 2133, 2134, 2201, 2236, 2282); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841). Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 19.11 (a), (c), (d), and (e) and 19.12 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 19.13 and 19.14(a) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

§ 19.3 [Amended]

2. In § 19.3, the definition of "Exclusion" is removed.

§ 19.18 [Amended]

3. In § 19.18, paragraphs (b)-(e) are removed and reserved.

Dated at Rockville, Maryland this 13th day of December 1991.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 91-30313 Filed 12-18-91; 8:45 am]

BILLING CODE 7590-01-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 19

RIN 3150-AE11

Exclusion of Attorneys From Interviews Under Subpoena

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to provide for the exclusion of counsel from interviews of a subpoenaed witness when that counsel represents multiple interests and there is concrete evidence that such representation would obstruct and impede the investigation. The proposed amendments are designed to ensure the integrity and efficacy of the investigative and inspection process. The proposed amendments are not expected to have any economic impact on the NRC or its licensees. Concurrently, the NRC is publishing a final rule revoking its previously-published attorney exclusion regulations. Those regulations were vacated upon judicial review.

DATES: Comment period expires February 18, 1992. Comments received after this date will be considered if it is practical to do so, but the Commission can only assure consideration of those comments received on or before that date.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Servicing Branch.

Deliver comments to: 2120 L Street, NW., Washington, DC, between 7:30 am and 4:15 pm, Monday through Friday.

Comments received may be examined at the NRC Public Document Room, at 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Roger K. Davis, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 492–1606.

SUPPLEMENTARY INFORMATION: On January 4, 1990 (55 FR 243), the Nuclear Regulatory Commission (NRC) published in the **Federal Register** amendments to its regulations found at 10 CFR Part 19. The NRC published the proposed rule on November 14, 1988 (53 FR 45768). These amendments provided for the sequestration of witnesses compelled by subpoena to appear in connection with NRC investigations or inspections. These amendments also provided for the exclusion of counsel for a subpoenaed witness when that counsel represented multiple interests and there was reasonable basis to believe that such representation would prejudice, impede, or impair the integrity of the inquiry. In addition, the amendments specified responsibilities of the NRC and rights of individual witnesses, licensees and attorneys when exclusion authority was to be exercised.

Both the sequestration provision and the attorney exclusion portion of the rule were challenged in a petition to the United States Court of appeals for the District of Columbia Circuit for judicial review. On July 23, 1991, the court of appeals upheld the sequestration portion of the Commission's rule, vacated the portion on attorney exclusion, and remanded the matter to the Commission for further consideration consistent with the court's opinion. *Professional Reactor Operator Society* v. *United States Nuclear Regulatory Commission*, 939 F.2d 1047 (D.C. Cir. 1991). The provisions of the rule relating to attorney exclusion were the definition of "exclusion" appearing in 10 CFR 19.3 and the standard and procedures for attorney exclusion appearing in 10 CFR 19.18(b)–(e).

The court of appeals found that the "reasonable basis" part of the standard for exclusion of counsel infringed to an impermissible degree on the right to counsel guarantee of the Administrative Procedure Act (APA), 5 U.S.C. 555(b). The court reasoned that it was not free, without express Congressional direction, to expand or contract the right to counsel at investigatory interviews depending on the mission of a particular agency. In a prior interpretation of the APA right to counsel guarantee, the court had ruled that the Securities and Exchange Commission could not exclude an attorney from representing a subpoenaed witness during an interview unless the agency came forward with "concrete evidence" that the counsel's presence would obstruct and impede its investigation. *SEC* v. *Csapo*, 533 F.2d 7, 11 (D.C. Cir. 1976). Since the NRC's "rational basis" standard was less rigorous than the "concrete evidence" requirement stated in *Csapo*, the court vacated the attorney exclusion portion of the NRC rule.

These proposed amendments are, in essence, a logical outgrowth of the court's guidance in *Professional Reactor Operator Society* v. *NRC*, *supra*. In response to the appeals court decision, the Commission has determined that its statutory responsibilities would be served by adoption of an attorney exclusion rule containing a "concrete evidence" standard. The Commission notes that a number of the commenters on the NRC's earlier proposed rule (53 FR 45768) expressed the view that the proper standard for exclusion of counsel by the NRC was the *Csapo* "concrete evidence" standard.

It is clear that one important means by which the Commission implements its responsibility for ensuring public health and safety is by investigation of unsafe practices and potential violations of the Atomic Energy Act and NRC regulations. *See* 10 CFR Part 19; 10 CFR 1.36. NRC investigators must often interview licensees, their employees, and other individuals having possible knowledge of matters under investigation. Effective identification and correction of unsafe practices or regulatory violations through an investigative or inspection process may depend upon the willingness of individuals having possible knowledge of the practices or violations to speak openly and candidly to Commission officials. In many cases, investigating officials must also conduct extensive and difficult inquiries to determine whether violations were willful and/or whether licensee's management engaged in wrongdoing.

As specified in 10 CFR 19.2, the rule would apply to all interviews under subpoena within the jurisdiction of the Nuclear Regulatory Commission other than those which focus on NRC employees or its contractors. The rule does not apply, however, to subpoenas issued pursuant to 10 CFR 2.720. Although in the discussion that follows we use the terms "licensee" or "licensee's counsel," the rule and its rationale apply as well to "non-licensees" whose activities fall within the jurisdiction of the Commission. Similarly, while much of the discussion most directly concerns interviews conducted under subpoena by the NRC's Office of Investigations, the proposed rule would also apply to NRC inspections and investigations conducted under subpoena by other NRC officials.

The Commission's principal concerns relate to cases in which licensee's counsel or counsel retained by the licensee represent both the licensee or licensee's officials under investigation and other employees who are to be witnesses. In these contexts, the Commission believes that there is potential for inhibiting the candor of witnesses who may be hesitant or unwilling to divulge information against the interests of the licensee or its officials in the presence of the licensee's counsel or counsel retained by the

licensee. The concern about potential inhibition may be heightened where the counsel intends to tell the employer everything that was said during an interview. It also may be heightened where the matter under investigation concerns whether licensee's employees have been, or are being, harassed or intimidated for raising safety issues. Multiple representation can also raise the concern that a subject of the investigation may learn facts, theories or strategies that are revealed in an interview and then act in ways that would obstruct further steps in the investigation. Consequently, the Commission has had a long-standing concern [1] that, in some instances of multiple representation, the Commission's ability to identify and correct unsafe practices and regulatory violations may be seriously impaired.

The Commission recognizes that neither mere multiple representation nor speculation about a potential for obstruction of an investigation is a sufficient basis to exclude counsel. The Commission does not presume that a witness's retention of counsel who also represents the licensee or other employees necessarily will inhibit that witness from providing information to an NRC inspector or investigator during an interview. It also does not view vigorous advocacy by competent counsel as improper.

Rather, the proposed rule provides direction for handling cases in which there is concrete evidence that the presence of counsel for multiple interests at a witness's interview would obstruct and impede the investigation. The Commission cannot predict in detail what manner of circumstances will arise in particular investigations that will lead to consideration of application of the exclusion rule. However, invocation of the rule would obviously be supported by concrete evidence that the witness would be more forthcoming or candid during the interview if the witness were not represented by counsel who also represents the licensee or other employees. This might involve evidence that the witness would answer in greater detail if there were not an understanding that the counsel would, or might, report the substance of the interview to the licensee or other witness. For instance, evidence that the employee had a concern that his employment would be jeopardized by transmittal of information from the interview to the licensee would surely be relevant. It would also be relevant if there were evidence that the multiple representation would lead to disclosure of the substance of an interview to a future interviewee or subject in the investigation and that this disclosure would have an adverse impact on the investigation.

While there have been particular cases raising questions about means of addressing the perceived impairment of investigations as a result of multiple representation,[2] this rulemaking does not require, or rest upon, a determination of whether past cases have involved concrete evidence of obstruction. The principal bases of this rule are the Commission's policy judgments that: (1) Cases may arise where there will be concrete evidence that the presence of counsel representing multiple interests during an NRC interview would seriously obstruct the NRC investigation; (2) The remedy of exclusion of the counsel from that interview should be available; and (3) The rule should facilitate expeditious and satisfactory consideration of many questions concerning multiple representation during the course of NRC investigations. The Commission notes that the propriety and utility of such a rule, however rarely invoked and applied, was recognized in both *Csapo* and a previous circuit court decision involving the SEC's sequestration rule, although the facts of those cases did not warrant exclusion. *SEC* v. *Csapo*, 533 F.2d 7; *SEC.* v. *Higashi*, 359 F.2d 550, 552 (9th Cir. 1966).

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget approval number 3150–0044.

Regulatory Analysis

The APA affords individuals compelled to submit to agency inquiry under subpoena the right to be accompanied by counsel or other representative of choice. 5 U.S.C. 555(b). Although the right to counsel guarantee of section 555(b) is not to be lightly disturbed, it is not absolute and may be circumscribed within permissible limits when justice requires as when there is concrete evidence that the presence of counsel during an investigative interview would impede and obstruct the agency's investigation.

Questions concerning the scope of the right to counsel have arisen in the context of NRC investigative interviews of licensee employees when the employee is represented by counsel who also represents the licensee or other witnesses or parties in the investigation. Although this arrangement is not improper on its face, the Commission believes that such multiple representation has the potential in some cases of inhibiting the candor of the witnesses and seriously impairing the integrity or efficacy of the NRC investigation. The proposed rule, which delineates NRC responsibilities concerning the availability of the remedy of exclusion of counsel, as well as rights of witness and counsel concerning the presence of counsel during the conduct of interviews, is intended to further expeditious and satisfactory resolution of NRC's inquiry into public health and safety matters. Guidance in this area should reduce delay and uncertainty in the completion of an investigation when certain questions of multiple representation arise. The foregoing discussion constitutes the regulatory analysis for this proposed rule.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this rule, if promulgated, would not have a significant impact on a substantial number of small entities. The proposed rule, which sets forth rights and limitations on the choice of counsel of licensee employees and other individuals who are compelled to appear before NRC representatives under subpoena, would have no significant economic impact on a substantial number of small entities.

Backfit Analysis

The NRC has determined that a backfit analysis is not required because these amendments do not involve any

[1] *See, e.g.*, Report of the Advisory Committee for Review of the Investigation Policy on Rights of Licensee Employees Under Investigation, Sept. 13, 1983. This Report is available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

[2] *See, e.g.*, Memorandum dated August 7, 1989, from Ben B. Hayes, Director, Office of Investigations, to James L. Blaha, Assistant for Operations, Office of the Executive Director for Operations. This memorandum is available for inspection at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 19

Criminal penalties, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements, Sex discriminations.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR part 19.

PART 19—NOTICES, INSTRUCTIONS AND REPORTS TO WORKERS: INSPECTION AND INVESTIGATIONS

1. The authority citation for part 19 continues to read as follows:

Authority: Secs. 53, 63, 81, 103, 104, 161, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2073, 2093, 2111, 2133, 2134, 2201, 2236, 2282); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841). Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 19.11(a), (c), (d), and (e) and 19.12 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 19.13 and 19.14(a) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 19.3, the definition of "Exclusion" is added to read as follows:

§ 19.3 Definitions.

* * * * *

Exclusion means the removal of counsel from an interview whenever the NRC official conducting the interview has concrete evidence that counsel's representation of multiple interests will obstruct and impede the particular investigation, inspection or inquiry.

* * * * *

3. In § 19.18, paragraphs (b)–(e) are added to read as follows:

§ 19.18 Sequestration of witnesses and exclusions of counsel in interviews conducted under subpoena.

* * * * *

(b) Any witness compelled by subpoena to appear at an interview during an agency inquiry may be accompanied, represented, and advised by counsel of his or her choice. However, when the agency official conducting the inquiry determines, after consultation with the office of the General Counsel, that the agency has concrete evidence that the investigation or inspection will be obstructed and impeded, directly or indirectly, by an attorney's representation of multiple interests, the agency official may prohibit that attorney from being present during the interview.

(c) The interviewing official is to provide a witness whose counsel has been excluded under paragraph (b) of this section and the witness's counsel a written statement of the reasons supporting the decision to exclude. This statement, which must be provided no later than five working days after exclusion, must explain the basis for the counsel's exclusion.

(d) Within five days after receipt of the written notification required in paragraph (c) of this section, a witness whose counsel has been excluded may appeal the exclusion decision by filing a motion to quash the subpoena with the Commission. The filing of the motion to quash will stay the effectiveness of the subpoena pending the Commission's decision on the motion.

(e) If a witness's counsel is excluded under paragraph (b) of this section, the interview may, at the witness's request, either proceed without counsel or be delayed for a reasonable period of time to permit the retention of new counsel. The interview may also be rescheduled to a subsequent date established by the NRC.

Dated at Rockville, Maryland this 13th day of December, 1991.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 91–30312 Filed 12–18–91; 8:45 am]

BILLING CODE 7590–01–M

federal register

Thursday
December 19, 1991

Part V

Small Business Administration

13 CFR Part 123

Disaster—Physical Disaster and Economic Injury Loans; Interim Final Rule

SMALL BUSINESS ADMINISTRATION

13 CFR Part 123

Disaster—Physical Disaster and Economic Injury Loans

AGENCY: Small Business Administration.

ACTION: Interim final rule.

SUMMARY: This interim final rule amends SBA's regulations concerning physical and economic injury disaster loans to implement a program for direct loans to small business concerns which have sustained severe economic injury as a result of troop deployments, related to the Persian Gulf conflict, from military installations in the same county or a county contiguous thereto. SBA is publishing this regulation as an interim final rule pursuant to the authority set forth in Public Law 102–190.

EFFECTIVE DATE: This rule is effective December 19, 1991.

ADDRESSES: Written comments should be addressed to Alfred E. Judd, Acting Assistant Administrator for Disaster Assistance, U.S. Small Business Administration, 409 Third Street SW., Eighth Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Alfred E. Judd, (202) 205–6734.

SUPPLEMENTARY INFORMATION: SBA regulations governing physical and economic injury disaster loans are set out in part 123 of title 13, Code of Federal Regulations (CFR). SBA is amending these regulations to add coverage for a program which will provide for direct loans to small business concerns which have sustained economic injury as the result of troop deployments, related to the Persian Gulf conflict, from military installations located in the same county or a county contiguous thereto. (Hereinafter, the term county, as used in this preamble and regulation, shall include other equivalent political subdivisions.)

Section 1087 of Public Law 102–190, the National Defense Authorization Act for Fiscal Years 1992 and 1993, enacted on December 5, 1991, authorizes the Administrator of SBA to make emergency direct loans to small business concerns located in a county in the United States in which at least five small business concerns have suffered severe economic injury as a result of the emergency deployment, after July 31, 1990, in connection with the Persian Gulf conflict, of members and units of the Armed Forces from military installations in or near that county. Public Law 102–190 provides that the source of funding for this program is funds appropriated to the Department of Defense in Public Law 101–511, if and to the extent such funding is available. This interim final rule amends 13 CFR part 123 to implement this program.

Under these regulations, in order to be eligible for a loan pursuant to the authority set forth in section 1087, a small business concern must meet certain criteria established in the statute, as well as SBA's general loan eligibility standards contained in title 13, Code of Federal Regulations, pertaining to economic injury disaster loans. The statute requires that, to be eligible for a loan, a small business concern must have (1) suffered economic injury as a result of the emergency deployment of members and units of the Armed Forces in connection with the Persian Gulf conflict and (2) been unable to obtain credit elsewhere. The relevant general eligibility criteria set forth in 13 CFR 123.40 and 123.41, which describe the eligibility criteria for economic injury disaster loans, also apply to loans made under this authority.

To receive a loan under this program, a small business concern must be located within a county designated, by SBA, pursuant to a Governor's certification, as an area of economic injury resulting from the deployment of troops related to the Persian Gulf conflict. (Hereinafter, the term Governor, as used in this regulation, shall include other equivalent officials.) SBA will require that the Governors of affected states certify that small business concerns in counties within their respective states have suffered such severe economic injury. This certification will be based upon criteria similar to that used by SBA to declare economic injury as a result of a physical disaster. These criteria are described in 13 CFR 123.23(c).

The Governors will be required to submit their certification to the Assistant Administrator for Disaster Assistance, in SBA's Central Office, as well as any additional documentation SBA may require. Such documentation will be similar to the supplemental documentation required by SBA for its economic injury disaster loan program. Thereafter, SBA will expeditiously make designations of eligible areas of economic injury.

A loan made under this program to a small business concern shall not exceed $50,000. The terms and interest rate for loans under this program shall be the same as the terms and interest rate for loans made pursuant to section 7(c)(5)(C) of the Small Business Act (15 U.S.C. 636(c)(5)(C)). The term of a loan made pursuant to this section may not exceed 30 years and the interest rate may not exceed four percent (4%). Further, a small business concern must meet the requirements of SBA's size standard regulations codified at part 121 of the Code of Federal Regulations and other eligibility criteria generally applicable to SBA economic injury disaster loans.

The Administrator's authority to make loans under these regulations shall expire after a 270-day period beginning on the date on which the Administrator first accepts applications for loans under this program.

In accordance with section 1087(g) of Public Law 102–190, SBA is publishing this regulation as an interim final rule effective immediately upon publication. However, SBA will accept written comments concerning this rule suggesting any modifications.

Compliance With Executive Order 12291 and 12612, the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., and the Paperwork Reduction Act, 44 U.S.C. Ch. 35

For purposes of Executive Order 12291, SBA certifies that this rule will not constitute a major rule because it is not likely to have an annual effect on the economy of $100 million or more, will not result in a major increase in costs for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, and will not have significant adverse effects on competition. SBA makes this certification based upon the fact that the appropriation for the emergency loan program established herein will not exceed $30,000,000 and does not affect State or local government.

For purposes of the Regulatory Flexibility Act, SBA certifies that this rule will not have a significant economic impact on a substantial number of small entities for the same reason that it would not be a major rule.

For purposes of the Paperwork Reduction Act, SBA certifies that this rule will impose no new reporting or recordkeeping requirements.

For purposes of Executive Order 12612, SBA certifies that this rule will not have federalism implications warranting the preparation of a Federalism Assessment

List of Subjects in 13 CFR Part 123

Disaster assistance, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set out in the preamble, part 123 of title 13, Code of Federal Regulations, is amended as follows:

PART 123—[AMENDED]

1. The authority citation for part 123 is revised to read as follows:

Authority: Sections 5(b)(6), 7 (b), (c), (f) of the Small Business Act, 15 U.S.C. 634(b)(6), 636 (b), (c), (f); Pub. L. 100–590; and Pub. L. 102–190.

2. Section 123.1(a), *Explanation of regulations,* is amended by adding at the end thereof a new sentence to read as follows:

§ 123.1 Explanation of regulations.

(a) * * * Subpart D includes regulations for direct loans to small business concerns which have suffered economic injury as a result of troop deployments, related to the Persian Gulf conflict, from military installations located in the same county or a county contiguous thereto.

* * * * *

3. Part 123 of title 13, Code of Federal Regulations is amended by adding at the end thereof a new subpart D to read as follows:

Subpart D—Persian Gulf Troop Deployment Economic Injury Loans

Sec.

123.60 Introduction.
123.61 Definitions.
123.62 Designation procedure.
123.63 Eligibility.
123.64 Terms and conditions of loan.
123.65 Applications for loans.
123.66 Expiration of authority.
123.67 Relationship to SBA disaster loan program.
123.68 Funding.
123.69 Other requirements.

Subpart D—Persian Gulf Troop Deployment Economic Injury Loans

§ 123.60 Introduction.

Loans to which this subpart applies are available only to eligible small business concerns, as described in § 123.63, located in a county in the United States in which at least five small business concerns have suffered severe economic injury as a result of the emergency deployment, after July 31, 1990, of members and units of the Armed Forces from military installations in such county or a county contiguous thereto, in connection with the Persian Gulf conflict. (Hereinafter, the term county, as used in this subpart, shall include other equivalent political subdivisions as defined in § 123.61.)

§ 123.61 Definitions.

For purposes of this section.

(a) The term *county* includes other equivalent political subdivisions such as, but not limited to, parishes, independent cities of, and as defined by, the Commonwealth of Virginia and the City of Baltimore, Maryland, and municipalities of the Commonwealth of Puerto Rico, of a State, territory, or other equivalent jurisdiction within the United States.

(b) The term *credit elsewhere* refers to the availability, based on cash flow and disposable assets of the applicant, of sufficient credit from non-Federal sources on reasonable terms and conditions, taking into consideration prevailing rates and terms in the community in or near where the concern transacts business for similar purposes and periods of time.

(c) The term *severe economic injury* shall have the same meaning as the term "substantial economic injury" defined in 13 CFR 123.41(a).

(d) The term *small business concern* has the meaning given that term in section 3 of the Small Business Act (15 U.S.C. 632).

§ 123.62 Designation procedure.

(a) The Governor of a State where a military installation is located may certify to SBA that small business concerns in a county in which a military installation is located, or a county contiguous thereto, have suffered severe economic injury as a result of the emergency deployment, after July 31, 1990, of members and units of the Armed Forces from military installations in the State, in connection with the Persian Gulf conflict. (Hereinafter, the terms Governor and State, as used in this subpart, shall include other equivalent officials and other equivalent jurisdictions.)

(b) The economic injury must be to such a degree as to warrant Federal involvement in the form of subsidized loans. This requirement will be satisfied if at least five (5) small business concerns in the county where the military installation is located, or a county which is contiguous thereto, have suffered such severe economic injury.

(c) The Governor's certification shall further specify each military installation, and the county it is located in and those counties which are contiguous thereto, within his or her respective State from which a deployment occurred sufficient to cause severe economic injury to small business concerns in the same county or counties contiguous thereto.

(d) The Administrator will take final action, and, if the request is approved, publish a notice, in the **Federal Register**, of designation of an area of economic injury.

(e) The Governor's certification, together with all necessary supporting documentation, should be received by the SBA Office of Disaster Assistance, Central Office, within 15 days of the effective date of this regulation. If the Governor's certification is received within the 15-day period, SBA will process the request for designation prior to the beginning of the application filing period. Certifications received after the 15-day period will be processed in an expeditious manner.

§ 123.63 To be eligible for a loan under this program, a small business concern must:

(a) Be located in a county in the United States, which has been designated in accordance with § 123.62;

(b) Have suffered severe economic injury as a result of the emergency deployment of members and units of the Armed Forces, from military installations in that county or a county contiguous thereto, in connection with the deployment of members and units of the Armed Forces during the Persian Gulf conflict;

(c) Be unable to obtain credit elsewhere; and

(d) Be otherwise eligible for SBA economic injury disaster assistance loans pursuant to 13 CFR 123.41(b).

(e) Agricultural enterprises, as defined in § 123.17, are not eligible for loans pursuant to this subpart.

§ 123.64 Terms and conditions of loan.

(a) Any loan made to a small business concern pursuant to this section shall be a direct loan.

(b) A loan made to a small business concern pursuant to this section may not exceed fifty thousand dollars ($50,000).

(c) The interest rate for a loan made pursuant to this section shall not exceed four percent (4%).

(d) The term of a loan made pursuant to this section shall not exceed thirty (30) years.

(e) Repayment ability shall be determined by SBA. Maturity and installment terms shall be established on each loan on the basis of the borrower's ability to pay. In most cases, equal monthly installment payments of principal and interest, beginning five (5) months from the date of the note, are required, but other payment terms may be accorded borrowers with seasonal or fluctuating income, and installment payments of varying amounts over the first two (2) years of the loan may be agreed upon if SBA determines that such schedule better reflects the borrower's ability to pay. There is no penalty for prepayment of a direct loan.

(f) SBA will require such collateral as is available for any economic injury loan made pursuant to this subpart which exceeds five thousand dollars ($5,000). When SBA requires an

applicant to pledge available collateral in accordance with this section, the applicant's refusal to pledge such collateral may justify the decline of a loan. Generally, SBA will not decline a loan where the applicant does not have any fixed amount of collateral available to pledge if there is reasonable assurance of repayment.

§ 123.65 Applications for loans.

(a) To receive a loan pursuant to this section, a small business concern shall submit an application to the SBA Disaster Area Office which serves the area where the small business concern is located. The application form and procedures are as set forth in § 123.7 of this part.

(b) The application filing period for small business concerns seeking a loan will begin 30 days from the effective date of this regulation. Applications will not be available, nor will they be accepted, prior to that date. The filing period ends 180 days after the application filing period commences. Applications cannot be accepted after the 180-day filing period.

(c) The provisions of § 123.12, concerning reconsideration, apply to all loans made pursuant to this subpart. However, any request for reconsideration submitted in accordance with § 123.12(b) must be received by SBA within 30 days of the initial decline. Further, in no event may SBA obligate funds pursuant to this subpart for a loan after the 270-day period has expired. Thus, any application for a loan under this subpart which is not funded at the expiration of the 270-day period, no matter what the circumstances or reasons, cannot and will not be approved.

§ 123.66 Expiration of authority.

The authority of the Administrator of the Small Business Administration to obligate funds for loans pursuant to this subpart shall expire after a 270-day period beginning on the date the application filing period commences (see § 123.65(b)).

§ 123.67 Relationship to SBA Disaster Loan Program.

This program will be administered in a manner similar to the Economic Injury Disaster Loan Program (15 U.S.C. 7(b)) and the regulations promulgated thereunder.

§ 123.68 Funding.

Public Law 102–190 provides that the source of funding for this program is funds appropriated to the Department of Defense in Public Law 101–511, if and to the extent such funding is available.

§ 123.69 Other requirements.

For explanation of regulations, see § 123.1; for fees and charges, see § 123.6(a); for loan authorization and closing requirements, see § 123.8; for loan administration, extension, and liquidation, see §§ 123.13(a) and (b); for civil rights requirements, see § 123.15(a); for books and records requirements, see § 123.18; and for use of proceeds, see § 123.41(g).

Dated: December 12, 1991.

Patricia Saiki,

Administrator.

[FR Doc. 91–30388 Filed 12–17–91; 9:19 am]

BILLING CODE 8025–01–M

Federal Register

Thursday
December 19, 1991

Part VI

Department of Education

Fund for Improvement and Reform of Schools and Teaching, Schools and Teachers Program; Notice Inviting Applications for New Awards for Fiscal Year 1992

DEPARTMENT OF EDUCATION

[CFDA No: 84.211A]

Fund for the Improvement and Reform of Schools and Teaching, Schools and Teachers Program; Notice Inviting Applications for New Awards for Fiscal Year 1992

Purpose of Program: To support Schools and Teachers projects that improve educational opportunities for and the performance of elementary and secondary school students and teachers.

Eligible Applicants: State educational agencies, local educational agencies, institutions of higher education, nonprofit organizations, individual public or private schools, consortia of individual schools, and consortia of these schools and institutions.

Deadline for Transmittal of Applications: 3/6/92.

Deadline for Intergovernmental Review: 5/6/92.

Applications Available: 1/14/92.

Available Funds: $1,500,000 (est).

Estimated Range of Awards: $50,000–$250,000.

Estimated Average Size of Awards: $150,000.

Estimated Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Budget Period: 12 months.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 757.

Priorities—Absolute Priority: Under 34 CFR 75.105(c)(3), 34 CFR 757.4(j), and 34 CFR 757.5(a), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Projects devoted to improving the teacher certification process, especially for schools, school districts, and States facing serious shortages of teachers.

Competitive Preference Priorities: Within the absolute priority specified in this notice, the Secretary, under 34 CFR 75.105(c)(2)(i) and 34 CFR 757.5(b), gives preference to applications that meet one or more of the following competitive preference priorities. Under 34 CFR 757.20(d), the Secretary awards up to 25 points to an application that meets one or more of the competitive preference priorities in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for this program.

Competitive Preference Priority 1—

Projects that benefit students or schools with below-average academic performance;

Competitive Preference Priority 2—

Projects that lead to increased access of all students to a high quality education; or

Competitive Preference Priority 3—

Projects that develop or implement a system for providing incentives to schools, administrators, teachers, students, or others to make measurable progress toward specific goals of improved educational performance.

Invitational Priorities: Within the absolute priority specified in this notice, the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, under 34 CFR 75.105(c)(1), an application that meets an invitational priority does not receive competitive or absolute preference over other applications.

Invitational Priority 1—

Projects that recognize in the teacher certification process the importance of the five core subject areas of English, history, geography, mathematics, and science.

Invitational Priority 2—

Projects that provide an alternate route for teacher certification for individuals who have not completed professional education in a traditional teacher training program. The Secretary is interested in projects that involve individuals who have professional experience in fields outside of education, such as government, the military, and human services, and recent college graduates with majors in the liberal arts and sciences.

Invitational Priority 3—

Projects that show the commitment to the project of the applicant and other participating organizations as evidenced by: (1) The contribution of resources by the applicant and any other participating organization; (2) prior work in the areas of concern of the project by the applicant and any other participating organization; and (3) the potential for continuation of the project beyond the period of Federal support.

Supplementary Information: This program and these priorities complement AMERICA 2000, the President's strategy for moving the nation toward achievement of the National Education Goals. By promoting improvements in the preparation of teachers in the five core subjects, and by supporting non-traditional routes of entry into the teaching profession, this program will strengthen the ability of teachers to help students achieve high levels of academic performance.

The Secretary is also interested in projects that have the potential to be disseminated by the National Diffusion Network (NDN). The NDN is a dissemination system through which proven exemplary education programs and processes are made available to interested school systems or other educational institutions around the country. In order to become eligible for dissemination by NDN, a project must be proven to be effective. Evidence of project effectiveness must be collected and presented to the Department's Program Effectiveness Panel (PEP). Projects that are judged effective by PEP become eligible to compete for dissemination funds from the NDN. Therefore, the Secretary encourages applicants who are interested in having their projects disseminated by the NDN to include an evaluation plan that will assess effectiveness and impact of project activities with emphasis upon changes in school practices and student performance.

For Applications or Information Contact: Eleanor Dougherty, U.S. Department of Education, Fund for the Improvement and Reform of Schools and Teaching, 555 New Jersey Avenue, NW., room 522, Washington, D.C. 20208–5524. Telephone: (202) 219–1496. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 4811–4812.

Dated: December 13, 1991

Diane Ravitch,

Assistant Secretary and Counselor to the Secretary.

[FR Doc. 91–30371 Filed 12–48–91; 8:45 am]

BILLING CODE 4000–01–M

federal register

Thursday
December 19, 1991

Part VII

Department of Education

Fund for Improvement and Reform of Schools and Teaching: Schools and Teachers Program—School Level Projects; Notice Inviting Applications for New Awards for Fiscal Year 1992

DEPARTMENT OF EDUCATION

[CFDA NO. 84.211B]

Fund for the Improvement and Reform of Schools and Teaching: Schools and Teachers Program—School Level Projects; Notice Inviting Applications for New Awards for Fiscal Year 1992

Purpose of Program: To support school-level projects under the Schools and Teachers Program that improve educational opportunities for and the performance of elementary and secondary school students and teachers. The type of applicants who are eligible to apply is what distinguishes the competition for school-level projects from the competition for other types of projects in the Schools and Teachers Program.

Eligible Applicants: Local educational agencies acting as the fiscal agent for a full-time teacher or administrator.

Deadline for Transmittal of Applications: 3/6/92.

Deadline for Intergovernmental Review: 5/6/92.

Applications Available: 1/14/92.

Available Funds: $1,500,000 (est.)

Estimated Range of Awards: $5,000–$125,000.

Estimated Average Size of Awards: $50,000.

Estimated Number of Awards: 30.

Note: The Department is not bound by any estimates in this notice.

Budget Period: 12 months.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 757.

Priorities—Absolute Priorities: Under 34 CFR 75.105(c)(3), 34 CFR 757.4(c), and 34 CFR 757.5(a) and (c), the Secretary gives an absolute preference to applications that meet the following priorities. The Secretary funds under this competition only applications that meet these absolute priorities:

Absolute Priority 1—

School-level projects conducted at an individual school or a consortium of schools, under the direction of a full-time teacher or administrator.

Absolute Priority 2—

Projects that propose to strengthen school leadership and teaching.

Competitive Preference Priorities: Within the absolute priorities specified in this notice, the Secretary, under 34 CFR 75.105(c)(2)(i) and 34 CFR 757.5(b), gives preference to applications that meet one or more of the following competitive preference priorities. Under 34 CFR 757.20(d), the Secretary awards up to 25 points to an application that meets one or more of these competitive preference priorities in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for the program.

Competitive Preference Priority 1—

Projects that benefit students or schools with below-average academic performance;

Competitive Preference Priority 2—

Projects that lead to increased access of all students to a high quality education; or

Competitive Preference Priority 3—

Projects that develop or implement a system for providing incentives to schools, administrators, teachers, students, or others to make measurable progress toward specific goals of improved educational performance.

Invitational Priorities: Within the absolute priorities specified in this notice, the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, under 34 CFR 75.105(c)(1), an application that meets an invitational priority does not receive competitive or absolute preference over other applications:

Invitational Priority 1—

Projects that will contribute to the ability of American students to demonstrate competency in the core subject of history;

Invitational Priority 2—

Projects that focus on the common heritage of the American people, with a special emphasis on the Founding Documents such as the Declaration of Independence, the Constitution, the Bill of Rights, and The Federalist as the source of that heritage;

Invitational Priority 3—

Projects that are designed to promote educational change that improves academic achievement, enhances skills necessary to compete in a global economy, and fosters informed citizenship among all American children;

Invitational Priority 4—

Projects that are directed toward improving education at the elementary level.

Supplementary Information. This program and these priorities support AMERICA 2000, the President's strategy for moving the nation toward achievement of the National Education Goals. By strengthening school leadership and teaching, with particular emphasis on the core subject of history, this program will enhance the ability of the nation's schools to improve the academic performance of students.

The Secretary is also interested in projects that have the potential to be disseminated by the National Diffusion Network (NDN). The NDN is a dissemination system through which proven exemplary education programs and processes are made available to interested school systems or other educational institutions around the country. In order to become eligible for dissemination by NDN, a project must be proven to be effective. Evidence of project effectiveness must be collected and presented to the Department's Program Effectiveness Panel (PEP). Projects that are judged effective by PEP become eligible to compete for dissemination funds from the NDN. Therefore, the Secretary encourages applicants who are interested in having their projects disseminated by the NDN to include an evaluation plan that will assess effectiveness and impact of project activities with emphasis upon changes in school practices and student performance.

For Applications or Information Contact: Anne Fickling, U.S. Department of Education, Fund for the Improvement and Reform of Schools and Teaching, 555 New Jersey Avenue, NW., room 522, Washington, DC 20208–5524. Telephone: (202) 219–1496. Deaf and hearing-impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 4811–4812.

Dated: December 13, 1991.

Diane Ravitch,

Assistant Secretary and Counselor to the Secretary.

[FR Doc. 91–30372 Filed 12–18–91, 8:45 am]

BILLING CODE 4000-01-M

federal register

Thursday
December 19, 1991

Part VIII

Department of Education

Fund for Innovation in Education, Comprehensive School Health Education Program; Notice Inviting Applications for New Awards for Fiscal Year 1992

DEPARTMENT OF EDUCATION

[CFDA No.: 84.215B]

Fund for Innovation in Education: Comprehensive School Health Education Program; Notice Inviting Applications for New Awards for Fiscal Year 1992

Purpose of Program: To encourage the provision of comprehensive school health education for elementary and secondary students.

Eligible Applicants: State educational agencies, local educational agencies, institutions of higher education, private schools, and other public and private agencies, organizations, and institutions.

Deadline for Transmittal of Applications: 2/14/92.

Deadline for Intergovernmental Review: 4/14/92

Applications Available: 12/23/91.

Available Funds: $2,500,000 (est.).

Estimated Range of Awards: $75,000—$250,000.

Estimated Average Size of Awards: $170,000.

Estimated Number of Awards: 15.

Note: The Department is not bound by any estimates in this notice.

Budget Period: 12 months.

Project Period: Up to 36 months.

Applicable Regulations: The Education Department of General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for Student Rights in Research, Experimental Programs, and Testing in 34 CFR part 98.

Priorities: Under 34 CFR 75.105(c)(1) the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

Invitational Priority 1

Projects to strengthen and expand comprehensive school health education curriculum for elementary school children (K–8). Of particular interest are projects that establish a comprehensive new curriculum that integrates key school health education concepts into all aspects of the school program.

Invitational Priority 2

Projects that improve the training of elementary teachers (K–8) and other appropriate school personnel in comprehensive school health education. Of particular interest are projects that develop and implement new in-service programs for school personnel to expand knowledge of personal health and fitness, nutrition, family health, accident prevention and safety, substance use and abuse, and prevention of communicable diseases.

Invitational Priority 3

Projects involving schools, parents, and communities in planning and implementing comprehensive school health education for elementary school students. Of particular interest are projects that provide opportunities to help parents understand health issues and problems and offer parents ideas for improving their children's health at home. This priority supports an important element of AMERICA 2000, the President's strategy for achieving the National Education Goals, by encouraging schools, parents, and communities to join together to improve the education of children.

Supplementary Information: Within these priorities, the Secretary is particularly interested in projects that provide students with the knowledge and decision-making skills that will enable them to establish healthy behaviors and practices throughout their lives.

The Secretary is also interested in projects that have potential to be disseminated by the National Diffusion Network (NDN). The NDN is a dissemination system through which proven exemplary education programs and processes are made available to interested school systems or other educational institutions around the country. In order to become eligible for dissemination by NDN, a project must be proven to be effective. Evidence of project effectiveness must be collected and presented to the Department's Program Effectiveness Panel (PEP). Projects that are judged effective by PEP become eligible to compete for dissemination funds from the NDN. Therefore, the Secretary encourages applicants who may be interested in having their projects disseminated by the NDN to include an evaluation plan that will assess effectiveness and impact of project activities with emphasis upon changes in school practices and student performance.

Selection Criteria: In evaluating applications for grants under this program, the Secretary uses the selection criteria in EDGAR, 34 CFR 75.210.

The regulations in 34 CFR 75.210(c) provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition the Secretary distributes the 15 points as follows:

Plan of Operation: (34 CFR 75.210(b)(3)). Five points are added to this criterion for a possible total of 20 points.

Evaluation Plan: (34 CFR 75.210(b)(6)). Ten points are added to this criterion for a possible total of 15 points.

For Applications or Information Contact: Joe Caliguro, U.S. Department of Education, Fund for the Improvement and Reform of Schools and Teaching, 555 New Jersey Avenue, NW., room 522, Washington, DC 20208–5524. Telephone (202) 219–1496. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC. 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program authority: 20 U.S.C. 3151, 3155.

Dated: December 13, 1991.

Diane Ravitch,

Assistant Secretary and Counselor to the Secretary.

[FR Doc. 91–30369 Filed 12–18–91; 8:45 am]

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Federal Register

Thursday
December 19, 1991

Part IX

Environmental Protection Agency

40 CFR Parts 110 et al.

Department of Defense

Corps of Engineers, Department of the Army

33 CFR Part 328

Department of Agriculture

Soil Conservation Service

7 CFR Part 12

Department of the Interior

Fish and Wildlife Service

50 CFR Chapters I and IV

1989 "Federal Manual for Identifying and Delineating Jurisdictional Wetlands"; Proposed Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 110, 116, 117, 122, 230, 232, 435

[FRL-4084-5]

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 328

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

7 CFR Part 12

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Chapters I and IV

Wetland Identification and Delineation Rule

AGENCIES: Environmental Protection Agency; Corps of Engineers, Department of the Army, DOD; Soil Conservation Service, Agriculture; and Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of availability; comment period extension.

SUMMARY: The Environmental Protection Agency (EPA), Army Corps of Engineers (Corps), and Soil Conservation Service (SCS) are proposing today to incorporate portions of the Federal Manual for Identifying and Delineating Jurisdictional Wetlands into the regulations governing the agencies' wetland protection programs. The provisions proposed today reflect revisions to the manual proposed on August 14, 1991 (56 FR 40446), and the final rule adopted by the agencies will be consistent with final manual adopted by the agencies after consideration of all public comments on the manual and today's proposal. In addition, in order to ensure adequate opportunity for public input, the above three agencies and the Fish and Wildlife Service are making the field data and other technical references available today for public review and comment. On October 16, 1991 (56 FR 61868), these four agencies extended the comment period on the proposed manual until December 14, 1991. In order to provide notice of today's proposed rule at least 30 days prior to the end of the comment period on the proposed manual, the comment period for both today's rulemaking and the proposed manual will close on January 21, 1992.

DATES: Written comments must be submitted on or before January 21, 1992.

ADDRESSES: Comments should be submitted in writing to: Mr. Gregory Peck, Chief, Wetlands and Aquatic Resources Regulatory Branch, Mail Code (A-104F), U.S. EPA, 401 M Street SW., Washington DC 20460.

FOR FURTHER INFORMATION CONTACT: Specific details are available from Mr. Michael Fritz (EPA) at (202) 260-6013; Ms. Karen Kochenbach (Corps) at (202) 272-0817; Mr. Billy Teels (SCS) at (202) 447-5991; or Mr. David Densmore (FWS) at (703) 358-2182.

SUPPLEMENTARY INFORMATION: On August 14, 1991, the Environmental Protection Agency (EPA), Department of the Army (Army), Soil Conservation Service (SCS) and the Fish and Wildlife Service (FWS) proposed to revise the 1989 Federal Manual for Identifying and Delineating Jurisdictional Wetlands, a technical guidance document which EPA and the Department of the Army have used to interpret and implement their respective wetlands definitions in identifying and delineating wetlands areas (56 FR 40446) (proposed manual). Although the SCS assisted in developing the 1989 manual, the SCS has used criteria that appear in 7 CFR part 12 for the identification of wetlands. In the preamble to those proposed revisions, the agencies stated that it would be appropriate and in the public interest to include parts of the final manual in the Code of Federal Regulations, and stated that the agencies would propose specific regulatory provisions prior to the close of the public comment on the proposal manual. Today's notice proposes such language and solicits comment on the amendments. The agencies will consider all comments submitted by the public on the proposed manual in finalizing the rule proposed today. Thus, comments previously submitted on the proposed manual do not have to be resubmitted in order to have them considered as part of this legislative rulemaking. Similarly, any comments received on today's proposed rule will be considered when the agencies finalize the proposed manual. The provisions of the proposed rule are discussed below.

In addition, following publication of the proposed revisions to the manual on August 14, 1991, the four agencies conducted extensive field testing of the proposed revisions. As part of today's proposed rulemaking, the agencies are establishing a docket that includes comments received from persons outside the agencies, data from the field testing, and technical references relating to wetland characteristics and other technical issues that are relevant to the proposed manual. The docket is open to the public in accordance with the requirements set forth in the Freedom of Information Act (5 U.S.C. 552), and is located at:

EPA-Office of Wetlands, Oceans and Watersheds, 499 S. Capitol St., SW., room 714, Washington, DC 20003, (202) 260-6071.

Information in the docket, including the public comments and the field testing data, will be carefully considered and evaluated by the agencies before today's proposed rulemaking and revisions to the manual are finalized.

While the docket maintained at the address listed above contains a complete, national set of the field testing data, each Corps District also has available for inspection copies of the field data collected during field testing within its particular Corps Division. These copies are available at the following locations:

Alaska District, Corps of Engineers, Building 21-700, Elmendorf Air Force Base, Anchorage, AK 99506-0898, (907) 753-2712.

Albuquerque District, Corps of Engineers, 517 Gold Ave. SW., Albuquerque, NM 87103-1580, (505) 766-2776.

Baltimore District, Corps of Engineers, 31 Hopkins Plaza, Baltimore, MD 21203-1715, (301) 962-3670.

Buffalo District, Corps of Engineers, 1776 Niagara Street, Buffalo, NY 14207-3199, (716) 879-4313.

Charleston District, Corps of Engineers, Federal Building, 334 Meeting Street, Charleston, SC 29403, (803) 724-4330.

Chicago District, Corps of Engineers, 111 N. Canal Street, Chicago, IL 60606, (312) 353-6428.

Detroit District, Corps of Engineers, McNamara Federal Building, 477 Michigan Ave., Detroit, MI 48231-1027, (313) 226-2432.

Ft. Worth District, Corps of Engineers, 819 Taylor St., Fort Worth, TX 76102-0300, (817) 334-2681.

Galveston District, Corps of Engineers, 444 Baracuda Ave., Galveston, TX 77553-1229, (409) 766-3930.

Huntington District, Corps of Engineers, 502 8th St., Huntington, WV 25701-2070, (304) 529-5487.

Honolulu District, Corps of Engineers, Building 230, Fort Shafter, Honolulu, HI 96858-5440 (808) 438-9258.

Jacksonville District, Corps of Engineers, 400 W. Bay St., Jacksonville, FL 32232-0019, (904) 791-1666.

Kansas City District, Corps of Engineers, 601 E. 12th St., Kansas City, MO 64106–2892, (816) 426–3645.

Little Rock District, Corps of Engineers, 700 W. Capitol, Little Rock, AR 72203–0867, (501) 324–5296.

Los Angeles District Corps of Engineers, 300 N. Los Angeles St., Los Angeles, CA 90053–2325, (213) 894–5606.

Louisville District, Corps of Engineers, Federal Building, 600 Dr. M.L. King Place, Louisville, KY 40202, (502) 582–6461.

Memphis District, Corps of Engineers, Clifford Davis Federal Building, Corner of Front & Poplar Streets, Memphis, TN 38103–1894, (901) 544–3471.

Mobile District, Corps of Engineers, 109 St. Joseph St., Mobile, AL 36628–0001, (205) 690–2658.

Nashville District, Corps of Engineers, Estes Kefauver Federal Building & US Court House, 801 Broadway, Nashville, TN 37202–1070, (615) 736–5181.

New Orleans District, Corps of Engineers, Foot of Pryantia Street, New Orleans, LA 70160–0267, (504) 862–2255.

New York District, Corps of Engineers, Jacob K. Javitz Federal Building, New York, NY 10278–0090, (212) 264–3996.

Norfolk, District, Corps of Engineers, Waterford Building, 803 Front St., Norfolk, VA 23510–1096, (804) 441–7068.

Omaha District, Corps of Engineers, 215 N. 17th St., Omaha, NE 68101–4978, (402) 221–4133.

Philadelphia District, Corps of Engineers, U.S. Custom House, 2nd & Chestnut Streets, Philadelphia, PA 19106–2991, (215) 597–2812.

Pittsburgh District, Corps of Engineers, Wm. S. Moorehead Federal Building, 1000 Liberty Ave., Pittsburgh, PA 15222–4186, (412) 644–6872.

Portland District, Corps of Engineers, 319 SW Pine St., Portland, OR 97204, (503) 326–6995.

Rock Island, Clock Tower Building, Rock Island, IL 61201–2004, (309) 788–6361.

Sacramento District, Corps of Engineers, 650 Capitol Mall, Sacramento, CA 95814–4794, (916) 551–2275.

St. Louis District, Corps of Engineers, 210 Tucker Blvd., N., St. Louis, MO 63101–1986, (314) 331–8575.

St. Paul District, Corps of Engineers, 1421 USPO & Custom House, 180 Kellogg Blvd., St. Paul, MN 55101–1479, (612) 220–0375.

San Francisco District, Corps of Engineers, 211 Main St., San Francisco, CA 94105–1905, (415) 744–3036.

Savannah District, Corps of Engineers, Juliett Gordon Law Building, 100 W. Oglethorpe Ave., Savannah, GA 31402–0889, (912) 944–5347.

Seattle District, Corps of Engineers, 4735 Marginal Way South, Seattle, WA 98124–2385, (206) 764–3495.

Tulsa District, Corps of Engineers, 234 South Boulder, Tulsa, OK 74121–0061, (918) 581–7261.

Vicksburg District, Corps of Engineers, Battlefield Mall, Vicksburg, MS 39180–0060 (601) 631–5276.

Walla Walla District, Corps of Engineers, Building 602, City—County Airport, Walla Walla, WA 99362–9265, (509) 522–6720.

Wilmington District, Corps of Engineers, 69 Darlington Ave., Wilmington, NC 28403, (919) 251–4629.

New England Division, Corps of Engineers, 424 Trapelo Road, Waltham, MA 02254–9149, (617) 647–8335.

Background

Four federal agencies are principally involved with wetland identification and delineation: The Corps, EPA, FWS, and SCS. The Corps and EPA are responsible for making jurisdictional determinations of wetlands regulated under the Clean Water Act (CWA) (33 U.S.C. 1252, *et seq.*). The Corps also makes jurisdictional determinations under section 10 of the Rivers and Harbors Appropriation Act of 1899 (33 U.S.C. 403). Under section 404 of the Clean Water Act, the Secretary of the Army, acting through the Chief of Engineers, is authorized to issue permits for the discharge of dredged or fill material into waters of the United States, including wetlands. EPA has developed the section 404(b)(1) Guidelines, in conjunction with the Army, and has primary responsibility for defining the geographic extent of waters of the United States, including wetlands. The Corps also issues permits for filling, dredging and other construction in certain wetlands under section 10.

Under authority of section 404(m) of the Clean Water Act, as well as the Fish and Wildlife Coordination Act, the FWS reviews applications for these federal permits and provides comments to the Corps on the environmental impacts of proposed work. In addition, the FWS is conducting an inventory of the Nation's wetlands and is producing a series of National Wetlands Inventory maps for the entire country. While the SCS has been involved in wetland identification since 1956, with the passage of the Food Security Act of 1985, as amended (16 USC 3801 *et seq.*), SCS is responsible for wetlands determinations and conservation requirements under this Act.

In January 1989, these four agencies jointly signed a technical guidance manual entitled the Federal Manual for Identifying and Delineating Jurisdictional Wetlands. This document marked the first time the four agencies had developed a uniform approach to identifying and delineating vegetated wetlands (see discussions in the proposed manual; 56 FR 40449). Based upon two years of experience implementing the manual and on comments received from the public in writing and at four public meetings held across the country, the agencies proposed revisions to the 1989 manual on August 14, 1991. The proposed revisions were intended to: (1) Tighten the evidentiary requirements for demonstrating the presence of the three wetland parameters, (2) make it easier for Federal or State agency staff to explain to landowners how wetlands are being delineated, and (3) generally maintain and improve the scientific validity of the agencies' delineation methods.

Determining the appropriate scope of wetlands jurisdiction and the resulting extent to which society will benefit from protection of such areas requires consideration of both scientific and policy issues. For example, determining the appropriate wetland/upland boundary is not always clear-cut from a scientific perspective.

The technical criteria and procedures contained in the manual and this proposed rule are intended, therefore, not only to improve the accuracy of and scientific basis for jurisdictional wetland identifications, but also to achieve the following wetland policy objectives: (1) Conserving wetlands and deriving correlated environmental benefits; (2) interagency consistency in wetland identification; (3) ensuring that regulatory restrictions on the use of property are imposed only where warranted to achieve the ecological objectives of the Clean Water Act, and (4) greater public understanding of and confidence in the wetland identification process, which is essential to the continued success and improvement of Federal wetland programs.

The agencies recognize, therefore, that alternative criteria and procedures should be evaluated not only on their scientific merit, but on their effect on relevant policy considerations. In order to foster public confidence in federal

wetlands programs, debate over scientific uncertainty must be informed by the need to establish practical wetland identification procedures consistent with overall wetland policies and programs. Because the agencies believe that use of the manual will achieve those policy objectives in a scientifically valid manner, the agencies propose to use the manual and the specific criteria and procedures set out in this proposed rule.

Current Federal Definitions of Wetlands

Several definitions of wetlands have been formulated by the four federal agencies in order to carry out their statutory, regulatory and non-regulatory responsibilities related to wetland protection. The Corps, EPA, and SCS have adopted regulatory definitions of wetlands (see 40 CFR part 110, 40 CFR part 116, 40 CFR part 117, 40 CFR part 122, 40 CFR part 230, 40 CFR part 232, 40 CFR part 435, 33 CFR part 328, and 7 CFR part 12), and today's proposed rule would amend each of these provisions. FWS defines wetlands for purposes of conducting an inventory of the nation's wetlands, but this definition is not regulatory. Therefore, today's proposed rule would not amend any FWS regulations.

Section 404 of the Clean Water Act—EPA and Corps Definition

EPA and the Corps use the following wetlands definition for purposes of administering their responsibilities under the CWA:

> The term wetlands means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas (EPA–40 CFR 230.3; December 24, 1989; Corps—33 CFR 328.3, November 13, 1986).

Food Security Act of 1985—SCS Definition

The following wetland definition is used by the SCS for identifying wetlands on agricultural land in assessing farmer eligibility for U.S. Department of Agriculture program benefits under the "Swampbuster" provision of the Act.

> Wetlands are defined as areas that have a predominance of hydric soils and that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions, except lands in Alaska identified as having a high potential for agricultural development and a predominance of permafrost soils. (7 CFR 12.2(a)(28))

Like the EPA/ Corps definition, SCS's definition centers on the presence of hydrology, hydrophytic vegetation, and hydric soils. Any area that meets the hydric soil criteria (as defined by the National Technical Committee for Hydric Soils) is considered to have a predominance of hydric soils. Unlike the EPA/Corps definition, this definition specifically excludes wetlands in Alaska which have a high potential for agricultural development and a predominance of permafrost soils.

Fish and Wildlife Service Definition

The FWS, in cooperation with other Federal agencies, state agencies and private organizations and individuals, developed a wetland definition for conducting an inventory of the Nation's wetlands. This definition was published in the FWS's publication, "Classification of Wetlands and Deepwater Habitats of the United States" (Cowardin, et al. 1979):

> Wetlands are lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For purposes of this classification wetlands must have one or more of the following three attributes: (1) At least periodically, the land supports predominantly hydrophytes; (2) the substrate is predominantly undrained hydric soil, and (3) the substrate is nonsoil and is saturated with water or covered by shallow water at some time during the growing season of each year.

This definition includes both vegetated and non-vegetated wetlands, recognizing that some types of wetlands lack vegetation. Examples of non-vegetated wetlands mapped by the FWS's National Wetlands Inventory, but which are not addressed by the regulatory definitions include flats where drastic fluctuations in water level, wave action, turbidity, or high concentration of salts may prevent the growth of hydrophytic vegetation, gravel beaches or rocky shores without vegetation, and seaweed-covered beds.

Summary of Proposed Rule

Under the proposed rule, EPA, Army and SCS would maintain their current regulatory definitions of wetlands. However, a new section would be added to the agencies' regulations which would describe the identifying characteristics of wetlands by incorporating the central components of the proposed manual. In addition, the Army proposes to amend the Code of Federal Regulations to include the entire federal manual (when it is finalized) as an appendix to its regulations. The agencies believe that these proposed changes will heighten the visibility and accessibility to the public of the agencies' wetlands identification and delineation procedures.

EPA notes that regulations applicable to various EPA programs currently contain their own definitions of wetlands. These programs include the regulation of the discharge of oil and hazardous substances under section 311 of the Clean Water Act (see 40 CFR 110.1, 116.3, 117.1), the National Pollutant Discharge Elimination System under section 402 of the Clean Water Act (see 40 CFR 122.2), and effluent guidelines for oil and gas extraction under section 301 of the Clean Water Act (see 40 CFR 435.41). These definitions are substantively identical to the definition used for purposes of the agency's section 404 program (§ 232.2(r)), but contain some minor wording differences. EPA is proposing to delete the current wetlands definitions applicable to the non-section 404 programs and include instead for those programs a reference to the amended definition that will be contained in § 232.2(r). These proposed changes would not substantively alter the regulatory requirements under the agency's non-section 404 programs, but would simply ensure consistency of definitions among EPA programs.

The new regulatory provision that the agencies propose today is entitled "Identifying Characteristics of Jurisdictional Wetlands." (see 33 CFR 328.6, 40 CFR 232.4, 7 CFR 12.31 of proposed rule). As noted above, each of the agencies' regulatory definition of wetlands focuses on three elements: Wetland hydrology, hydrophytic vegetation and hydric soils. The proposed manual implements the regulatory definitions by establishing criteria for determining whether each of these elements is present. Under the proposed manual, an area must meet all three criteria to be a wetland, unless it otherwise qualifies as a wetland under the "exceptions," "problem areas," or "disturbed areas" sections of the proposed manual.

The rule proposed today reflects the content and structure of the proposed manual and therefore does not represent a substantive departure from the guidance material contained in the August 14, 1991 notice. Paragraph (a) of the proposed rule reiterates the approach of the proposed manual in requiring that the hydrology, vegetation and soils criteria must all be met for an area to be a wetland, unless the area qualifies as a wetland under the exception, problem area, or disturbed

area provisions of the proposed rule. The proposed rule contains the proposed manual's criteria for determining whether wetland hydrology, hydrophytic vegetation and hydric soils are present (see paragraphs (b)–(d) of each proposed section). In addition, the proposed rule identifies those types of areas which are exceptions, problem areas, and disturbed areas in a manner consistent with the proposed manual. (See paragraphs (e)–(g) of each proposed section).

The agencies caution that today's rule, when it is finalized, should not be applied to the actual identification and delineation of wetlands without the benefit of the finalized delineation manual. The final manual will contain detailed technical guidance describing appropriate procedures for determining whether an area has wetland hydrology, hydric soils and hydrophytic vegetation, as well as for evaluating whether an area qualifies as an exception, problem area or disturbed area. The manual should therefore be followed to ensure that the regulatory requirements that will be established in this rulemaking are properly implemented when making individual delineations.

In the preamble to the proposed manual, the agencies described other alternatives that the agencies were considering adopting in the final manual (*e.g.*, including a "facultative neutral test" as part of the hydrophytic vegetation criterion and expanding the list of the exceptions listed in the proposed manual). See 56 FR 40447–48. In addition to the specific regulatory language proposed today, the agencies will consider all the alternatives discussed in the preamble to the proposed manual when the agencies adopt final regulations after the close of the public comment period, so that the final manual and regulatory provisions will be entirely consistent. Therefore, the agencies request comment on the alternatives discussed in the proposed manual's preamble as well the specific regulatory language being proposed today.

In addition, the agencies also solicit comment on other alternatives that they are considering adopting in the final regulation. As noted above, the criteria contained in the proposed rule are identical to those contained in the proposed manual. The proposed hydric soil criterion references several other documents for determining whether hydric soils are present. For clarity purposes, the agencies are considering adopting an alternative approach that, instead of simply referencing other documents, would include a definition of hydric soils taken from "Hydric Soils of the United States." This criterion would read as follows:

> Hydric soils are present when an area has soils that have developed anaerobic conditions in the upper part due to inundation or saturation from surface or ground water during the growing season. Hydric soils are described with more specificity in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, which appears at Appendix A of this Part, and the Soil Conservation Service's publication, Hydric Soils of the United States (as amended).

The agencies believe that this approach, by containing a substantive standard for determining the presence of hydric soils, may provide a clearer standard than the proposed rule for determining the presence of hydric soils, and therefore solicit comment on the appropriateness of this approach. In addition, this alternative approach would clarify that field verification of the presence of hydric soils may not always be necessary where reliable data has been previously collected and there is sufficient information available to make a conclusive determination regarding the presence of hydric soils.

In addition, the agencies solicit comment on whether the wetland types listed in the "exceptions" and "problem areas" sections of the proposed rule should be an exhaustive list, or merely illustrative of the types of areas that would qualify as wetlands under these provisions.

Executive Order 12291

This proposed regulation makes important revisions to the regulations governing the agencies' wetland protection programs. The proposed revisions are intended to (1) tighten the evidentiary requirements for demonstrating the presence of the three wetland parameters, (2) make the wetland delineation process easier to explain, and (3) improve the accuracy of and scientific basis for jurisdictional wetland identifications. In addition, the proposal is intended to conserve wetlands and ensure that regulatory restrictions on the use of property are imposed only where warranted to achieve the ecological objectives of the Clean Water Act. This rule was submitted to the Office of Management and Budget for Executive Order No. 12291 review.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires agencies to prepare an initial regulatory flexibility analysis for all proposed regulations that have a significant impact on a substantial number of small entities. No regulatory flexibility analysis is required, however, where the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Based on the reasons discussed in the preceding paragraph, we hereby certify, pursuant to 5 U.S.C. 605(b), that this regulation will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3050 *et seq.*, agencies must submit a copy of any rule that contains a collection of information requirement to the Director of the Office of Management and Budget for review and approval. This proposed regulation contains no additional information collection requirements, and therefore the Paperwork Reduction Act is not applicable.

List of Subjects in 40 CFR Parts 110, 116, 117, 122, 230, 232 and 435; 33 CFR Part 328; and 7 CFR Part 12

Wetlands, Water pollution control.

F. Henry Habicht II,

Deputy Administrator, Environmental Protection Agency.

Nancy P. Dorn,

Assistant Secretary (Civil Works), Department of the Army.

Dr. John H. Beuter,

Deputy Assistant Secretary for Natural Resources and Environment, Department of Agriculture.

Joseph E. Doddridge,

Acting Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior.

For the reasons set out in the preamble, 40 CFR parts 110, 116, 117, 122, 230, 232, and 435, 33 CFR part 328, and 7 CFR part 12 are proposed to be amended as follows:

40 CFR Chapter I—[Amended]

PART 110—DISCHARGE OF OIL

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 1321(b)(3) and (b)(4) and 1361(a); 33 U.S.C. 1517(m)(3).

2. Section 110.1, definition of wetlands, is revised to read as follows:

§ 110.1 Definitions.

* * * * *

Wetlands means those areas defined at § 232.2(r) of this chapter.

PART 116—DESIGNATION OF HAZARDOUS SUBSTANCES

1. The authority citation for part 116 continues to read as follows:

Authority: 33 U.S.C. 1521 *et seq.*

2. In § 116.3, the definition of navigable waters is revised to read as set forth below, and the definitions are placed in alphabetical order.

§ 116.3 Definitions.

* * * * *

Navigable waters is defined in section 502(7) of the Act to mean "waters of the United States, including the territorial seas," and includes, but is not limited to: (1) All waters which are presently used, or were used in the past, or may be susceptible to use as a means to transport interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide, and including adjacent wetlands; the term "wetlands" as used in this regulation means those areas defined at § 232.2(r) of this chapter. The term "adjacent" means bordering, contiguous or neighboring; (2) tributaries of navigable waters of the United States, including adjacent wetlands; (3) interstate waters, including wetlands; and (4) all other waters of the United States such as intrastate lakes, rivers, streams, mudflats, sandflats and wetlands, the use, degradation or destruction of which affect interstate commerce including, but not limited to:

(i) Intrastate lakes, rivers, streams, and wetlands which are utilized by interstate travelers for recreational or other purposes; and

(ii) Intrastate lakes, rivers, streams, and wetlands from which fish or shellfish are or could be taken and sold in interstate commerce; and

(iii) Intrastate lakes, rivers, streams, and wetlands which are utilized for industrial purposes by industries in interstate commerce.

* * * * *

PART 117—DETERMINATION OF REPORTABLE QUANTITIES FOR HAZARDOUS SUBSTANCES

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

2. Section 117.1(i)(6) is revised to read as follows:

§ 117.1 Definitions.

* * * * *

(i) * * *

(6) Wetlands adjacent to waters identified in paragraphs (i) (1) through (5) of this section ("Wetlands" means those areas defined at § 232.2(r) of this chapter: *Provided,* That waste treatment systems (other than cooling ponds meeting the criteria of this paragraph) are not waters of the United States.

* * * * *

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

1. The authority citation for part 122 continues to read as follows:

Authority: 33 U.S.C. 1251 *et. seq.*

2. Section 122.2, definition of wetlands, is revised to read as follows:

§ 122.2 Definitions.

* * * * *

Wetlands means those areas defined at § 232.2(r) of this chapter.

* * * * *

PART 230—SECTION 404(b)(1) GUIDELINES FOR SPECIFICATION OF DISPOSAL SITES FOR DREDGED OR FILL MATERIAL

1. The authority citation for part 230 continues to read as follows:

Authority: 33 U.S.C. 1344(b) and 1361(a).

2. Section 230.3(t) is revised to read as follows:

§ 230.3 Definitions.

* * * * *

(t) The term *wetlands* means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Identifying characteristics of jurisdictional wetlands are described in § 232.4 of this chapter. Technical guidance on identifying and delineating wetlands is contained in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands (see appendix A of 33 CFR part 328) [1].

PART 232—404 PROGRAM DEFINITIONS; EXEMPT ACTIVITIES NOT REQUIRING 404 PERMITS; WETLAND IDENTIFICATION AND DELINEATION

1. The authority citation for part 232 continues to read as follows:

Authority: 33 U.S.C. 1344.

[1] The text of appendix of 33 CFR part 328 was proposed in the **Federal Register** issue of August 14, 1991 (56 FR 40446).

2. The heading for part 232 is revised as set forth above:

PART 232—404 PROGRAM DEFINITIONS; EXEMPT ACTIVITIES NOT REQUIRING 404 PERMITS; WETLAND IDENTIFICATION AND DELINEATION

3. Section 232.2(r) is revised to read as follows:

§ 232.2 Definitions.

* * * * *

(r) *Wetlands* means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Identifying characteristics of jurisdictional wetlands are described in § 232.4 of this part. Technical guidance on identifying and delineating wetlands is contained in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands (see appendix A of 33 CFR part 328)[2].

4. Section 232.4 is added to read as follows:

§ 232.4 Identifying Characteristics of Jurisdictional Wetlands.

(a) Under natural, undisturbed conditions, wetlands generally possess three characteristics: Wetland hydrology, hydrophytic vegetation, and hydric soils. These three criteria, as described in paragraphs (b)–(d) of this section, must be present for an area to be identified as wetlands, unless otherwise specified in paragraphs (e)–(g) of this section.

(b) Wetlands hydrology is present if an area is inundated for 15 or more consecutive days, or saturated from surface or ground water to the surface for 21 or more consecutive days, during the growing season in most years. Wetland hydrology is also present if an area is periodically flooded by tidal water in most years. In the absence of direct measurement of inundation, soil saturation, or tidal flooding, an area meets the wetland hydrology criterion if one of the following indicators are documented:

(1) A minimum of 3 years of hydrologic records, collected during the years of normal rainfall, correlated with long-term hydrologic records for the specific geographic area, that demonstrate the area meets the wetland hydrology criterion; or

[2] See footnote 1 to 40 CFR part 230.3(t).

(2) Aerial photography for a minimum of 5 years that reveals evidence of inundation and/or saturation in most years, correlated with long-term hydrologic records for the specific geographic area, that demonstrates the area meets the wetland hydrology criterion; or

(3) The material presence of one or more primary hydrologic indicators below, which, when considered with evidence of frequency and duration of rainfall or other hydrologic conditions, that provides sufficient evidence to establish that the area meets the wetlands hydrology criterion:

(i) Surface water inundation; or

(ii) Observed free water at the surface in an unlined borehole; or

(iii) Water can be squeezed or shaken from a soil sample taken at the soil surface; or

(iv) Oxidized stains along the channels of living roots (oxidized rhizospheres); or

(v) Sulfidic material within 12 inches of the soil surface; or

(vi) Specific plant morphological adaptation/responses to prolonged inundation or saturation: pneumatophores, prop roots, hypertrophied lenticels, arenchymous tissues, and floating stems and leaves of floating-leaved plants growing in the area (may be observed lying flat on the soil), and buttressed trunks or stems.

(4) If none of the indicators in paragraphs (b)(1), (b)(2), or (b)(3) of this section is present, one or more of the following secondary hydrologic indicators, when used in conjunction with corroborative information (*e.g.*, maps), supports a wetland hydrology determination:

(i) Silt marks (waterborne silt deposits) that indicate inundation; or

(ii) Drift lines; or

(iii) Surface-scoured areas; or

(iv) Other common plant morphological adaptations/responses to hydrology: Shallow root systems and adventitious roots.

(c) Hydrophytic vegetation is present when, under normal circumstances, a frequency analysis of all species within the community yields a prevalence index of less than 3.0 (where obligate wetland = 1.0, facultative wetland = 2.0, facultative = 3.0, facultative upland = 4.0, and upland = 5.0). Hydrophytic vegetation is described with more specificity in the U.S. Fish and Wildlife Service's publication, National List of Plant Species that Occur in Wetlands, which is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC, 20402 (Stock Number 024–010–00682–0).

(d) Hydric soils are present when, based on field verification, an area has:

(1) Soils listed by series in "Hydric Soils of the United States" (as amended), which is available from the Chairperson, National Technical Committee for Hydric Soils, U.S. Department of Agriculture, Soil Conservation Service, South Agriculture Building, room 0054, 14th and Independence Avenue, SW., Washington, DC 20250;

(2) Organic soils (histosols, except foists);

(3) Mineral soils classifying as sulfaquents, hydraquents, or histic subgroups of aquic suborders; or

(4) Other soils that meet the National Technical Committee for Hydric Soils' criteria for hydric soil, which is available from the Chairperson, National Technical Committee for Hydric Soils, U.S. Department of Agriculture, Soil Conservation Service, South Agriculture Building, room 0054, 14th and Independence Avenue, SW., Washington, DC 20250.

(e) Exceptions to the Criteria. Areas satisfying the conditions specified below are wetlands even though they may not meet one of the criteria specified in paragraphs (b)–(d) of this section.

(1) Wetland Hydrology. Pocosins, playas, prairie potholes, and vernal pools are types of wetlands that may not satisfy the hydrology criterion specified in paragraph (b) of this section, but are inundated and/or saturated at the surface for 7 or more consecutive days during the growing season. These wetland types are described with more specificity in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands which appears at appendix A of 33 CFR part 328. Such areas are wetland provided they meet the hydrophytic vegetation and hydric soils criteria contained in paragraphs (c) and (d) of this section.

(2) Hydrophytic Vegetation. Eastern hemlock swamps, white pine bogs, and tamarack swamps are types of wetlands that may not satisfy the hydrophytic vegetation criterion specified in paragraph (c) of this section. These wetland types are described with more specificity in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands which appears at appendix A of 33 CFR part 328. Such areas are wetlands provided they meet the wetland hydrology and hydric soils criteria contained in paragraphs (b) and (d) of this section.

(f) Problem Wetland Areas. Problem wetland areas are those areas which provide wetland functions and values but where evidence of one or more of the criteria contained in paragraphs (b)–(d) of this section may be absent during a limited or extended period of time due to particular characteristics of the soil, vegetation, and hydrology of these areas. Problem areas and the conditions under which they may be wetlands are specified in appendix 6 of the Federal Manual for Identifying and Delineating Jurisdictional Wetlands which appears at appendix A of 33 CFR part 328.

(g) Disturbed Areas.

(1) Disturbed areas are those areas that previously met the criteria contained under paragraphs (b)–(d) of this section, or previously qualified as a wetland under paragraphs (e)–(f) of this section, but have had vegetation, soils, and/or hydrology altered by recent human activity or natural events such that the required evidence of the affected criteria has been removed. These wetland types are described with more specificity in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands which appears at appendix A of 33 CFR part 328. If a disturbed area is identified as a wetland, field personnel shall document the reasons for determining that the site would have been a wetland but for the disturbance. Such documentation shall include affirmative evidence reasonably supporting a conclusion that the site previously met the requisite criteria.

(2) Areas which have been disturbed by authorized or otherwise legal human activity are wetlands if the activity does not result in the relatively permanent removal of wetland hydrology, hydrophytic vegetation, or hydric soils. The removal of hydrology, vegetation or soils is not relatively pemanent if the affected hydrology, vegetation, or soils reasonably could be expected to return after the cessation of the legal activity. Illegal or unauthorized activities may not eliminate Clean Water Act jurisdiction.

(3) With regard to areas disturbed as a result of natural events (*e.g.*, avalanches, mudslides, fire, volcanic depositions, and beaver dams), the agency shall consider the relative permanence of the change, and whether the area is still functioning as a wetland. If natural events have relatively permanently disturbed an area to the extent that wetland hydrology is no longer present, and therefore hydric soils and hydrophytic vegetation, even if still present, would not be expected to persist at the site, the area is no longer a wetland.

PART 435—OIL AND GAS EXTRACTION POINT SOURCE CATEGORY

1. The authority citation for part 435 continues to read as follows:

Authority: 33 U.S.C. 12151 *et seq.*

2. Section 435.41(f) is revised to read as follows:

§ 435.41 Specialized definitions.

* * * * *

(f) Wetlands means those areas defined at § 232.2(r) of this chapter.

33 CFR Chapter II—[Amended]

PART 328—DEFINITION OF WATERS OF THE UNITED STATES

1. The authority citation for part 328 continues to read as follows:

Authority: 33 U.S.C. 1344.

2. Section 328(b) is revised to read as follows:

§ 328.3 Definitions.

* * * * *

(b) The term *wetlands* means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Identifying characteristics or jurisdictional wetlands are described in § 328.6. Technical guidance on identifying and delineating wetlands is contained in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands (see appendix A of this part).[3]

* * * * *

3. Section 328.6 is added to read as follows:

§ 328.6 Identifying Characteristics of Jurisdictional Wetlands.

(a) Under natural, undisturbed conditions, wetlands generally posses three characteristics: Wetland hydrology, hydrophytic vegetation, and hydric soils. These three criteria, as described in paragraphs (b)–(d) of this section, must be present for an area to be identified as wetlands, unless otherwise specified in paragraphs (e)–(g) of this section.

(b) Wetlands hydrology is present if an area is inundated for 15 or more consecutive days, or saturated from surface or ground water to the surface for 21 or more consecutive days, during the growing season in most years. Wetland hydrology is also present if an area is periodically flooded by tidal water in most years. In the absence of direct measurement of inundation, soil saturation, or tidal flooding, an area meets the wetland hydrology criterion if one of the following indicators are documented:

(1) A minimum of 3 years of hydrologic records, collected during the years of normal rainfall, correlated with long-term hydrologic records for the specific geographic area, that demonstrate the area meets the wetland hydrology criterion; or

(2) Aerial photography for a minimum of 5 years that reveals evidence of inundation and/or saturation in most years, correlated with long-term hydrologic records for the specific geographic area, that demonstrates the area meets the wetland hydrology criterion; or

(3) The material presence of one or more primary hydrologic indicators below, which, when considered with evidence of frequency and duration of rainfall or other hydrologic conditions, that provides sufficient evidence to establish that the area meets the wetlands hydrology criterion:

(i) Surface water inundation; or

(ii) Observed free water at the surface in an unlined borehole; or

(iii) Water can be squeezed or shaken from a soil sample taken at the soil surface; or

(iv) Oxidized stains along the channels of living roots (oxidized rhizospheres); or

(v) Sulfidic material within 12 inches of the soil surface; or

(vi) Specific plant morphological adaptation/responses to prolonged inundation or saturation: pneumatophores, prop roots, hypertrophied lenticels, arenchymous tissues, and floating stems and leaves or floating-leaved plants growing in the area (may be observed lying flat on the soil), and buttressed trunks or stems.

(4) If none of the indicators in paragraphs (b)(1), (b)(2), or (b)(3) of this section is present, one of more of the following secondary hydrologic indicators, when used in conjunction with corroborative information (*e.g.*, maps), supports a wetland hydrology determination:

(i) Silt marks (waterborne silt deposits) that indicate inundation; or

(ii) Drift lines; or

(iii) Surface-scoured areas; or

(iv) Other common plant morphological adaptations/responses to hydrology: Shallow root systems and adventitious roots.

(c) Hydrophytic vegetation is present when, under normal circumstances, a frequency analysis of all species within the community yields a prevalence index of less than 3.0 (where obligate wetland=1.0, facultative wetland=2.0, facultative=3.0, facultative upland=4.0, and upland=5.0). Hydrophytic vegetation is described with more specificity in the U.S. Fish and Wildlife Service's publication, National List of Plant Species that Occur in Wetlands, which is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC, 20402 (Stock Number 024–010–00682–0).

(d) Hydric soils are present when, based on field verification, an area has:

(1) Soils listed by series in "Hydric Soils of the United States" (as amended), which is available from the Chairperson, National Technical Committee for Hydric Soils, U.S. Department of Agriculture, Soil Conservation Service, South Agriculture Building, room 0054, 14th and Independence Avenue, SW., Washington, DC 20250;

(2) Organic soils (histosols, except folists);

(3) Mineral soils classifying as sulfaquents, hydraquents, or histic subgroups of aquic suborders; or

(4) Other soils that meet the National Technical Committee for Hydric Soils' criteria for hydric soil, which is available from the Chairperson, National Technical Committee for Hydric Soils, U.S. Department of Agriculture, Soil Conservation Service, South Agriculture Building, room 0054, 14th and Independence Avenue, SW., Washington, DC 20250.

(e) Exceptions to the Criteria. Areas satisfying the conditions specified below are wetlands even though they may not meet one of the criteria specified in paragraphs (b)–(d) of this section.

(1) Wetland Hydrology. Pocosins, playas, prairie potholes, and vernal pools are types of wetlands that may not satisfy the hydrology criterion specified in paragraph (b) of this section, but are inundated and/or saturated at the surface for 7 or more consecutive days during the growing season. These wetland types are described with more specificity in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands which appears at appendix A of this part. Such areas are wetland provided they meet the hydrophytic vegetation and hydric soils criteria contained in paragraphs (c) and (d) of this section.

(2) Hydrophytic Vegetation. Eastern hemlock swamps, white pine bogs, and tamarack swamps are types of wetlands that may not satisfy the hydrophytic

[3] See footnote 1 to 40 CFR part 230.3(t).

vegetation criterion specified in paragraph (c) of this section. These wetland types are described with more specificity in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands which appears at appendix A of this part. Such areas are wetlands provided they meet the wetland hydrology and hydric soils criteria contained in paragraphs (b) and (d) of this section.

(f) Problem Wetland Areas. Problem wetland areas are those areas which provide wetland functions and values but where evidence of one or more of the criteria contained in paragraphs (b)–(d) of this section may be absent during a limited or extended period of time due to particular characteristics of the soil, vegetation, and hydrology of these areas. Problem areas and the conditions under which they may be wetlands are specified in Appendix 6 of the Federal Manual for Identifying and Delineating Jurisdictional Wetlands which appears at appendix A of this part.

(g) Disturbed Areas (1) Disturbed areas are those areas that previously met the criteria contained under paragraphs (b)–(d) of this section, or previously qualified as a wetland under paragraphs (e)–(f) of this section, but have had vegetation, soils, and/or hydrology altered by recent human activity or natural events such that the required evidence of the affected criteria has been removed. These wetland types are described with more specificity in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands which appears at appendix A of this part. If a disturbed area is identified as a wetland, field personnel shall document the reasons for determining that the site would have been a wetland but for the disturbance. Such documentation shall include affirmative evidence reasonably supporting a conclusion that the site previously met the requisite criteria.

(2) Areas which have been disturbed by authorized or otherwise legal human activity are wetlands if the activity does not result in the relatively permanent removal of wetland hydrology, hydrophytic vegetation, or hydric soils. The removal of hydrology, vegetation or soils is not relatively permanent if the affected hydrology, vegetation, or soils reasonably could be expected to return after the cessation of the legal activity. Illegal or unauthorized activities may not eliminate Clean Water Act jurisdiction.

(3) With regard to areas disturbed as a result of natural events (*e.g.*, avalanches, mudslides, fire, volcanic depositions, and beaver dams), the agency shall consider the relative permanence of the change, and whether the area is still functioning as a wetland. If natural events have relatively permanently disturbed an area to the extent that wetland hydrology is no longer present, and therefore hydric soils and hydrophytic vegetation, even if still present, would not be expected to persist at the site, the area is no longer a wetland.

7 CFR Chapter VI—[Amended]

PART 12—HIGHLY ERODIBLE LAND AND WETLAND CONSERVATION

1. The authority citation for part 12 continues to read as follows:

Authority: 16 U.S.C. 3801 *et seq.*

2. Section 12.2(a)(29) is amended by adding at the end of the following two sentences:

§ 12.2 Definitions.

(a) * * *

(29) * * * Wetlands generally include swamps, marshes, bogs and similar areas. Identifying characteristics of jurisdictional wetlands are described in § 12.31(a). Technical guidance on identifying and delineating wetlands is contained in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands (see appendix A of 33 CFR part 328).[4]

* * * * *

3. Section 12.31 is amended by removing paragraphs (a) and (b); redesignating existing paragraphs (c) and (d) as (h) and (i), respectively; revising the reference to "(c)(1)" in newly redesignated paragraph (h)(2) to read "(h)(1)"; and adding the following new paragraphs (a) through (g) to read as follows:

§ 12.31 Wetland identification Criteria

(a) *Criteria.* Under natural, undisturbed conditions, wetlands generally possess three characteristics: Wetland hydrology, hydrophytic vegetation, and hydric soils. These three criteria, as described in paragraphs (b)–(d) of this section, must be present for an area to be identified as wetlands, unless otherwise specified in paragraphs (e)–(g) of this section.

(b) *Wetlands Hydrology.* Wetlands hydrology is present if an area is:

(1) Inundated for 15 or more consecutive days, or saturated from surface or ground water to the surface for 21 or more consecutive days, during the growing season in most years; or

(2) Periodically flooded by tidal water in most years. In the absence of direct measurement of inundation, soil saturation, or tidal flooding, an area meets the wetland hydrology criterion if one of the following indicators are documented:

(i) A minimum of 3 years of hydrologic records, collected during the years of normal rainfall, correlated with long-term hydrologic records for the specific geographic area, that demonstrate the area meets the wetland hydrology criterion; or

(ii) Aerial photography for a minimum of 5 years that reveals evidence of inundation and/or saturation in most years, correlated with long-term hydrologic records for the specific geographic area, that demonstrates the area meets the wetland hydrology criterion; or

(iii) The material presence of one or more primary hydrologic indicators below, which, when considered with evidence of frequency and duration of rainfall or other hydrologic conditions, that provides sufficient evidence to establish that the area meets the wetlands hydrology criterion:

(A) Surface water inundation; or

(B) Observed free water at the surface in an unlined borehole; or

(C) Water can be squeezed or shaken from a soil sample taken at the soil surface; or

(D) Oxidized stains along the channels of living roots (oxidized rhizospheres); or

(E) Sulfidic material within 12 inches of the soil surface; or

(F) Specific plant morphological adaptation/responses to prolonged inundation or saturation: pneumatophores, prop roots, hypertrophied lenticels, arenchymous tissues, and floating stems and leaves of floating-leaved plants growing in the area (may be observed lying flat on the soil), and buttressed trunks or stems.

(3) If none of the indicators in paragraphs (b)(2)(i), (b)(2)(ii), or (b)(2)(iii) of this section is present, one or more of the following secondary hydrologic indicators, when used in conjunction with corroborative information (*e.g.*, maps), supports a wetland hydrology determination:

(i) Silt marks (waterborne silt deposits) that indicate inundation; or

(ii) Drift lines; or

(iii) Surface-scoured areas; or

(iv) Other common plant morphological adaptations/responses to hydrology: shallow root systems and adventitious roots.

(c) Hydrophytic vegetation is present when, under normal circumstances, a frequency analysis of all species within the community yields a prevalence index of less than 3.0 (where obligate wetlands = 1.0, facultative wetland = 2.0,

[4] See footnote 1 to 40 CFR part 230.3(t).

facultative=3.0, facultative upland=4.0, and upland=5.0). Hydrophytic vegetation is described with more specificity in the U.S. Fish and Wildlife Service's publication, National List of Plant Species that Occur in Wetlands, which is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC, 20402 (Stock Number 024-010-00682-0).

(d) *Hydric soils.* Hydric soils are present when, based on field verification, an area has:

(1) Soils listed by series in "Hydric Soils of the United States" (as amended), which is available from the Chairperson, National Technical Committee for Hydric Soils, U.S. Department of Agriculture, Soil Conservation Service, South Agriculture Building, room 0054, 14th and Independence Avenue, SW., Washington, DC 20250;

(2) Organic soils (histosols, except foists);

(3) Mineral soils classifying as sulfaquents, hydraquents, or histic subgroups of aquic suborders; or

(4) Other soils that meet the National Technical Committee for Hydric Soils' criteria for hydric soil, which is available from the Chairperson, National Technical Committee for Hydric Soils, U.S. Department of Agriculture, Soil Conservation Service, South Agriculture Building, room 0054, 14th and Independence Avenue, SW., Washington, DC 20250.

(e) *Exceptions to the Criteria.* Areas satisfying the conditions specified below are wetlands even though they may not meet one of the criteria specified in paragraphs (b) through (d) of this section.

(1) *Wetland Hydrology.* Pocosins, playas, prairie potholes, and vernal pools are types of wetlands that may not satisfy the hydrology criterion specified in paragraph (b) of this section, but are inundated and/or saturated at the surface for 7 or more consecutive days during the growing season. These wetland types are described with more specificity in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands which appears at appendix A of 33 CFR part 328. Such areas are wetland provided they meet the hydrophytic vegetation and hydric soils criteria contained in paragraphs (c) and (d) of this section.

(2) *Hydrophytic Vegetation.* Eastern hemlock swamps, white pine bogs, and tamarack swamps are types of wetlands that may not satisfy the hydrophytic vegetation criterion specified in paragraph (c) of this section. These wetland types are described with more specificity in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands which appears at appendix A of 33 CFR part 328. Such areas are wetlands provided they meet the wetland hydrology and hydric soils criteria contained in paragraphs (b) and (d) of this section.

(f) Problem Wetland Areas. Problem wetland areas are those areas which provide wetland functions and values but where evidence of one or more of the criteria contained in paragraphs (b)-(d) of this section may be absent during a limited or extended period of time due to particular characteristics of the soil, vegetation, and hydrology of these areas. Problem areas and the conditions under which they may be wetlands are specified in appendix 6 of the Federal Manual for Identifying and Delineating Jurisdictional Wetlands which appears at appendix A of 33 CFR part 328.

(g) *Disturbed Areas.* (1) Disturbed areas are those areas that previously met the criteria contained under paragraphs (b)-(d) of this section, or previously qualified as a wetland under paragraphs (e)-(f) of this section, but have had vegetation, soils, and/or hydrology altered by recent human activity or natural events such that the required evidence of the affected criteria has been removed. These wetland types are described with more specificity in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands which appears at appendix A of 33 CFR part 328. If a disturbed area is identified as a wetland, field personnel shall document the reasons for determining that the site would have been a wetland but for the disturbance. Such documentation shall include affirmative evidence reasonably supporting a conclusion that the site previously met the requisite criteria.

(2) Areas which have been disturbed by authorized or otherwise legal human activity are wetlands if the activity does not result in the relatively permanent removal of wetland hydrology, hydrophytic vegetation, or hydric soils. The removal of hydrology, vegetation or soils is not relatively permanent if the affected hydrology, vegetation, or soils reasonably could be expected to return after the cessation of the legal activity.

(3) With regard to areas disturbed as a result of natural events (*e.g.*, avalanches, mudslides, fire, volcanic depositions, and beaver dams), the agency shall consider the relative permanence of the change, and whether the area is still functioning as a wetland. If natural events have relatively permanently disturbed an area to the extent that wetland hydrology is no longer present, and therefore hydric soils and hydrophytic vegetation, even is still present, would not be expected to persist at the site, the area is no longer a wetland.

* * * * *

[FR Doc. 91-30341 Filed 12-17-91; 12:15 pm]
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federal register

Thursday
December 19, 1991

Part X

The President

Proclamation 6395—Basketball Centennial Day, 1991

Executive Order 12783—Extending the President's Council on Rural America

Federal Register
Vol 56, No. 244
Thursday, December 19, 1991

Presidential Documents

Title 3—

The President

Proclamation 6395 of December 17, 1991

Basketball Centennial Day, 1991

By the President of the United States of America

A Proclamation

When Dr. James Naismith invented basketball a century ago, he could not have envisioned what would become of the simple game he had devised to entertain his students between the fall football and spring baseball seasons. Today the uniquely American game of basketball is one of the fastest paced and most widely popular team sports in the world.

Dr. Naismith's brainchild has changed dramatically since a janitor helped him hang peach baskets at each end of the gymnasium at the International Young Men's Christian Association Training School in Springfield, Massachusetts. Once played primarily at YMCA facilities, basketball now boasts players and fans around the globe. Breakaway rims and gravity-defying jump shots have replaced the one-handed set shot into wooden receptacles; three-point goals now reward players who can shoot accurately from long range; and more and more women are taking up the game at all levels of competition.

Each of these changes has made basketball more exciting to watch, expanding its appeal to people of all ages and all walks of life. Indeed, few sporting events generate more spirited rivalries than a high school state basketball championship, the NCAA 64-team tournament, or the NBA Finals. Since 1904, when it was introduced as a demonstration sport, basketball has also been a thrilling part of the Olympics. The United States is proud of the many Olympic titles that have been brought home by our American teams, including the 1984 Women's Gold Medal.

In every city and town across the United States, playgrounds and gymnasiums are filled with youngsters who dream of success on the hardwood. However, whether one aspires to play professional ball or simply hopes to win a friendly pickup game, anyone who spends time on the court knows the importance of mastering the fundamentals: dribbling, passing, shooting, and rebounding. Once these skills are developed, an athlete must then learn to coordinate his or her game with the other four players on a squad. This combination of individual achievement and teamwork is what makes the game of basketball both fascinating and rewarding. The great college coach, John Wooden, may have said it best when he explained:

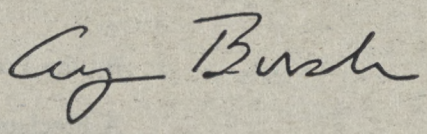
> In basketball, we meet adversity head on. It's so much like life itself: the ups and downs, the obstacles—they make you strong. A coach is a teacher, and like any good teacher, I'm trying to build men.

Like all sports, basketball not only promotes physical health and fitness but also fosters virtues that serve players well on and off the court. On this occasion, we proudly celebrate the 100th anniversary of this uniquely American game.

The Congress, by Public Law 102–210, has designated December 21, 1991, as "Basketball Centennial Day" and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim December 21, 1991, as Basketball Centennial Day. I invite all Americans to observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of December, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and sixteenth.



[FR Doc. 91-30553
Filed 12-18-91; 11:05 am]
Billing code 3195-01-M

Presidential Documents

Executive Order 12783 of December 17, 1991

Extending the President's Council on Rural America

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to extend the President's Council on Rural America, it is hereby ordered that Executive Order No. 12720 is amended by deleting the text of section 3(e) and inserting in lieu thereof "The Council shall terminate on January 16, 1993."

George Bush

THE WHITE HOUSE,
December 17, 1991.

[FR Doc. 91-30554
Filed 12-18-91; 11:06 am]
Billing code 3195-01-M

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Last List December 18, 1991

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102d Congress, 2nd Session, 1992

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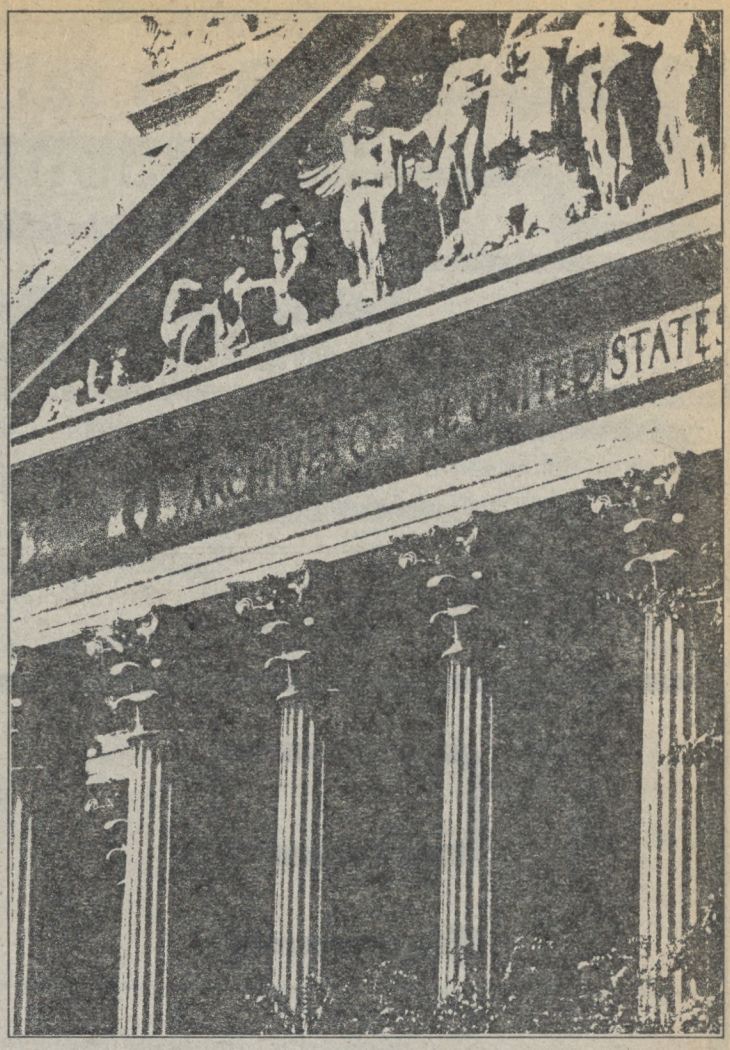
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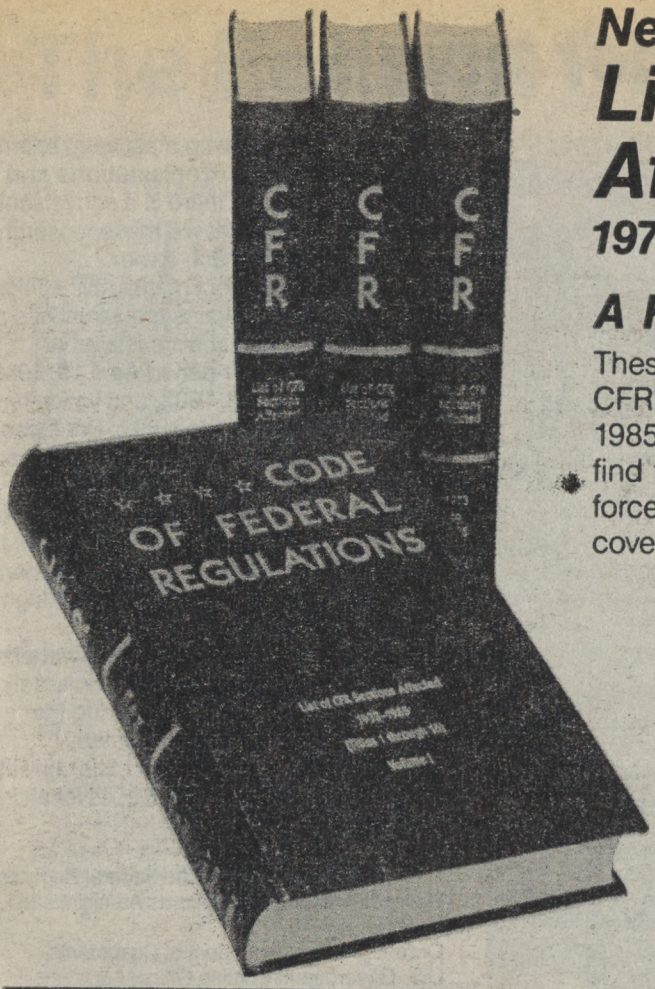
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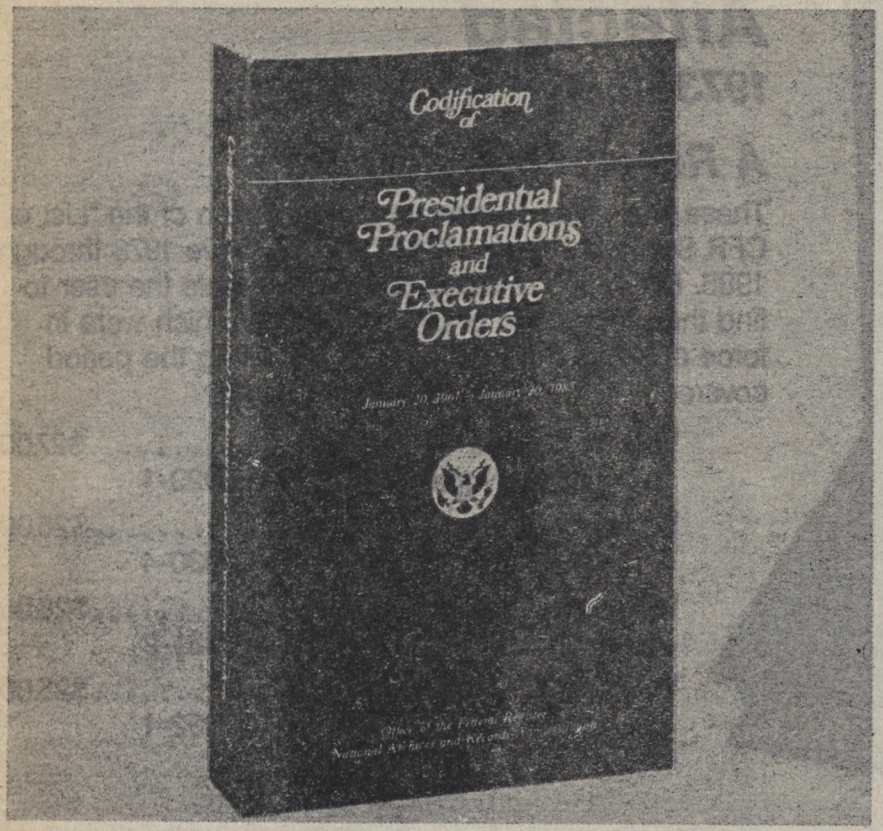
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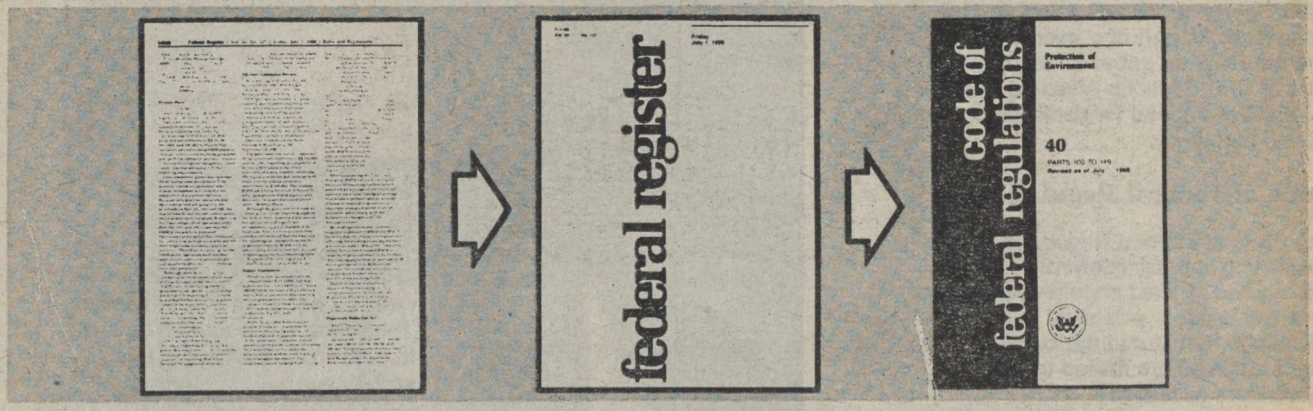
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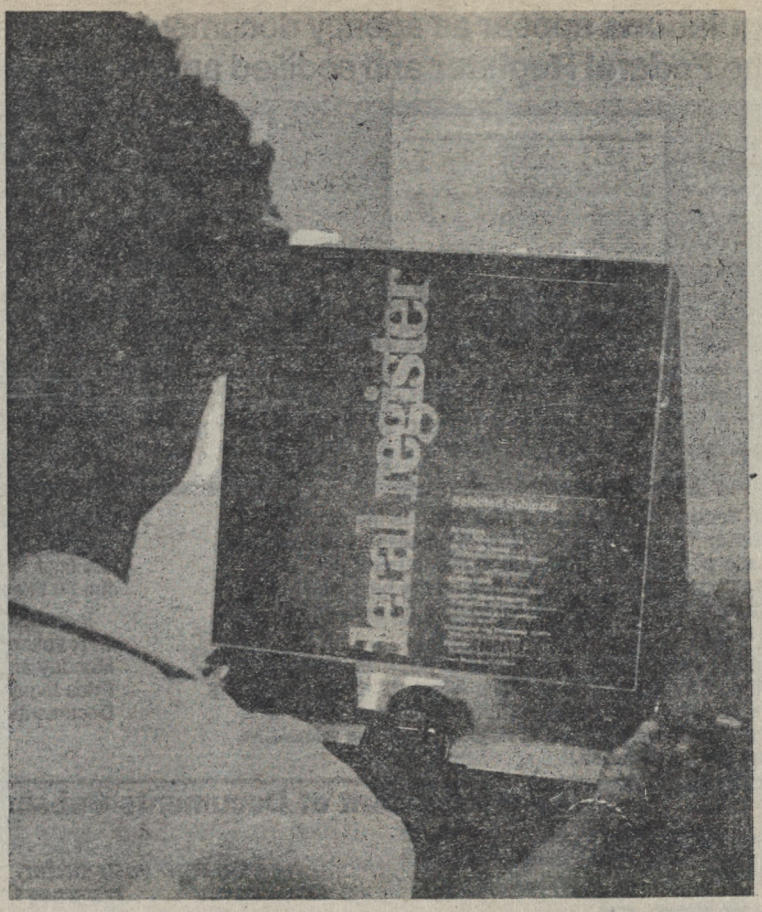
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